



Immigration Law Practitioners' Association

# THE DETAINED FAST TRACK PROCESS

**a best practice guide**

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With a foreword by Carolyn Regan,  
Chief Executive, Legal Services Commission



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The Immigration Law Practitioners' Association (ILPA) is the UK's professional association of immigration lawyers, advisers and academics practising or engaged in immigration, asylum and nationality law.

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## Foreword

The ability to obtain early access to good quality legal advice is of vital importance to people seeking asylum. Where they are detained and their application is fast-tracked, this access is even more important as they will require advice about bail as well as their asylum application.

In April 2004, we changed the way we contracted with service providers so that only practitioners with an 'exclusive contract schedule' could provide advice to fast-track clients. These contract schedules are exclusive because they are only awarded to providers who demonstrate high quality service delivery through skilled and experienced staff, effective supervision arrangements and a good track record of audit. Providers are also subject to additional contract requirements when giving advice to detained, fast-track clients.

To ensure access to prompt, competent and independent legal advice, we have worked closely with legal aid service providers and the Home Office to create an effective duty rota scheme which ensures that all fast-tracked detainees have access to a publicly funded legal representative.

From April 2008, all legal advice for detainees, not just those who are fast-tracked, will become subject to these exclusive contracting arrangements so that we have a single system which covers all the advice needs of those held in immigration removal centres.

This guide is essential for service providers who advise clients held under the fast-track process. It complements previous guides and provides valuable and easily accessible information for busy practitioners. We hope that it will prove invaluable in ensuring that particularly vulnerable people can exercise their rights.

**Carolyn Regan**  
Chief Executive  
Legal Services Commission

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The primary author of the guide was Matthew Davies who was convenor of ILPA's Detained Fast Track sub-committee 2004–2006. The project was co-ordinated by Susan Rowlands and her successor as General Secretary of ILPA, Alison Harvey, with invaluable continuity and support provided by Helen Williams.

Our thanks to our funder the Legal Services Commission.

# Introduction

## About the Detained Fast Track process

### **What is the Detained Fast Track process?**

By Detained Fast Track process we mean the process by which asylum seekers are detained for their application for asylum and any subsequent appeal to be processed quickly under accelerated procedures. We mean the Detained Fast Track process currently operated in Harmondsworth and Yarl's Wood Immigration Removal Centres. A different process, presenting similar but different challenges to applicants, currently operates at Oakington Immigration Removal Centre (sometimes referred to as 'Oakington Reception Centre').

### **How does a case end up in the Detained Fast Track process?**

Home Office policy is that 'any asylum claim, whatever the nationality or country of origin of the Claimant, may be fast-tracked where it appears after screening to be one that may be decided quickly' (*Suitability for Detained Fast Track (DFT) and Oakington processes*, Home Office, 28 July 2007 (Suitability List (2007))).

### **What does it mean in practice to be fast-tracked?**

The case will be processed very quickly according to a strict timetable:

- on day 1 the detainee will arrive in the detention centre
- on day 2 she will be interviewed in connection with her claim
- on day 3 she will be served with a decision.

If her claim is refused and she remains in Fast Track detention, then any appeal will be dealt with under accelerated appeal provisions so that the appeal is likely to be heard within one week of the refusal. Any onward appeal by way of review and reconsideration will also be subjected to accelerated procedures.

## **Why is the Detained Fast Track process a cause for concern?**

An asylum seeker detained in the Fast Track has limited time and resources to present her case to the Home Office or to prepare for any appeal. The chances of her case succeeding on any appeal in the Fast Track are minimal compared to asylum seekers who have their appeals heard in the normal way. In the period 4 April 2005 to 31 March 2006 only 1% of appeals were allowed in the Yarl's Wood Fast Track and only 3% of appeals were allowed in the Harmondsworth Fast Track. This compares to a success rate of appeals outside of the Fast Track of between 14% and 28% at the other hearing centres during the same period.

## **What is the role of a legal representative in the Detained Fast Track process?**

The legal representative must take instructions, advise and represent their client on the substantive asylum claim and in any subsequent appeal as they would for any other client. However, in addition, they have the very important role of seeking to have their client's case taken out of the Fast Track process (which invariably leads to release from detention) where fairness requires it.

The purpose of this guide is to assist practitioners in that task.

## **How to use this guide**

The aim of this guide is to provide you with materials and best practice guidance so that you are able to represent asylum seekers detained in the Fast Track to the best of your abilities.

The first part of this guide sets out the history of the Detained Fast Track process. It is important to understand this history and how the law and policy has changed over the years.

We then go on to set out all the relevant Home Office policies that apply to the Fast Track, giving general best practice guidance as to how to apply and make use of these policies as we go along.

We then move to a practical step by step guide to representing a client from the taking of instructions up to receiving the decision.

This is followed by a section on the appeals procedure as applied in Fast Track cases and then a step by step guide summarising the steps to be taken from receiving the decision through to the end of the appeal process.

We have included a short section on using judicial review in the Fast Track and a section on legal aid made up of reminders of relevant Legal Services Commission (LSC) requirements and guidance.

Once you have found your way around the guide we hope that it proves a useful tool to you in practice and that you take it with you when doing this difficult work.

## Note on style and terminology

To aid clarity in the text, we have assumed all clients to be female. This is in recognition of the fact that 'refugee women and girls constitute the majority of the World refugee population and many of them are exposed to special problems in the international protection field' (UNHCR Ex Com *Refugee women and international protection*, conclusion No. 39 (XXXV1) of 1985). In so doing we follow the approach taken by Professor James Hathaway in *The law of refugee status* (Toronto, Butterworths 1991).

Throughout this guide we refer to the Home Office and the Immigration Service rather than the Border and Immigration Agency (BIA). We have also sometimes used the phrase Home Office 'caseworker' and sometimes 'immigration official' or 'immigration officer'. On a day-to-day basis the terminology that you use will vary according to the official or part of the Home Office that you are dealing with and you should adopt the terminology accordingly.

## Currency

The law and policy set out in this guide is current as at December 2007.

The Detained Fast Track process is a contentious area of government policy and it is subject to change. This is particularly so because any change is likely to be possible without primary legislation. It is essential for representatives to keep up to date with policy and practice as well as legislative changes.

Membership of the Immigration Law Practitioners' Association (ILPA) will help to ensure that you are kept up to date.

Telephone numbers, correspondence, addresses and fax numbers are changed often and frequently without notice. It is therefore important that you keep up to date with any changes.

## Other ILPA best practice guides

Detained Fast Track work requires a knowledge of the law and procedure as it relates to detention, making asylum applications and representing on an asylum appeal. ILPA has published five best practice guides:

- Making an asylum application: a best practice guide (2002)
- Challenging immigration detention: a best practice guide (2003)
- Best practice guide to asylum and Human Rights appeals (2003)
- Working with children and young people subject to immigration control: guidelines for best practice (2004)
- Representation at immigration appeals: a best practice guide (2005)

This best practice guide to Detained Fast Track work is a companion to the earlier guides. This means we will not set out in any great detail matters of best practice that are dealt with in the earlier guides. The purpose of this guide is to focus solely on the Detained Fast Track and what is essential for practitioners to know. Where we believe reference to the earlier guides would be helpful to you we make that reference.

## The Detained Fast Track process timetable at a glance

- Day 1** Arrival at Immigration removal centre. Legal aid duty solicitor called if required by applicant. Legal representative interview if time permits
- Day 2** Legal representative interview and asylum interview
- Day 3** Service of decision (grant or refusal).  
If refused, legal representative interview to advise on refusal and merits of appealing. If granted asylum, released
- Day 4** First of two days in which to appeal to AIT (if refused)
- Day 5** Second of two days in which to appeal to AIT
- Day 6** First of two days in which appeal bundle can be lodged by Home Office
- Day 7** Second of two days in which appeal bundle can be lodged by Home Office
- Day 9** Appeal hearing
- Day 10** First of two days in which determination must be promulgated
- Day 11** Appeal determination must be promulgated
- Day 12** First of two days in which to seek a reconsideration hearing
- Day 13** Second of two days in which to seek a reconsideration hearing
- Day 15** AIT determine whether to allow a reconsideration hearing.  
If refused then two days to seek a reconsideration hearing from the High Court
- Day 17** Reconsideration hearing
- Day 18** AIT promulgate reconsideration hearing
- Day 19** First of two days to seek permission to appeal to the Court of Appeal
- Day 20** Second day to seek permission to the Court of Appeal
- Day 21** AIT determines permission to Court of Appeal application.  
Appeal rights are exhausted if refused.  
If granted, standard Court of Appeal timetable applies.

This is the standard Fast Track timetable for an asylum applicant, from beginning to possible end, assuming all appeal rights are exercised and the timetable is not 'enlarged' (i.e. extended).

It is based on the timetable produced by the Home Office which was attached to a leaflet entitled *Harmondsworth Fast Track procedure* (Home Office, February 2005). The timetable is not set in stone nor, save for the appeal time limits, in legislation. It is a creation of policy and not law.

But the timetable shown is essentially what you should expect if you take on a Fast Track case. The speed at which things have to be done must not be taken lightly – a Fast Track case will take up most of your time whilst it is running and you need to set aside enough time to do it properly:

The pace is bewildering, and there is plenty of scope for unfairness and loss of important rights.

*Immigration nationality and refugee law handbook*,  
JCWI, 2006 edition, p.1130.

To do this work well you should equip yourself with all the materials that you need – this should include a thorough understanding of how the Detained Fast Track process came about, what it is supposed to be and what it is not supposed to be.

You should start with understanding the history of the Fast Track which we outline in chapter 1.

## Abbreviations

AIT	Asylum and Immigration Tribunal
AIT (Fast Track Procedure) Rules	Asylum and Immigration Tribunal (Fast Track Procedure) Rules 2005 (SI 2005/560, as amended)
API	Asylum Policy Instruction
BIA	Border and Immigration Agency
CLR	Controlled Legal Representation
EEA	European Economic Area
FRC	Funding Review Committee
DFT	Detained Fast Track
ECHR	European Convention on Human Rights
IRC	Immigration Removal Centre
LEO	Local Enforcement Office
LSC	Legal Services Commission
NAM	New Asylum Model
NIU	National Intake Unit
NSA	Non-Suspensive Appeals
OEM	Operational Enforcement Manual
Principal Rules	Asylum and Immigration Tribunal (Procedure) Rules 2005 (SI 2005/230, as amended)
Refugee Convention	the 1951 United Nations Convention Relating to the Status of Refugees
RLC	Refugee Legal Centre
OISC	Office of the Immigration Services Commissioner
Suitability List (2007)	<i>Suitability for Detained Fast Track (DFT) and Oakington processes</i> , Home Office, Border and Immigration Agency Asylum Process Instruction 28 July 2007
UNHCR	United Nations High Commissioner for Refugees

## Before the Detained Fast Track process

Before the introduction of the Detained Fast Track process all asylum claims were considered in the same way. Some asylum seekers were detained but the majority were not. Those who were detained were detained in accordance with the policy on detention that then pertained: detention was in effect to be limited to those cases where there was a concern that the asylum seeker might abscond or otherwise fail to comply with any terms of temporary admission or where there was a need to discover what was an individual's true identity or where their removal was imminent. There was no concept of, or legal basis for, detaining a person simply to process her asylum claim quickly.

## Oakington Fast Track

This all changed on 16 March 2000 when the then Minister for Immigration, Mrs Barbara Roche, announced a change in policy allowing detention in Oakington Reception Centre in Cambridgeshire for the purpose of processing claims for asylum quickly.

In a written statement to Parliament Mrs Roche said:

Oakington Reception Centre will strengthen our ability to deal quickly with asylum applications, many of which prove to be unfounded. In addition to the existing detention criteria, applicants will be detained at Oakington where it appears that their application can be decided quickly, including those which may be certified as manifestly unfounded. Oakington will consider applications from adults and families and children, for whom separate accommodation is being provided, but not from unaccompanied minors. Detention will initially be for a period of about 7 days to enable applicants to be interviewed and an initial decision to be made. Legal advice will be available on site.

If the claim cannot be decided in that period, the applicant will be granted temporary admission or, if necessary in line with existing criteria, moved to another place of detention. If the claim is refused, a decision about further detention will similarly be made in accordance with existing criteria. Thus, detention in this latter category of cases will normally be to effect removal or where it has become apparent that the person will fail to keep in contact with the Immigration Service.

*Hansard* HC 16 March 2000 Vol 364, Col 385 WS

Mr Ian Martin, an Inspector in the Immigration and Nationality Directorate, explained the thinking behind Oakington in a witness statement produced for the case of *R (Saadi et ors) v SSHD* [2001] EWHC Admin 670, which challenged the lawfulness of the Oakington regime. He said:

This was to be a centre at which asylum applications would be decided quickly, within about 7 days. In order to achieve that objective for significant numbers of applicants an intensive consideration and decision process was required. In particular, it was considered essential that applicants should be available for an early interview and to submit any further representations that may be judged necessary. It was also considered important that they should be readily available for the decision to be served. The Home Office's experience is that many applicants particularly those whose applications are likely to be unfounded, were unwilling to comply with fast track asylum procedures. In the Government's view the aim of considering and deciding asylum claims within about 7 days for substantial numbers of applicants were best achieved by requiring applicants to reside at Oakington, under existing Immigration detention powers.

For the first time in the UK, the liberty of asylum seekers was to be taken away simply so that the Home Office could have them reside in one place to consider their asylum claims quickly. The principle of detaining for 'administrative convenience' was born.

The Oakington process originally envisaged:

- detention in a 'relaxed regime of minimal physical security, reflecting the fact that the purpose is to consider and decide applications [*rather than to detain absconding risks*]' (Ian Martin, Oakington Project Manager cited in *R (Saadi et ors) v SSHD* [2002] UKHL 41 at para 18)
- on-site legal representation (provided by the Refugee Legal Centre or the Immigration Advisory Service)
- a timetable whereby legal advice from the on-site representative was given on the day of arrival, day 1, or on day 2, with the Home Office interview on day 3, and days 4 and 5 available for legal advice and the submission of written representations and evidence
- a decision within 'approximately 7 days' (Ian Martin, *op. cit.*) failing which, temporary release would be granted or further detention authorised elsewhere under existing detention criteria
- processing only those claims considered capable of being decided quickly
- nationality would be a major but not the only factor in assessing at the screening interview whether a claim was capable of quick decision
- if refused asylum, any appeal would be heard in the normal way and not be subjected to a Fast Track timetable.

## Challenges to Oakington: *Saadi*

The legality of detention at Oakington for the sole purpose of fast-tracking an asylum claim was challenged in the case mentioned above, *R v SSHD ex p Saadi et ors* [2001] EWHC Admin 670. It was argued by a number of Iraqi detainees that detention at Oakington for a claim to be fast tracked was disproportionate for the purposes of Article 5(1)(f) of the European Convention on Human Rights (ECHR):

**Article 5(1)(f) ECHR:**

Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law:

...

- f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition

It was argued that since Mr Saadi was not being detained 'to prevent his effecting an unauthorised entry' into the UK but only to fast-track his asylum claim (he had been on temporary admission prior to detention), the detention was not in accordance with Article 5. Mr Justice Collins sitting in the High Court agreed and found that Fast Track detention at Oakington was a breach of Article 5. The Home Office appealed successfully to the Court of Appeal (*Saadi* [2001] EWCA Civ 1512) and the case then went to the House of Lords. The Law Lords gave their judgment on 31 October 2002 (*Saadi* [2002] UKHL 41). The leading judgment was given by Lord Slynn who held that Fast Track detention as carried out in Oakington was within the ambit of Article 5(1)(f). The Law Lords concluded that so long as the detention was in 'reasonable conditions' and for a period that was 'not excessive' it was proportionate and not a violation of Article 5.

Mr Saadi took his case to the European Court of Human Rights who gave their judgment on 11 July 2006 (*Saadi v UK*, Application No. 13229/03 [2006] ECHR 732). The Court found, by a majority of four to three, that there had been no violation of Article 5 in respect to Mr Saadi's detention for fast-tracking at Oakington. The Court held that such detention can reasonably be considered to be aimed at preventing unlawful entry to the UK and that since the detention lasted a total of only seven days it was not excessive in the circumstances. Moreover the domestic law of the UK provided a system of safeguards that enabled the applicant to challenge the lawfulness of his detention (i.e. the right to apply for temporary admission and bail).

Worthy of note is the concurring opinion of the British Judge Sir Nicolas Bratza who observed that:

The detention in the present case lasted for a total of 7 days, which the majority has found not be excessive. While I can agree that the period of the applicant's detention at Oakington was within the limits of what could be regarded as acceptable, any period of detention significantly in excess of this period would in my view not be compatible with the first limb of Article 5(1)(f).

The implication of this is that there is a real prospect that detention for any period significantly in excess of seven days, for reasons of administrative convenience only to enable fast-tracking, would be held to be incompatible with Article 5 and unlawful. That is something you should bear in mind when representing clients in the Detained Fast Track process.

On 11 October 2006 Mr Saadi applied for his case to be heard by the Grand Chamber of the European Court of Human Rights. They granted his application to be heard and the hearing was in May 2007.

Mr Saadi argued that detaining people simply for the purpose of fast-tracking their asylum claim:

... raises serious issues of general importance regarding the nature of the protection provided by [Article 5] and the relevance to such protection of the state's responsibility for immigration control ... the serious issues raised strike at the very heart of the balance inherent in the Convention between the individual and the community...Such questions affect the fundamental rights of large numbers of people. Albeit the domestic proceedings were brought on behalf of five applicants, the courts, the media and the Government recognised that at issue was the legality of the Government's 'flagship' policy of detaining asylum applicants not on the basis of fears that they might abscond, but rather for its own administrative convenience. The legality of such policy is of importance to the legal and administrative systems of many other Council of Europe states.

*Saadi v UK*, Request for Referral to the Grand Chamber on behalf of the Applicant, 9 October 2006.

The UNHCR made written submissions as a third party intervener in Mr Saadi's case. They argued that the detention of asylum seekers may only be undertaken as an exceptional measure of last resort. Detention should not be arbitrary, and must therefore be necessary and proportionate – in the sense that less intrusive measures will not suffice. They submitted that 'Mere expediency or administrative convenience is not sufficient' (Written Submissions on behalf of the United Nations High Commissioner for Refugees, 30 March 2007).

The judgment of the Grand Chamber in Mr Saadi's case will determine whether detention solely for fast-tracking an asylum claim is in breach of human rights – and whether the Detained Fast Track process will continue in the UK in its present form.

At the time of writing this guide the judgment is awaited.

In *Saadi*, both the House of Lords and the European Court of Human Rights were considering 'the relaxed regime' introduced at Oakington in the year 2000. That regime changed on 7 November 2002 when s 115 of the Nationality Immigration and Asylum Act 2002 came into force. Oakington started to be used for a different type of claim with higher stakes on refusal. Section 115 empowered the Secretary of State to certify claims brought by certain East European nationals 'unless satisfied that the claims were not clearly unfounded'.

The effect of a certification under s 115 (and now under s 94) of the 2002 Act was to deprive the claimant of a right of appeal from within the UK. Oakington therefore became primarily a place to detain persons whose claims the Secretary of State was likely to certify, thereby denying them an in-country right of appeal. A challenge to the fairness of these new procedures was considered by the Court of Appeal in *ZL and VL* [2003] EWCA Civ 25 where the Court held that the new Oakington procedures introduced from 7 November 2002 were capable of being operated fairly.

## Harmondsworth Detained Fast Track process

The Fast Track process that forms the subject of this guide began in Harmondsworth Removal Centre with an announcement made on 18 March 2003 by the then Home Office Minister Beverley Hughes. She said:

Last October, the power to detain asylum seekers for the purpose of making a speedy decision, as we do at Oakington, was upheld as lawful by the House of Lords. We are therefore extending the use of this power to Harmondsworth Removal Centre for a pilot.

New Rules to be laid before Parliament this week will also enable us to also pilot a much faster appeals process. In order to effect this new procedure, we will detain straightforward claimants to enable a quick initial decision and swift removal after any appeal, providing they meet the criteria for detention.

*Hansard HC Vol 401 Col 42WS (18 March 2003)*

Having established a seven-day Fast Track regime in Oakington for the processing of an asylum claim, the lawfulness of which had been upheld by the courts in two ways, the lawfulness of the detention and the fairness of the decision-making process, the Home Office now wanted to extend the Fast Track approach to the appeal process. They also proposed to shorten the period for the deciding of the claim (this is why the Detained Fast Track process is sometimes known as the 'Super Fast Track').

JUSTICE said of the changes:

It is a matter of serious concern that asylum seekers should now be detained for a relatively prolonged time for the sake of administrative convenience ...[the timescales] are not sufficient to enable the asylum seekers to make their case, document their need for protection, receive meaningful advice from a lawyer, or effectively challenge a negative decision on appeal. In sum the process is not one that can deliver fair decisions.

JUSTICE submission to the House of Commons Committee on the Lord Chancellor's Department Inquiry into Asylum and Immigration Appeals, April 2003, page 9

This new 'pilot' at Harmondsworth (where only male asylum seekers were detained) commenced on 10 April 2003. Its timetable, as it then was, was set out by Mr Justice Collins in the case of *R (RLC) v SSHD* [2004] EWHC 684 (Admin). He summarised it as follows:

The Harmondsworth scheme was to apply to those who were considered to have straightforward claims and who could be detained pending a quick decision. There was, it was said, to be a sharp focus on high quality decision making, with on site access to legal advice and, so far as possible, the same caseworker and legal representative dealing with an application from start to finish. It was 'to build on the successful Oakington process'. It is limited to single male applicants from countries which are believed by the [Home Office] to be those where in general there is no serious risk of persecution.

There is a screening process to identify those suitable for the fast track. 50% come from port of entry and 42% are in-country referrals, although many of the latter may have arrived as illegal entrants. Some, however, will be overstayers or others who have been here for some time and who claim asylum when discovered to try to avoid removal. Those considered suitable are taken to Harmondsworth. Before arrival, a duty solicitor or, if the applicant has his own legal representative, that representative is informed of his estimated time of arrival and when he is to be interviewed.

Normally, the interview will take place in the afternoon of the day after arrival, allowing the morning for instructions to be taken by the representative. An interpreter will be provided if necessary (as is very often the case). There is what is described as an induction interview when the applicant arrives in the course of which he is informed when he is to be interviewed and that he will be provided with legal representation, free of charge, if he has none. When the scheme started there were occasions when an asylum interview did take place on the day that the applicant arrived at the centre, but, following a review of the procedures after the raising of concerns that this was too tight a time scale and was unfair, that has not occurred since the end of July 2003.

More experienced officials, mainly Presenting Officers who used to represent the Home Office on appeals, have been drafted in to conduct the asylum interview. These normally last between 1 3/4 and 2 3/4 hours. It is up to the Officer how he conducts the interview and the extent to which breaks are needed. He is instructed that he must ensure that the applicant is fit and well and that he must adopt a sensitive approach and be prepared to be flexible and accede to any reasonable application for a break or indeed for further time. He must also be aware of the possibility that any applicant may need to be taken out of the fast track if, for example, medical or other evidence may need to be obtained or the claim turns out not to be so straightforward as was initially believed. The second day is thus taken up with instructions to the legal representative in the morning and formal asylum interview in the afternoon. On the following day, the decision is made. This will usually be a refusal. Unlike the Oakington system, the claim is never certified and so a right of appeal in all cases is provided. This must be exercised within 2 days and the hearing before the Adjudicator takes place on the next day. His decision is given the next day whereupon there are 2 days to apply for leave to appeal to the Immigration Appeal Tribunal. That is determined within 3 days. If permission is granted, a Tribunal hearing takes place 2 days thereafter and the decision is given the next day. If permission is refused, there are 10 working days to seek statutory review under section 101 of the 2002 Act. This Court will deal with that application within a week. Thus the whole process in the case of a refusal which is upheld by all the appellate bodies can be over within 5 weeks.

## Challenges to Harmondsworth: Refugee Legal Centre

The Refugee Legal Centre (RLC) brought their claim for judicial review to argue that this new Harmondsworth Fast Track procedure was unfair because it did not provide the legal representative with a day free for taking instructions prior to the Home Office interview and a day following interview for the submission of written representations (as had been the case in Oakington). Judgment in the case was given by Mr Justice Collins on 31 March 2004. He held that the Harmondsworth Detained Fast Track process was not inherently unfair although 'anything quicker would be impossible to justify'.

The RLC appealed to the Court of Appeal. Judgment dismissing the appeal was given on 12 November 2004 in *Refugee Legal Centre v SSHD* [2004] EWCA Civ 1481. The Court of Appeal agreed with Mr Justice Collins that the Harmondsworth system was not inherently unfair but it expressed considerable concern that there was no written flexibility policy setting out the circumstances in which the Home Office would take a case out of the Fast Track process or enlarge the timetable.

The Court of Appeal said this:

What is lacking, in our judgment, is a clearly stated procedure – in public law a policy – which recognises that it would be unfair not to enlarge the standard timetable in a variety of instances ... to assert [as Treasury Counsel did during the proceedings] without any real evidence to support it that a general principle of flexibility is 'deeply ingrained' is not good enough. Putting the relevant issues in writing – and we assume that without question that what is put in writing will be made public – is not simply a bureaucratic reflex. It will concentrate official minds on the proper ingredients of fair procedure; it will enable applicants and their legal representatives to know what these ingredients are taken to be; and if anything is included in or omitted from them which renders the process legally unfair, the Courts will be in a position to say so ... provided that it is operated in a way that recognises the variety of circumstances in which fairness will require an enlargement of the standard timetable – that is to say lawfully operated – the Harmondsworth system itself is not inherently unfair. A written flexibility policy to which officials and representatives alike can work will afford a necessary assurance that the three-day timetable is in truth a guide and not a straightjacket.

The Court of Appeal judged that it was not enough for the Home Office to say they were flexible, they needed to put it in writing and set out in what circumstances they would be flexible. The Detained Fast Track processes: Operational Instruction on flexibility was eventually published some five months after the judgment on 26 April 2005 and we look at that in detail elsewhere in this guide. ► See chapter 2.

The RLC case is of great importance to those who do Fast Track work. It underlines the importance of the Home Office being *flexible* within the Detained Fast Track process, and (a better outcome for the applicant) taking cases out of the Detained Fast Track process altogether when they are not *suitable*.

You should quote from the judgment liberally when making applications for your client to achieve either of these goals.

## Yarl's Wood Fast Track

On 11 May 2005 the Fast Track procedure for men at Harmondsworth was extended to Yarl's Wood Removal Centre for women applicants. It is exactly the same procedure and the Fast Track policies and case law apply equally to Yarl's Wood and Harmondsworth. From a representative's point of view, the one crucial difference is that because the Yarl's Wood detainees are all women particular attention has to be given to policies, guidelines and case law relevant to gender, some of which may found arguments for being taken out of the Fast Track.

## Detained Fast Track asylum process suitability list first extended

On 23 May 2005 it was announced that cases suitable for fast-tracking would not be limited to nationals of certain countries as had been the case hitherto. The Detained Fast Track asylum process suitability list would be extended to applicants of all nationalities where a case could be decided quickly.

## The New Asylum Model and the future of the Fast Track

On 18 January 2006 the Home Office announced the concept of the New Asylum Model (NAM). This envisaged asylum seekers being placed into categories called 'segments' which will determine how their case is processed, of which the Detained Fast Track process was to be one. Although the notion of segments has largely disappeared, the Detained Fast Track process has remained an integral part of NAM. The Home Office aims to process 30% of new asylum claimants in detention. Fast Track looks set to stay.

### Fast Track in the UK – chronology

- 16.03.00 Policy of detaining asylum seekers at **Oakington** to Fast Track their claims is announced.
- 17.09.01 Judgment given by Collins J in **Saadi** – detention for fast-tracking breaches Article 5 ECHR.
- 19.10.01 Home Office’s appeal in **Saadi** allowed by the Court of Appeal – detention for fast-tracking does not breach Article 5 ECHR.
- 31.10.02 House of Lords upholds the Court of Appeal’s decision in **Saadi**.
- 18.03.03 **Harmondsworth** Fast Track pilot scheme announced.
- 10.04.03 Harmondsworth Fast Track pilot begins.
- 31.03.04 Judgment given by Collins J in *R (RLC) v SSHD*. The Harmondsworth Fast Track is held to be fair. The RLC appeal to the Court of Appeal.
- 12.11.04 Judgment given by the Court of Appeal in the RLC case. They hold that the Harmondsworth Fast Track process is capable of being operated fairly provided there is a written flexibility policy
- 26.04.05 Home Office’s written **flexibility policy** published.
- 11.05.05 Yarl’s Wood Fast Track process commences.
- 23.05.05 **Suitability List 2005** published confirming that any claim is liable to be fast-tracked, not just certain nationalities.
- 18.01.06 New Asylum Model announced – Detained Fast Track to be one of the ‘segments’.
- 11.07.06 Judgment given by European Court of Human Rights in **Saadi** finding no breach of Article 5(1)(f).
- May 2007 Appeal to the Grand Chamber of the ECHR in **Saadi**
- July 2007 Hearing in **Saadi** before the Grand Chamber. Judgment awaited at time of writing
- 28.07.07 **Suitability List 2007** published

## The European experience and the observations of the UNHCR

The Detained Fast Track process is not just a UK phenomenon. At the European level a small number of other member states have introduced their own versions from which lessons can be learned.

These must be considered in the light of Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers, which provides at Article 7 that:

7(2) Member states may decide on the residence of the asylum seeker for reasons of public interest, public order or, when necessary, for the swift processing and effective monitoring of his or her application.

It is worth looking briefly at the experience of our Dutch colleagues who have been struggling with their own version of accelerated procedures since April 2001 when the Aliens Act 2000 came into force in the Netherlands. This set up a Fast Track in which cases were decided within 48 processing hours. Unlike our system the only criteria for dealing with cases in the Dutch Fast Track is whether the asylum application can be rejected within 48 processing hours without a time-consuming investigation (including manifestly unfounded cases and cases where a claim can be lodged in a third country). Like in the UK, the fairness of the system was challenged in the courts. The courts in the Netherlands endorsed the process holding that the test for placing a case in the Fast Track should be whether rejection on the basis of a careful assessment is possible within 48 processing hours.

In July 2003 the UNHCR published observations and recommendations in respect to the accelerated procedures in the Netherlands (*UNHCR Implementation of the Aliens Act 2000: UNHCR Observations and recommendations, July 2003*). The UNHCR observed:

UNHCR is concerned that accelerated procedures in the Netherlands have become the Rule and the stated aim is to have an even higher share of claims examined in an accelerated procedure. From UNHCR's perspective, channelling claims into the accelerated procedure should not be statistics driven but rather be determined on the merits of the claim.

UNHCR accepts and supports measures that could lead to more efficient and rapid determination of asylum claims in so far as they take into account basic procedural safeguards. Conclusion Number 30 of the Executive Committee of UNHCR focuses specifically on manifestly unfounded or abusive claims, and makes provisions for claims considered to be so obviously without foundation as not to merit full examination at every level of the procedure. As noted during the Global Consultations on International Protection amongst others *'If the types of application which may be categorised as clearly abusive or manifestly unfounded can be clearly defined and delimited, and if appropriate safeguards are in place, the approach can be a useful case management tool within the asylum procedure to expedite decision making in countries dealing with a significant caseload'*.

*Op. cit.*, page 2

Generally vulnerable and traumatised asylum seekers, including unaccompanied and separated children, require time to establish trust and confidence in the person(s) responsible for determining their claim, before they can explain the reasons for their flight or the cause of their trauma. Persons raising gender related claims and survivors of torture or severe trauma in particular require a supportive environment where they can be reassured of the confidentiality of their claim. Some claimants, because of the shame they feel over what has happened to them, or due to trauma, may be reluctant to identify the true extent of the persecution suffered or feared. They may continue to fear persons in authority, or they may fear rejection and/or reprisals from their family and/or community. Particularly for survivors of sexual violence or other forms of trauma, subsequent interviews may be needed in order to establish trust and to obtain all the relevant information.

*Op. cit.*, page 3

The UNHCR concluded by expressing its concern that the 48-hour framework of the accelerated procedure in the Netherlands did not permit the time required to establish the necessary confidence and trust. They concluded that:

...claims by traumatised and other vulnerable cases, including unaccompanied and separated children, should always be channelled into the regular procedure and be prioritised within that procedure. Manifestly well founded cases, that is cases where the international protection need is evident, deserve early assurances of safety and stability, and should therefore also be prioritised within the regular procedure.

*Op. cit.*, page 3

The UNHCR recommended:

Only manifestly unfounded or clearly abusive cases, as defined by UNHCR's Executive Committee in its conclusion Number 30, be channelled into the accelerated procedure.

Manifestly well-founded cases be prioritised in the regular procedure to ensure a quick and efficient examination of their claim.

Vulnerable cases, including cases suspected of trauma, and cases where sexual or gender specific violence or torture may be of concern, as well as claims by unaccompanied or separated children be channelled into and prioritised within the regular procedure.

*Op. cit.*, page 8

For a detailed critique of the Dutch Fast Track system see the Human Rights Watch report *Fleeting refuge: the triumph of efficiency over protection in Dutch asylum policy*, April 2003, (Vol 15, no. 3 (D)).

## Accelerated asylum procedures in Council of Europe Member States

### a report for the Council of Europe Parliamentary Assembly

Concerned about the emergence of accelerated procedures which 'privilege speed over fairness', the Committee on Migration, Refugees and Population of the Parliamentary Assembly of the Council of Europe appointed a Rapporteur, Mr Pedro Agramunt. On 2 August 2005 his report: *Accelerated asylum procedures in Council of Europe Member States* (Doc 10655) was published. The report surveys the accelerated procedures in the Council of Europe Member States.

The Rapporteur expresses a number of concerns including:

- 65 In his opinion, accelerated asylum procedures as applied at present in Council of Europe Member States may result, inter alia, in a violation of the principal of non-refoulement and/or Article 3 of the European Convention on Human Rights. The reason is that accelerated procedures privilege speed over fairness and often even fail to guarantee effective access to the asylum procedure or an impartial and fair assessment of the claim.
- 67 Your Rapporteur is concerned about the wide use of accelerated procedures both in current practice and also as allowed for under the proposal for a Council Directive. In this context we would like to draw attention to UNHCR Executive Committee conclusion number 30 (XXXIV) of 1983. While this provides for the possibility of special procedures for dealing with cases in an expeditious manner, it limits these to cases that are 'clearly abusive' (i.e. clearly fraudulent, or 'manifestly unfounded' i.e. not related to the grounds for granting international protection). Practice and the proposal for a Council Directive clearly go beyond this.
- 95 In the process of refugee status determination, speed should not be the primary concern, the primary concern is to establish whether the applicant has a well founded fear of persecution. Your Rapporteur is therefore concerned that tight time deadlines can further contribute to the processing of claims without full procedural guarantees being observed in practice.
- Linked to the individual determination and interview is the right to free legal aid, which should be available at first instance and not just in the event of a negative decision. Access to an effective legal assistance at all stages of the procedure is essential as is access to an interpreter.
- 99 As a general point, your Rapporteur considers that the aim ought to be to ensure good quality decisions at the first instance and that there should not be an over-reliance on effective remedies at appeal stage. The greater the use of accelerated procedures, however, the more likely it is that recourse to effective remedies at the appeal stage will be required. This is particular so as many refugees are only recognised as such during the appeal stage.
- 103 Your Rapporteur believes that accelerated asylum procedures which do not foresee a right of appeal, or set an unreasonably tight limit to lodge the appeal or establish a right of appeal without suspensive effect, to be at variance with relevant international standards.
- 104 An analysis of country practices reveals that few countries provide exemptions for particularly vulnerable groups, such as separated children/unaccompanied minors, victims of torture or sexual violence or trafficking, cases implying complex, legal or factual issues or cases which might fall under the 'exclusion clauses' laid down in the 1951 Refugee Convention. Your Rapporteur considers that such cases are manifestly unsuitable for accelerated procedures and all attempts should be made to restrict accelerated procedures in relation to them in view of the difficulties and complexities of these cases and the consequences of errors and procedures and decisions for the persons concerned.

He recommended that speed should never be the primary concern of governments determining asylum claims. '[T]he primary concern is to establish whether the applicant has a well founded fear of persecution' (para 99), and that is what representatives working within accelerated procedures, whether in the UK or the Netherlands, should seek to ensure.

Having understood the history of the Detained Fast Track process and its political context it is now important to know and understand the various Home Office policies that combine to make up this process.

The policies break down into two key areas:

**suitability**

When is a case 'suitable' for the Fast Track?

**flexibility**

When should a case be taken out of the Fast Track or the timetable be 'enlarged' (i.e. extended)?

## Suitability for the Detained Fast Track Process

On what grounds and for what reason does the Home Office consider an asylum claim suitable to be fast tracked?

The answer is to be found in a number of policies.

### Chapter 38 Operation Enforcement Manual

The starting point is that if your client is 'suitable' to be placed in the Fast Track then she must also be 'suitable' to be detained. It is therefore to the Home Office detention policy that you first look.

Where does it state that a person can be detained simply in order to have their claim fast tracked and what criteria are applied in deciding to detain in these circumstances?

You find the policy in chapter 38.4 of the Operational Enforcement Manual of the Immigration Service. This gives officials guidance on the circumstances in which detention for the purpose of fast tracking is appropriate. It states:

#### 38.4 Fast Track processes

Since March 2000 asylum applicants have been detained at Oakington where it appears that their claims are capable of being decided quickly. Detention for this purpose is commonly referred to as being under the 'Oakington criteria' although it is now set out under the title 'Detained Fast Track Processes Suitability List'. Detention for a short period of time to enable a rapid decision to be taken on an asylum/human rights claim has been upheld as lawful by the House of Lords [*Saadi et al*].

From 7 November 2002 a separate procedure was introduced for dealing with cases which are capable of being certified as clearly unfounded under section 94 of the Nationality, Immigration and Asylum Act 2002 (commonly referred to as 'NSA' cases). In addition, since 10 April 2003 there has been a Detained Fast Track process at Harmondsworth which includes an expedited in-country appeals procedure for male claimants. In May 2005, the Detained Fast Track was expanded to include the processing of female claimants at Yarl's Wood. Claimants in the latter Detained Fast Track process may be detained only at sites specified in the relevant Statutory Instrument (currently the Asylum and Immigration Tribunal (Fast Track Procedure) Rules 2005 (as amended) which came in to force on 4 April 2005.

The policy in relation to detention for Fast Track processes was updated in February 2006.

Oakington, Harmondsworth and Yarl's Wood are designated places of detention and any person could be detained there under immigration powers for any of the published reasons for detention. Detention other than for Fast Track processing must be arranged via the normal process.

That is clear enough: a background introduction to the Detained Fast Track process.

But what is the procedure for deciding who should be fast-tracked and on what criteria? The OEM at 38.4 continues:

When officers come across a person who makes an application for asylum, they should consider whether he or she meets the Detained Fast Track Suitability List criteria. All potentially suitable applicants must be referred to the National Intake Unit (NIU) Oakington co-ordinator who will confirm if they are accepted into either the process at Oakington, Harmondsworth or Yarl's Wood. The use of detention to Fast Track suitable claims under these processes is necessary to achieve the objective of delivering decisions quickly.

*Any claim may be referred to the Detained Fast Track, whatever the nationality or country of origin of the applicant, where it appears after screening to be one that may be decided quickly.*

**So the criteria for being fast-tracked are these:**

- **any claim**
- **whatever the nationality or country of origin**
- **where it appears, after screening, to be one that can be decided quickly.**

The key element of the policy is that the case must be one that can be decided quickly. You should immediately be asking yourself – is the case of my client one that can be decided quickly or not? If there are reasons why it cannot be dealt with quickly, i.e. within the Fast Track timetable, then you should be setting out those reasons to the Home Office and arguing that your client is not suitable for the Fast Track.

You should also be asking the Home Office for the documents relating to the screening that should have taken place – the policy requires that a case can only 'appear' to be one that can be decided quickly 'after screening'. You should ask for copies of all screening notes and if there was no screening event argue that without it your client should never have been considered for the Fast Track.

Note well that the criteria for the Detained Fast Track process do not include an assessment of whether your client has a strong case or not. It is a common myth that cases with poor prospects of success are sent to the Fast Track. That is incorrect as the criteria do not include an assessment of the merits of the claim. This is not surprising given that no details of the substance of the claim are taken at the screening stage.

### **Suitability List (2007)**

What assistance do officials get from the policy to help them decide whether your client's case is one that can be decided quickly? The policy states:

To assist staff in making referrals, the 'Detained Fast Track Processes Suitability List', includes a list of countries which may well give rise to claims which may be decided quickly, within the indicative timescales for the Detained Fast Track. Generally speaking, any asylum claim from a national of the countries listed on the Detained Fast Track Suitability List should be referred to the NIU unless the claimant falls within one of the excluded categories. The suitability list includes advice as to which claims are unsuitable for referral.

The Detained Fast Track processes suitability list is a very important document. It changes from time to time.

The most recent version (July 2007) is reproduced on the next two pages but you should satisfy yourself that you are working with the most up to date list.

## Suitability List (2007)

### Border and Immigration Agency: Asylum Process Instruction Suitability for Detained Fast Track (DFT) and Oakington processes 28 July 2007

- 1 Any asylum claim, whatever the nationality or country of origin of the claimant, may be considered suitable for the DFT or Oakington process where it appears, after screening, to be one that may be decided quickly.
- 2 It is the responsibility of the duty officer at the Asylum Intake Unit (AIU) to identify claims suitable for the DFT process at Harmondsworth and Yarl's Wood or Oakington process at Oakington and Yarl's Wood.
- 3 This instruction provides advice as to which claims are unlikely to be accepted into the DFT or Oakington process (section A below). It also provides advice on age dispute cases (section B below) together with a list of countries (see Annex 2 next page) which may well give rise to claims which may be decided quickly. However, if you are unsure as to whether a case is suitable for the DFT or Oakington process then do not hesitate to discuss the case by telephone with the AIU.
- 4 The guidance in this instruction should not be taken as implying any departure from the fundamental principle that all asylum claims are looked at on a case-by-case basis and decided on their individual merits.

#### A Claims which are unlikely to be accepted into the DFT or Oakington process

- Pregnant females of 24 weeks and above.
- With any medical condition which requires 24 hour nursing or medical intervention.
- With a disability, except the most easily manageable.
- With an infectious/contagious disease.
- Presenting with acute psychosis, e.g. schizophrenia and requiring hospitalisation.
- Presenting with physical and/or learning disabilities requiring 24 hour nursing care.
- Where there is independent evidence that the claimant has been tortured.
- Where detention would be contrary to government policy, e.g. where the claimant is an unaccompanied asylum-seeking child.
- Where there is independent evidence from a recognised organisation, e.g. the Poppy Project, that the claimant has been a victim of trafficking.

#### B Age dispute cases

Applicants claiming to be under 18 should be accepted into the DFT or Oakington process only if one or more of the following criteria apply:

- There is credible and clear documentary evidence that they are 18 years of age or over;
- A full 'Merton-compliant' age assessment by Social Services is available stating that they are 18 years of age or over. *Please note that assessments completed by social services Emergency Duty Teams are not acceptable evidence of age.*
- Their physical appearance/demeanour very strongly indicates that they are *significantly* over 18 years of age and no other credible evidence exists to the contrary.

Any age dispute case not falling within at least *one* of the criteria above is not suitable for the DFT or Oakington process. Where it is decided that an age dispute case is suitable for the DFT or Oakington process, Annex 3 should be completed by the officer dealing with the case and faxed to the AIU after initial contact has been made with the AIU by telephone.

*Suitability List (2007) continued*
**Annex 2**
**List of countries likely to be suitable for the DFT or Oakington process**

(with effect from 28 July 2007)

The countries listed below are likely to provide claims that may be suitable for the DFT or the Oakington process. The list includes Wave 5 of the NSA provisions that came into force on 28 July 2007. Claims from nationals of countries not on the list below (and claims from women who are nationals of the countries listed in respect of men only) may also be suitable if you have reason to believe that the claim may be decided quickly

Afghanistan	Ghana (females)	Peru <b>NSA</b>
Albania <b>NSA</b>	Guinea-Bissau	St Lucia
Bangladesh	Ivory Coast	Senegal
Benin	India <b>NSA</b>	Serbia <b>NSA</b>
Bolivia <b>NSA</b>	Jamaica <b>NSA</b>	Sierra Leone
Bosnia-Herzegovina	Kenya <b>NSA men only</b>	<b>NSA men only</b>
<b>NSA</b>	Liberia <b>NSA men only</b>	Somaliland
Botswana	Macedonia <b>NSA</b>	( <i>not Somalia</i> )
Brazil <b>NSA</b>	Malaysia	South Africa <b>NSA</b>
Burkina Faso	Malawi <b>NSA men only</b>	Sri Lanka
Cameroon	Mali <b>NSA men only</b>	Swaziland
Canada	Mauritania	Tanzania
Central African Rep	Mauritius <b>NSA</b>	Togo
China	Moldova <b>NSA</b>	Trinidad and Tobago
Congo (Brazzaville)	Mongolia <b>NSA</b>	Turkey
Ecuador <b>NSA</b>	Montenegro <b>NSA</b>	Uganda
Equatorial Guinea	Mozambique	Ukraine <b>NSA</b>
Gabon	Nigeria <b>NSA men only</b>	Vietnam
Gambia <b>NSA men only</b>	Nigeria (females)	Zambia
Ghana <b>NSA men only</b>	Pakistan	

**NSA:** under section 94 of the Nationality, Immigration and Asylum Act 2002 the Secretary of State may certify an asylum or human rights claim as clearly unfounded, with the result that an appeal may not be brought whilst the claimant is in the UK. In respect of people entitled to reside in the countries listed in section 94, the Secretary of State must certify the claim as clearly unfounded unless satisfied that it is not clearly unfounded.

You will see that the list contains 54 countries and if your client is from one of these she will 'generally speaking' be considered suitable for the Detained Fast Track.

However, the preamble to the list makes clear that:

Claims from nationals of countries not on the list (and claims from women who are nationals of the countries listed in respect of men only) may also be suitable if you have reason to believe that the claim may be decided quickly

In other words it is wrong to assume only certain nationalities can be fast-tracked – in theory any nationality can, if the claim can be *decided quickly*.

## Categories unsuitable for the Detained Fast Track process

The Suitability List (2007) is particularly important because of what it says about who would be unsuitable for the Detained Fast Track. The list sets out the current categories. You must know these categories well as they constitute immediate grounds for removing your client from detention.

The policy in the OEM at chapter 38.4 also sets out categories that are unsuitable. These are broadly similar to those on the current list:

The following will usually be unsuitable for the detained fast track:

- Unaccompanied minors (always unsuitable, see 38.9 Young Persons);
- Age dispute cases. The policy of detaining age dispute cases for the purposes of Fast Tracking was updated in February 2006 and again in July 2007;
- Disabled applicants, except the most easily manageable;
- Pregnant females of 24 weeks and above;
- Any person with a medical condition which requires 24 hour nursing or medical intervention;
- Anybody identified as having an infectious/contagious disease;
- Anybody presenting with acute psychosis e.g.: schizophrenia and requiring hospitalisation;
- Anybody presenting with physical and/or learning disabilities requiring 24 hour nursing care;
- Anybody where there is independent evidence that she has been tortured
- Where detention would be contrary to government policy, e.g. where in the case of an unaccompanied child seeking asylum;
- Anybody where there is independent evidence from a recognized organization, e.g. the Poppy Project, that she has been trafficked

So, it follows that as a legal representative your first task is to consider the suitability of your client for the Fast Track applying the Suitability Policy (2007) set out above and making representations to the Home Office if you believe your client is not suitable. Often this is not an exact science, as the Home Office itself has admitted: 'It is far better to refer a case that subsequently turns out to be unsuitable ... than not to refer a case that is suitable' (*National Intake Unit – New Asylum Module Immigration Service Operational Instruction*, Home Office, 10 February 2006).

## Flexibility in the Detained Fast Track process

If your client is *suitable* for the Detained Fast Track process then it is to the Operational Instruction on flexibility that you turn to see how the Home Office considers they should be acting to ensure fairness. This is set out in full in appendix 1, and the checklist on page 41.

In *R (Refugee Legal Centre) v SSHD* [2004] EWHC 684 (Admin) the Court of Appeal held that the Detained Fast Track process was fair provided operated flexibly in accordance with a written published policy. That policy was published on 26 April 2005 as an Operational Instruction and remains current at the date of publication. It is set out in full in appendix 1.

In formulating applications for transfers out of the Detained Fast Track, or requests for more time within it, reference should be made to this policy and the application formulated, where appropriate, in similar language.

### Ensuring fairness

The Introduction to the Operational Instruction states:

#### **Flexibility in the Fast Track process**

The Fast Track timetable is an indicative one, which should be varied as appropriate in accordance with the guidance below where circumstances require it. This document is a guide to responding to the situations that are most likely to raise issues on the flexibility of the timetable. While it is important that the integrity of the Fast Track process should be maintained insofar as it is reasonably possible to do so, this guidance must be applied in accordance with the key principle of *ensuring fairness* in the asylum determination procedure. It must be remembered that at this stage in the process, the applicant is entitled both to have his claimed heard fairly and to a fair-minded decision.

This document gives guidance on when the timetable should be enlarged to ensure fairness within the Detained Fast Track system.

So, the policy recognises that *ensuring fairness* is the key principle and you should remember this overriding principle at all stages of a Detained Fast Track case and make representations for the case to be removed from the Fast Track when fairness requires it.

## Removal from the Detained Fast Track process

The Operational Instruction on flexibility is primarily about when to be flexible *within* the Fast Track and does not give specific guidance on when a case should be removed from the Fast Track altogether.

However, the introduction does give one example of when a case should be removed from the Fast Track and a reminder that in other situations fairness may demand removal:

...caseworkers must be aware that cases *should be removed* from the process if it is not possible to consider the claim with the requisite degree of fairness within the fast track timescales (even when flexibly applied in accordance with the guidance set out in this document) and consequently the claim is not one which is capable of a quick decision. *This might be the case, for example, if the caseworker is satisfied that the applicant is obtaining supporting evidence, that fairness requires that it be taken into account when making the initial decision on the asylum claim, and that it will not be available within a period consistent with Fast Track processing even if the timetable were to be enlarged.* It must be remembered that removal from the Fast Track process should be considered in other situations where the requirements of fairness demand it.

[All emphasis added]

This is the primary source for your representations that a case should be taken out of the Detained Fast Track process because you need to obtain supporting evidence.

## Flexibility, six situations

The Operational Instruction then goes on to set out details of six situations where flexibility may be required and how that flexibility should be applied. These are situations where flexibility requires an enlargement of the timetable, not removal from the Detained Fast Track process altogether:

### Flexibility in the case of illness

Where an applicant indicates at the time of the asylum interview that he or she is unwell, it should first be established whether they wish to proceed with the interview that day. If they do wish to proceed, access to medical facilities before the interview commences should be offered. It should be noted whether such access has been either accepted or declined. The comments of the representative should also be noted. However, if an applicant wishes to proceed and the representative expresses a contrary opinion, the wishes of the applicant should normally be regarded as taking priority, unless there is some obvious reason why the stated wishes of the applicant should be regarded as unreliable (for example, if the wishes are expressed against a background of obviously confused or irrational thought or behaviour). If a delay is authorised, the applicant should be informed of the rescheduled date and time. The new interview date and time should normally be within 24 hours of the date and time of the interview which is being delayed. If the delay is being authorised on the grounds of illness it should be stressed to the applicant that there will be no further delays to the interview if they fail to seek medical attention from healthcare without a good explanation being given as to why the applicant has been unable to attend the healthcare department. Any question of a further delay to the interview on the grounds of illness should be favourably considered with the benefit of additional information from the appropriate removal centre healthcare department.

**Flexibility in the case of non-or late-attendance of representative**

Where the failure of a representative to attend (either to interview the applicant or to attend the asylum interview) would have the consequence that an asylum interview could only be conducted with the applicant being unrepresented, the interviewing officer should in the first instance make contact with the appropriate legal firm and find out the reason for non-attendance. Where the non-attendance is due to problems unrelated to the applicant, the situation should be fully explained to the applicant, who should be offered the options of conducting the interview without the representative or of delaying the interview (normally no more than 24 hours). If the interview is delayed, the representative should be notified at once of the rescheduled date and time. If the representative is so late as to make the asylum interview impractical on the day on which it is scheduled, the interview should be rearranged for the following day. If the non-attendance of a representative is due to a late change of representation by the applicant, without informing the duty office, advice should be sought by the caseworker from a senior officer but in most cases one delay of no more than 24 hours should be considered.

**Flexibility in the case of inadequate interpretation**

Where the interpreter booked to attend the interview is not competent for the purpose (for example, if there are difficulties with the language or dialect spoken, or the interpreter has insufficient vocabulary), then the interview should be delayed to ensure proper interpretation. Subject to the availability of suitable interpretation, any delay for this reason should not normally be for more than 24 hours. This guidance is subject to the proviso that if it is only the representative who expresses concern, the applicant himself appearing to have no difficulty with the interpreter and vice versa, and the caseworker is satisfied that the interpreter is competent for the purpose, then the interview should normally proceed. If the applicant expresses a desire to be interviewed in a language that is different from the one previously requested and booked, then this should be dealt with in line with guidance found in Asylum Process Manual (chapter 2 8.5).

**Flexibility in the case of non co-operation**

Where an applicant who is represented and has adequate interpretation and has no outstanding health issues refuses to comply with the interviewing process, it will be normal practice to explain the non-compliance procedure fully to the individual and invite them once more to comply. If they choose not to the claim should be considered as per the non-compliance guidelines found in the Asylum Policy Instructions (Non-Compliance). Delay will not normally be appropriate in these circumstances.

**Flexibility if the applicant or their representative asks for more time to prepare for the interview**

Where additional time is requested prior to the asylum interview, due regard should be taken of the date that the representative took conduct of the case. Caseworkers must consider the reason for the request. In most circumstances, it will not be appropriate to delay the interview because the timetable for Fast Track process should have already afforded both the applicant and the representative sufficient time to prepare for the interview, the representative having had the opportunity to ascertain from the applicant the basis of his claim and the applicant having had the opportunity to explain it to the representative with the assistance of the representative's questions. Both will be freshly aware of all the important aspects of the claim. However, there will be cases where the opportunity has been insufficient, for example where through no fault of the applicant a representative has been instructed on the same day as the scheduled interview. And there will be other situations in which circumstances mean that it will be unfair to insist on the interview going ahead as originally scheduled when more time is needed by the applicant or his representative to prepare for it; every request must be considered in the light of the proffered reasons for the request.

In all cases where such a delay to the start of an asylum interview will result in the interview not occurring on the day on which it was originally scheduled, whether because the applicant or the representative asks for a delay of that magnitude or because the start time is delayed for so long that the interview cannot predictably be started and finished on the same day, advice and authority from a senior officer should be sought. In all circumstances detailed file minutes should be made and the representative and applicant informed of the procedure.

#### **Post interview flexibility**

If, following an interview, a representative says that more time is required for them to file material relevant to the claim, then a caseworker must consider whether that proposed evidence is probative of the claim and decide whether to delay the decision. In order to decide whether to do so the caseworker should ascertain what further material it is proposed to obtain and the time scale in which it is expected to become available. The caseworker will also, by this time, have a good idea of the issues on which the decision is likely to turn. The key issue is whether it would be unfair to the applicant to proceed to a decision without considering the further material or at least giving him a reasonable opportunity to obtain it. The question of fairness will depend, amongst other things, on whether the material is central or critical to the issues on which the decision is likely to turn, or whether it relates to an issue which is only peripheral. This can only be assessed in the light of the way that the issues in the case have emerged during the interview. Timing, and the likelihood of the material being successfully obtained, are also important. In most circumstances, it will not be appropriate to delay the decision but if the caseworker, in discussion with a senior colleague, feels that it would be unfair to proceed with a decision, then the fast track timetable should be enlarged and time given for further material to be presented and delivered before the decision is made. Whilst it is perfectly possible to delay a decision for over 5 days, which is the usual time for further representations in the mainstream system, this should only happen in the most exceptional circumstances. The same principles will apply to any proposed legal research, or evidential research into readily-available objective materials, which the representative wishes to have considered before a decision is made. However, the nature of this material means that it is much more likely to be available quickly so that, if any delay is needed, it can be relatively short.

### **Flexibility in other circumstances**

The Operational Instruction concludes with a final paragraph making clear that in addition to the six situations set out above, the Fast Track timetable can be extended in other circumstances – where flexibility is needed in order to ensure the fair processing of the claim:

In addition to the above, the Fast Track timetable can be extended in other circumstances in order to ensure the fair processing of claims in the Fast Track process

What would those circumstances be?

That is the challenge to the representative – keep on asking yourself, is my client's claim for asylum being fairly processed in the Detained Fast Track process – if the answer is 'no' then make representations for the case to be taken out of the process or for the process to be operated flexibly.

## The New Asylum Model Solihull pilot, an alternative policy on flexibility?

Part of the development of the New Asylum Model (NAM) has been a pilot run in Solihull where legal representatives attend the asylum interview paid for by the LSC and work closely with the Home Office caseworker. It is in those respects similar to the Detained Fast Track process, although the claimants are not detained.

At the end of the Asylum Policy Instruction (API) on Interviewing there is a document entitled *Annex A: Solihull pilot on early and interactive legal advice*. This is of interest to those doing Detained Fast Track work because, although it does not apply to Detained Fast Track cases, it has its own set of flexibility criteria where the Home Office differentiates between 'ordinary' and 'complex' cases. Representatives can argue by analogy that if a case is 'complex' under this policy then a factually similar case in the Detained Fast Track should also be treated as complex and not one that can be decided quickly (and hence one that should be taken out of the Fast Track).

According to the Annex, in the Solihull pilot an ordinary case is:

... one where the genuinely useful evidence is confined to the applicant's statements and general country of origin or other objective evidence already in the public domain. Such cases (whether grant or refusals) fall to be decided within one month of application.

Complex cases are defined as 'those which fall within the flexibility criteria and which may not be able to be decided within one month, especially where specific evidence gathering is required'.

### The Solihull 'flexibility criteria' are as follows:

The flexibility criteria define, without being exhaustive, those occasions when a fair and sustainable decision may not be able reasonably to be made within one month. The criteria set out circumstances where the time limits may (but not necessarily will) have to operate flexibly by agreement to ensure that applicants and their legal representatives have the time which is required to provide specific evidence on material issues in dispute and so that the case owner can make just decisions with all available evidence. A case may fall within the flexibility criteria at any stage of the process, although it is expected that the majority of such cases will come to the attention of the legal representative after day four and before day ten [*i.e. during the instruction taking period prior to interview*] ... instances may arise where the need to adopt the flexibility criteria only becomes apparent at some time during or post the asylum interview. In these cases there will be provision to allow for flexibility according to the criteria below if necessary'.

... Where a factual issue is material to the decision and is one which can be established by specific objective evidence, the case owner, having received the witness statement and general supporting evidence, and in discussion with the legal representative will decide whether the issue is one which can be accepted without specific evidential proof over and above that already submitted. If this is not the case and the matter remains in dispute, the case owner and the legal representative will jointly ensure that all possible steps are taken to obtain the specific evidence required to decide the particular factual issue within the 20 day limit if possible or a reasonable time thereafter, which shall be agreed between the parties.

... Flexibility may apply to the following categories of cases:

- Where there is an allegation of torture or other trauma which is material to the decision and which expert medical evidence could reasonably resolve:
- Where there are gaps in publicly available objective evidence on issues which are material to the decision and for which expert country evidence can reasonably be obtained:
- Where specific documents are presented, the validity of which is material to the decision and which can reasonably be verified by a relevant expert:
- Where the language or dialect spoken by the applicant is material to the decision and this can reasonably be verified by a relevant expert
- Where the nationality, ethnicity or clan of an applicant is material to the decision and this can reasonably be verified by a relevant expert.
- Where the age of the applicant is material to the decision and this can reasonably be verified by a relevant expert.
- Where a factual claim is material to status determination and a witness to that alleged claim will be available to give evidence within a reasonable time.
- Where the applicant's mental capacity to give evidence is in dispute and the matter could reasonably be resolved by expert medical evidence.
- Where further objective evidence may resolve an issue identified as being in dispute and can be obtained within a reasonable time.
- Where the interests of justice and the need to make sustainable decisions otherwise require flexibility.'

So, if your case is factually similar to any of these scenarios you should be arguing that it is a 'complex case' and should be taken out of the Fast Track as not suitable (referring also to the Operational Instruction on flexibility in the Detained Fast Track process). If the Home Office reply by claiming that it is not a 'complex case' refer them to their own policy as set out above, it should make no difference that this policy is only for a NAM pilot.

## Asylum Policy Instructions relevant to Detained Fast Track work

There are other policies of the Home Office published on their website [www.bia.homeoffice.gov.uk](http://www.bia.homeoffice.gov.uk) which are of relevance and of use to representatives doing Detained Fast Track work. Most of these policies are Asylum Policy Instructions (APIs). You should be familiar with them all.

### API Gender issues in the asylum claim

October 2006

This contains sections that are relevant to Fast Track cases. In particular they are of use when representing women detained in the Fast Track at Yarl's Wood.

You should be aware of the following sections in particular:

This instruction gives guidance on the additional considerations decision makers should have in mind when assessing claims for asylum that could include gender related issues.

...Considering the gender related aspects of the claim will ensure that all aspects of a claim are fully and fairly considered.

It is best practice to request an interviewer or interpreter of the same sex as the applicant with their agreement:

...Every effort will be made to comply with any request for an interviewer or interpreter of the same sex as the applicant that is made in advance of an interview. Requests made on the day of an interview for a same sex interviewer or interpreter will be met as far as is operationally possible. This may mean a delay for an applicant while a same sex interviewer/interpreter becomes available.

If your client has been sexually assaulted, remind the interviewing officer of the following:

Women who have been sexually assaulted may suffer trauma. The symptoms of this include persistent fear, a loss of self confidence and self esteem, difficulty in concentration, an attitude of self blame, shame, a pervasive loss of control and memory loss or distortion. Decision makers should be aware of this and how such factors may effect how a woman responds during interview.

Where your client has raised information for the first time which she has not disclosed in the screening or other interviews that may have taken place before she was placed in the Fast Track, you will derive particular assistance from:

If an applicant does not immediately disclose information relating to her claim, this should not automatically count against her. There may be a number of reasons why a woman may be reluctant to disclose information for example feelings of guilt, shame, concern about family dishonour.

If the interview is not being conducted effectively or issues need clarifying, you should remind the interviewing officer of the instruction that:

Establishing credibility is an important element in assessing the claim and may be crucial to the decision. It is therefore important that an effective interview is conducted and relevant issues clarified with the applicant.

When asking for a case to be taken out of the Fast Track because you need to obtain specific country information or an expert report because the ill treatment suffered by your client has not been publicly documented, refer to:

The decision maker needs to assess objectively whether there are reasonable grounds for believing that the applicant would, if returned to the country from which they seek refugee, face persecution for a Convention reason. It is important to consider fully relevant objective evidence including the country information provided by the country of origin information service. The absence of objective information to corroborate a claimant's account is likely to be an important factor, but should not necessarily be taken to mean that human rights abuses do not occur. For instance, systematic abuse of a certain group would usually be documented but isolated acts of ill treatment perpetrated by one person on another would not.

Decision makers should familiarise themselves with the role, status and treatment of women in the country from which the woman has fled, using the country information supplied by the Country of Origin Information Service. It is essential to consider a number of issues when gathering information. These include, but are not limited to: Position of women before the law including their standing in Court, the right to bring a complaint and give evidence, divorce and custody law, the right to own property, reproductive rights, freedom to travel, and the political social and economic rights referred to below; political rights of women including the right to vote, to hold office and belong to a political party; social and economic rights of women including the right to marry a person of their choice, the right not to marry and the right to divorce, the right to determine their own sexuality, the right to an education, a career, and a job or remunerated activities, the status of single women, widows or divorcees and freedom of dress; consequences for women who refuse to abide by or who challenge social, religious or cultural norms regarding their behaviour including, for example, norms regarding virginity and pre-or extra-marital sex or pregnancy, norms around the institution of marriage including arranged marriages and divorce, and norms about behaviour and dress; incidents and forms of violence against women and the form it takes (such as, but not limited to, violence within the family, sexual abuse, honour killings, bride burning); extent of protection available to women and the sanctions or penalties on those who perpetuate the violence; consequences that may befall a woman on her return. A woman may be at greater risk on return than a man because, for example, of the authorities and the society's attitude towards women travelling alone.

It is likely that in many gender based asylum claims the decision-maker will not be able to consider all these issues properly and gather the information required within the Fast Track timetable. This would be particularly the case where the Home Office's Country of Origin Information Service does not cover all these issues in their most recent report. It is likely that an expert's report will be needed and an argument can be made that consequently the claim is not one capable of being decided quickly and should be taken out of the Fast Track.

## API Translations

October 2006

This should be referred to if your client wishes to rely upon documents that are not in English. It provides you with good reasons for arguing for more time where translations are required. Asking for more time for this reason entails revealing the existence of the documents. This may be problematic as documents that turn out not to be authentic may prejudice your client's case. You should explain this to your client and be clear on their instructions before making a decision to rely on the policy and ask for more time to obtain translations.

The policy states:

### 1 Introduction and key messages

All documents that the applicant wishes to rely upon should be provided in English, or accompanied by an English translation. The translators credentials should be provided, along with their affirmation that the translation is accurate.

Article 4 of the European Council Qualification Directive has been incorporated into UK legislation by inclusion in the Immigration Rules at Paragraph 339I which states:

'when the Secretary of State considers a person's asylum claim.....it is the duty of the person to submit to the Secretary of State as soon as possible all material factors needed to substantiate the asylum claim or establish that he is a person eligible for humanitarian protection.... which the Secretary of State shall assess in co-operation with the person'.

'All material factors needed to substantiate the asylum claim...' includes not only any documents relied upon, but also, if the documents are not in English, an English translation.

The following principles should be applied by decision-makers in the handling of foreign-language documents:

- Applicants should be informed that any documents relied upon should be provided in English or accompanied by an English translation, no matter when they are submitted.
- Any foreign-language documents on which the applicant or the decision maker wishes to rely must be accompanied by an English translation of reliable quality.
- No reliance can be place on an un-translated document.
- Decision makers should allow reasonable time for translations to be submitted, but as decisions should not be unduly delayed by the applicant's failure to submit a translation, decision makers have the discretion to arrange for an un-translated document to be translated at IND's expense where this is justifiable in the circumstances of the case.

### 2 Allowing extra time for translations

Where the document is clearly essential to the claim decision makers may grant an extension of time for the applicant to obtain a translation prior to an initial decision being made.

This should only be done where it is justifiable in the circumstances of the case, and where the document is clearly central to the claim (e.g. documentary evidence upon which the claim hinges). The decision maker should take into account:

- What stage in the process the claim has reached, and whether the applicant could reasonable be expected to have obtained a translation previously;

- Whether or not the applicant has what is considered a reasonable excuse for failing to get the document translated up to that stage;
- Whether waiting for the translation is likely to assist earlier case conclusion and improve quality of decision making.

If in doubt over whether to grant an extension in order for the applicant to obtain a translation, advice should be sought from a senior caseworker.

If you have a case where there are documents that are material to the case requiring translation, your first argument should be that the need for such a translation, to be done in accordance with the API, means that this case cannot be decided quickly within the Fast Track timetable. Your client should be released from the Fast Track.

If that is not agreed, the timetable should at least be enlarged and you should argue that the clock should be stopped until the translations have been undertaken and considered by you and your client.

## API Interviewing

November 2006

This applies equally to interviews conducted in the Detained Fast Track process as it does to interviews in the normal asylum procedure.

You should be familiar with the following paragraphs, bear them in mind during the Fast Track interview and refer to them when you make representations to the Home Office asking for more time or concerning the conduct of the interview:

The UNHCR handbook on procedures and criteria for determining refugee status under the 1951 Convention outlines the method by which we should assess any claim for asylum...

Claimants should be given every opportunity at interview to put forward the basis of their claim and to explain any apparent discrepancies. The interview should also be used to satisfy ourselves about the claimant's nationality if we are not certain of it. It is important that, by the end of the interview, we have done as much as we can to satisfy ourselves that the claimant is or is not the nationality they claim to be...

Particular care should be taken when interviewing alleged victims of torture or members of other vulnerable groups...

Wherever possible, we will comply with any requests for an interviewer or interpreter of a particular gender where specifically requested by the claimant or their representative...

The purpose of the asylum interview is to establish the facts of an asylum claim. Whilst an asylum claimant might have submitted information to the Home Office previously, the asylum interview will be the principal opportunity for a claimant to set out their claim and for the caseworker to examine any details they consider necessary...

The asylum interview is essentially a fact finding exercise and the interviewing officer will probe any answers given and investigate unsupported statements. If there is reason to doubt a certain element of a claim, it is important that the claimant has the chance to address the points of contention, and the interviewing officer has sufficient information to address such issues in the reasons for refusal letter if it is decided to refuse the claim. In particular, it is good practice to invite the claimant to explain any behaviour that may damage credibility under Section 8 of the 2004 Act.

...Caseworkers should ensure that if any discrepancies between what is on the SEF and on other papers and what is said by the claimant at interview these discrepancies are thoroughly probed at the interview. An explanation should be sought for any discrepancies in the account given by the claimant. We should also explore discrepancies between what is in the papers and is said at interview and known country information...

Where a representative is present at the interview, their role is to ensure that the claimant understands the interview process and has the opportunity to provide all relevant information. Representatives are usually not expected to intervene during the interview, other than to draw the interviewing officers attention to a problem with the standard of interpretation or to express clarification of a question or comment made by the interviewing officer.

Interpreters employed by the Home Office are required to translate accurately and impartially what is said at interview. IND interpreters are not expected to enter into any discussion regarding the merits of the claim although they may intervene to ask for clarification, to point out that a party may not have understood something, or to alert the parties to a possible missed cultural inference.

Claimants or their representatives may provide their own interpreter in addition to the official one but the claimant's or representative's interpreter may not act in place of the official IND interpreter even if an IND interpreter is not available.

As in all asylum cases, the asylum interview in a Detained Fast Track case should be conducted in accordance with this policy. To do so may, on the facts of a particular case, require the interview to be adjourned or continued on another day. It may require more time to be given so that the interviewing officer can put points of contention to your client in such a way that your client has a proper chance to address these points. A failure to follow the policy should be grounds for asking that the interview be conducted afresh and the case taken out of the Fast Track because it can no longer be dealt with quickly within the timetable envisaged.

## Victims of torture and the API Medical Foundation undated – all references to API as of August 2007

This API is of great importance to Fast Track work. It ties in with the Suitability List (2007) which, as we learned earlier, says that victims of torture, where there is independent evidence, are not suitable for fast-tracking.

A referral to the Medical Foundation for the Care of Victims of Torture, which is accepted for assessment before the service of a refusal letter, should invariably lead to your client's release from detention and the Fast Track process.

The relevant sections of the API are:

The traumatic nature of torture means that particular care and sensitivity is required when interviewing claimants who claim to be victims of torture. Caseworkers should ensure that they are familiar with the best practice guidance which can be found at annex C of the Interviewing API.

...

A torture victim's potential shame, distress, embarrassment and humiliation about recounting their experiences are difficulties which may need to be overcome. They may find it particularly difficult in the atmosphere of officialdom. Those who have suffered at the hands of their own authorities may distrust officials here, despite travelling to this country to seek refuge. In many ways this is an intractable problem, but common sense, awareness and sensitivity can reduce this influence.

These general observations explain why fast-tracking the asylum claim of a torture victim is not appropriate. Common sense, awareness and sensitivity should all lead to the conclusion that processing the claim at rapid pace in detention is not appropriate.

**Medical reports:** In producing a medical report, the medical expert will assess consistency between the Claimant's account of torture and the signs and symptoms of torture apparent on examination.

This is useful for reminding officials of the important role a medical report can play in assisting them to reach a fully informed decision on the claim.

**Medical Foundation Procedures:** Essentially, there are three stages in the Foundation's consideration of referrals – examination of the case on the papers to see whether there are grounds for consideration, a 'pre-assessment' appointment with a MF caseworker, who determines whether a full assessment by a medical practitioner is required, and full assessment by a doctor with a view to completing a medico-legal report. The Medical Foundation normally informs claimants and their representatives of the results of the first two stages within 10 working days of each of the appointments. Subject to paragraph 2.4 below all cases that have been accepted for pre-assessment by the Medical Foundation will be placed on hold pending the outcome of the pre-assessment, as long as evidence of the appointment is provided in writing. Such evidence will usually take the form of correspondence from the Medical Foundation to the Claimant or representative. If the Claimant's representative does not confirm to IND in writing within 15 working days of the pre-assessment appointment that the claimant will have a full medical assessment with a doctor, then IND will normally consider the asylum claim without further delay unless there are exceptional reasons to keep the claim on hold ...

This is your primary source for making representations that your client should be taken out of the Fast Track when she has been accepted for pre-assessment by the Medical Foundation – the case, in all but very exceptional cases, will no longer be one that can be determined quickly.

You should also be aware of the written answer of Baroness Scotland, Home Office Minister in the Lords, of 2 November 2006:

Claimants detained at Oakington can be referred to the Medical Foundation by representatives in the same way as other claimants who are not detained. If the Medical Foundation agrees to accept a claimant for pre-assessment the claimant is taken out of the Oakington process. The referral is usually accepted within 24 hours. Similarly at Harmondsworth and Yarl's Wood, if a written confirmation of a Medical Foundation [sic] is produced before the initial decision is made, claimants are released from detention and the DFT process'. Immigration: Removal Centres (*Hansard* HL, Vol 686, Col 59WA, 2 November 2006)

The API goes on to state:

**Extensions for post interview representations** Special arrangements have been agreed to allow requests for an extension of time for post-interview representations to be submitted when a claimant has obtained an appointment with the Medical Foundation. Such requests should be carefully considered and, where supported by written evidence, refused only in exceptional circumstances'.

This is your primary source for making representations that your client should be taken out of the Fast Track post-interview if she has not been taken out before. Where she has been accepted for pre-assessment by the Medical Foundation the case will no longer be one that can be determined quickly.

The API goes on:

Where a credible account of torture is given during interview, caseworkers should consider suggesting that the claimant may wish to approach the Medical Foundation for assistance. However, it is ultimately for the Claimant, in consultation with any legal representative, to decide whether to seek an appointment with the Medical Foundation. IND does not insist that a medical report should be submitted when torture has been alleged and will delay consideration of a claim only after confirmation of an appointment with the Medical Foundation has been provided in writing. A medical report may not be necessary if claims of torture are not contested or if caseworkers already intend to grant asylum. In such cases the claimant may still wish to approach the Medical Foundation for care or treatment.

It follows then that if your client has given an account of torture during interview you should refer her to the Medical Foundation if you have not done so already. Even if the caseworker tells you they are not contesting the claim of torture you should still refer to the Medical Foundation if the caseworker refuses to release from the Fast Track – if your client is not released and is refused asylum she will be subject to the accelerated appeals process and an immigration judge may not be so willing to accept the uncorroborated claim of torture. There are no similar protocols to the API governing the referral of cases to the Medical Foundation at the appeal stage.

The API goes on to state:

It is important that reports prepared on behalf of the Foundation are understood fully and given proper weight in the consideration process. It is important to stress that caseworkers must avoid making clinical judgements

...Where a claimant submits a report from the Medical Foundation which supports his account of torture, the fact that the claimant has been tortured should be accepted unless there is significant reasons for rejecting that conclusion despite the content of the report.

...Evidence of past torture in the country of origin will be very relevant when assessing whether there is a reasonable likelihood that the claimant would face persecution or torture in that country in the future.

It should be clear from the above that it is vitally important to establish at an early stage whether your client has been a victim of torture and seek urgently to put in place the process for documenting that torture. If you do this then your client should be removed from the Fast Track. The earlier the referral the more likely it is that the pre-assessment appointment letter arrives before the refusal letter is served. There is significantly more 'resistance' from the Home Office to taking a case out of the Fast Track post-refusal.

### Referrals to the Medical Foundation

The Medical Foundation has designed a referral form which is included in this guide ► See appendix 4, and should be completed *in full* when referring cases. It should be faxed to the Medical Foundation, ► see appendix 7 for contact details. The Medical Foundation will be able to tell you within 24 hours if they can offer an assessment. The Home Office is aware that the Medical Foundation works during normal business hours and allowances should be made for evenings and weekends.

When referring cases to the Medical Foundation the referral form should be accompanied by draft statements if they have been prepared, the interview record if the interview has taken place, or in the absence of these, the notes of the attendance when you took instructions, which the Medical Foundation will treat as confidential. You should also inform the Medical Foundation at what stage in the process your client is and the exact deadlines to which you are working.

The Medical Foundation will need to know in as much detail as possible what the actual torture amounted to, what are the injuries you wish it to document and the context in which those injuries were alleged to have happened. Do not rely on exclusively the checklist on the form, this is intended as an *aide-memoire* only. It is the narrative detail of the torture and its circumstances that is crucial in assisting the person receiving the form in making a quick and sound decision.

You do not have to make a diagnosis or worry about using medical terminology. Layperson's terms are fine. However, if any medical notes are available from, for example, the health care centre at the immigration removal centre (IRC), particularly if they have been prepared in support of a Rule 35 'allegation of torture' form (see below in this chapter, detention centre rules) these can be extremely helpful in assisting the Medical Foundation to reach a decision on whether to offer assessment interviews.

Sometimes more information can emerge over time. For example, an allegation of torture may be made when taking instructions over the telephone and a Medical Foundation referral form can be filled in to a significant extent but not fully completed. Submit the form to the Medical Foundation explaining the circumstances. Suggest that, if they are unable to agree an assessment appointment on the information currently available, they should agree to look at the case again, post-interview. An important aspect of torture is that disclosure is often partial. This is expected by the Medical Foundation and can be catered for.

Further details of the Medical Foundation's referral processes can be found on their website [www.torturecare.org.uk](http://www.torturecare.org.uk)

**The Helen Bamber Foundation**

Although the API only refers to the Medical Foundation there is no reason why 'independent evidence' of torture from similar organisations should not be treated in the same way.

The Helen Bamber Foundation does similar work to that of the Medical Foundation and the Home Office has treated it in the same way as the Medical Foundation in Fast Track cases, after hearing argument that it should be treated the same. The Helen Bamber Foundation's remit is wider than that of the Medical Foundation. ►See appendix 7 for contact details.

## Victims of trafficking and the API Trafficking victims

### February 2005

The Suitability List (2007), as we learned earlier, says that people who have been trafficked, where there is independent evidence, are not suitable for fast-tracking. The Suitability List (2007) makes specific reference to one source of such evidence, an organisation called the Poppy Project. ►See appendix 7 for contact details.

Guidance was issued by the Home Office on 17 February 2005 in the form of an API. It no longer appears on the Home Office website, but the Poppy Project have confirmed as at September 2007 that so far as they are aware it remains in operation. The guidance states:

Any cases that clearly meet the Project criteria should not be referred to Oakington. Women who are accepted onto the Poppy Scheme are not suitable for processing through the fast-track asylum route at Oakington due to their need to undertake the various stages of the first level in the project that lasts for 4 weeks and the need to ensure that they can co-operate fully with any investigation and court proceedings.

The API on Gender Issues (dated October 2006 and discussed above) also contains a section on trafficking. This includes the following comments:

#### 8 Trafficking

Trafficking for sexual exploitation involves the movement of a woman into a situation of exploitation using deception and/or coercion. Decision-makers should be mindful not to confuse trafficking with illegal migration or human smuggling, although many victims of trafficking may have been smuggled illegally. That a woman has been trafficked for sexual exploitation is not, in itself, a ground for refugee status. However some trafficked women may be able to establish a Convention reason (such as a membership of a particular social group) and have valid claims to refugee status. Forced recruitment of women for the purposes of forced prostitution or sexual exploitation is a form of gender-related violence and/or abuse and may amount to persecution. In addition, trafficked women may face serious repercussions upon their return to their home country, such as reprisals or retaliation from trafficking rings or individuals, or discrimination from their community and families. Each case should be considered on its individual merits and in the context of the country on which it is based.

For further guidance on handling claims where the applicant has or is believed to have been trafficked into the UK for sexual exploitation will be soon be available in an **Asylum Process Notice**.

As of September 2007, no Asylum Process Notice on trafficking had been published.

The Poppy Project is funded by the Home Office, to provide housing and support to up to 35 adult (over 18) female victims of trafficking for sexual exploitation. The women must fulfil the following criteria (correct as September 2007), which have been agreed between the Home Office and the Poppy Project:

- trafficked to the United Kingdom
- forced to work as a prostitute in the United Kingdom
- sexually exploited in the three months prior to the date of referral

When women meet the first two, but not the third criteria, they may be eligible for support from the Poppy outreach team, which provides short-term crisis intervention. Women accepted for outreach should still be removed from the Fast Track (Communication from Poppy, September 2007).

To qualify for longer term assistance entails co-operating with the authorities, for example giving information to law enforcement agencies for intelligence purposes or agreeing to be a witness in court.

Women who fall outside of the entry criteria include:

- women picked up by immigration at point of entry (because the woman has not yet been working as a prostitute within the UK)
- women who escaped/left prostitution more than three months before referral (but see above, a referral to the outreach team is one possibility)
- women who have been trafficked for purposes other than prostitution (domestic slavery, forced marriage etc).

So, you need to take instructions from your client to see if she meets the criteria for a Poppy Project referral. The number of cases that do will be small, and in cases that do not, other independent evidence should be sought.

### **Referrals to the Poppy Project**

Should your client consent to a Poppy Project referral then a referral should be made by telephone (not by fax or email). Representatives should have as much information available as possible regarding the above criteria when making the referral.

Referrals should be made to the following telephone number: 020 7840 7129.

If an applicant is accepted by the Poppy Project you should request confirmation of this acceptance in writing and then fax it to the Home Office asking that your client be released from the Detained Fast Track. The Poppy Project will normally liaise with the Home Office to arrange for your client's release from detention into accommodation provided by Eaves Housing for Women.

Whilst there do not appear to be any published procedures, the Home Office has confirmed that if a woman is accepted by the Poppy Project temporary release will normally be granted.

If your client is a victim of trafficking but does not meet the criteria for the Poppy Project or wish to be referred to it, the Home Office guidance of 17 February 2005 is still relevant. It states:

Those who do not wish to be referred to the Poppy Scheme should be processed in the normal manner. Whilst we do not accept that lengthy recovery and reflection periods are necessary in every case, or that they should be granted regardless of whether a victim chooses to assist in any prosecution of the traffickers, staff should be mindful that victims of trafficking may need time and assistance to recover from the effects of abuse at the hands of their traffickers and to make informed decisions about their future.

This is in concord with the Suitability List (2007), which recognises that people who have been trafficked are 'unlikely' to be 'suitable' for the Detained Fast Track process. A further source of useful information is the Home Office *Trafficking in people toolkit*, available at [www.crimereduction.gov.uk](http://www.crimereduction.gov.uk)

It is ILPA's view that victims of trafficking and other gender-related persecution will never be suitable for fast-tracking. They are frequently too traumatised, afraid, distrustful or too ashamed to divulge to anyone, including their legal advisors, the full extent of what has happened to them. Common issues in trafficking cases will be sufficiency of protection on return to the country of origin and internal relocation. These will often need to be addressed by way of expert evidence. These cases require time and sensitivity to gain the trust of these clients and you should strenuously resist the fast-tracking of such claimants.

## Detention and bail policies

Always remember that the Detained Fast Track process equals detention. You should ensure therefore that you are aware of the up to date policies on detention and bail. Chapter 38 of the Operational Enforcement Manual is the main policy and we have included a substantial extract from it as an appendix to this guide. ► See appendix 2. Chapter 39 of the OEM deals with bail and chapter 79 with detention following completion of a criminal sentence. Chapter 31 of the Immigration Directorate Instructions had provisions on detention for port applicants but at the time of writing it has been removed from the IND website. It more or less replicated chapter 38 of the OEM.

Your client has the same rights to apply for temporary admission, Chief Immigration Officer's (CIO) bail and bail from the AIT as any other detainee. The fact that she is in the Fast Track does not suspend these rights. If anything it is more important that they should be exercised, where appropriate. Whilst a person can be detained for the sole purpose of fast-tracking their claim, as soon as a decision is taken on the application detention can only be continued if the usual detention criteria apply, for example a risk of absconding. Only if these apply should your client remain in the Fast Track for their appeal.

The power for an immigration officer or the AIT to grant bail is set out in paragraphs 22(1) and 34 of Schedule 2 to the Immigration Act 1971. These provisions provide that bail can be granted pending the examination of a claim for leave to enter and pending the giving of removal directions. So bail can be granted to a person detained in the Fast Track for these purposes.

In relation to those detained for the purposes of examining their claim for leave to enter, paragraph 22(1B) provides that such a person may not be released on bail 'until seven days have elapsed since the date of the person's arrival in the UK'.

The timing of a bail application should be considered carefully. It may be worth spending valuable time making a bail application on the first day on which instructions are received (unless your client is a port applicant and seven days have not yet elapsed). It may not be listed quickly. There is a requirement in the Asylum and Immigration Tribunal Practice Directions (Consolidated Version, April 2007) at 19.1 for the AIT to list a bail application within three working days of receipt 'if practicable'. Practice Direction 19.2 (*op. cit.*) specifies that for listing purposes, a bail application received after 3.30pm will be treated by the AIT as having been received on the next business day. So it may well be that your bail application is not listed until after the Fast Track interview has taken place and a decision been made.

If detention is maintained after the decision, applying normal detention criteria, then a bail application made on the first day of instructions may be listed a few days before the appeal hearing which will give you a good opportunity to have your client released from the Fast Track if the detention criteria are no longer met. More on this later when we look at the steps to take. ► See chapter 3.

Any representative doing Fast Track work should read ILPA's *Challenging immigration detention: a best practice guide* (2003) alongside this guide. It has many practical suggestions for making applications for temporary admission and bail.

## Detention centre rules

You should make yourself familiar with the Detention Centre Rules 2001 (SI 2001/238, as amended). The Rules make provision for the regulation of and management of detention centres, which includes Immigration removal centres. They regulate the regime in which your client is detained. Your client may well have questions for you concerning her treatment whilst in detention and you should be familiar with her rights under these Rules.

**Rule 30** provides that a legal representative 'shall be afforded reasonable facilities for interviewing him [the detainee] in confidence, save that any such interview may be in the sight of an officer'.

Rules 34 and 35 are of particular relevance where your client claims to be a victim of torture or suffers ill health.

**Rule 34** requires that every detained person shall be given a physical and mental examination by the medical practitioner in the Immigration removal centre (IRC) 'within 24 hours of his admission to the detention centre'.

**Rule 35** requires the medical practitioner to report to the manager on the case of any detained person whose health is likely to be injuriously affected by continued detention or any conditions of detention. Rule 35(2) requires the medical practitioner to report to the manager on the case of any detained person he suspects of having suicidal intentions and the detained person shall be placed under special observations so long as those suspicions remain and a record of her treatment and condition shall be kept throughout that time. Rule 35(3) requires the medical practitioner to report to the manager on the case of any detained person who he is concerned may have been the victim of torture. The manager is required to send a copy of any report made in each of these circumstances to the Secretary of State without delay.

The failure by the health care department in the IRC to conduct the examinations or make the reports renders the detention unlawful (see *R (D et ors)*, *R (K et ors) v SSHD* [2006] EWHC Admin 980).

## The Immigration Rules

A final word on the Immigration Rules (HC 395 as amended). There is nothing in them that mentions the Detained Fast Track process – it is a creature of policy as we have seen. However, the Immigration Rules do have a whole section on asylum and how an application should be considered. ► See appendix 3. Notably, these impose a duty on an applicant to substantiate their asylum claim and they give some scope for arguing that your client should be given more time or be taken out of the Fast Track entirely to enable her to fulfil her duty, particularly where she has only her statement to rely on but believes that, given the time, she can find supporting documentary or other evidence.

The Immigration Rules should be read along side two other APIs: *Assessing the asylum claim* (October 2006) and *Credibility in asylum and human rights claims* (undated), both to be found on the BIA website.

## Policy sources checklist for removal from the Detained Fast Track

**Is your client unsuitable for the Detained Fast Track or should she be removed from the Fast Track for other reasons?**

You will find this checklist helpful in identifying at a glance the policy source to use to argue your case.

Case types	Policy source
Unaccompanied minors	Suitability List (2007)
Age dispute cases – not falling within specified criteria	Suitability List (2007) Chapter 38.4 OEM
Independent evidence of torture	Suitability List (2007)
Medical Foundation offer of assessment	API, Medical Foundation
Medical condition requiring 24 hours nursing etc	Suitability List (2007) Chapter 38.4 OEM
Disability, except the most easily manageable	
Infectious or contagious disease	
Acute psychosis requiring hospitalisation	
Pregnant female, 24 weeks and above	
Physical or learning difficulty requiring 24 hours nursing care	
Violent or uncooperative case	
Criminal conviction, except where specifically authorised	Chapter 38.4 OEM
Detention would be contrary to published criteria/government policy (e.g. cases of unaccompanied children)	Suitability List (2007) Chapter 38 OEM (particularly chapter 38.3)
Applicant is obtaining supporting evidence which is material	Operational Instruction Flexibility (2005) <i>R (RLC) v SSHD</i> [2004]
Requirements of fairness demand removal from the Fast Track	
Independent evidence of trafficking from a recognised organisation, e.g. the Poppy Project	Suitability List (2007) API, Trafficking Victims

### Checklist for flexibility

Event	Remedy	Policy
Client is ill	24 hour delay	Operational Instruction, Flexibility [2003] <i>R (RLC) v SSHD</i> [2004] EWHC 684 (Admin)
Representative is late	24 hour delay	
Inadequate interpreter	24 hour delay	
More time needed to advise pre-interview	More time	
More time needed post-interview to file relevant material	More time, up to 5 days, longer in exceptional circumstances	
To ensure the fair processing of the claim for asylum	More time	API – Gender issues in the asylum claim
Gender specific caseworker or interpreter requested	Delay until available	



# 3

## Representing your client step by step part 1: from instructions to decision

Having made yourself familiar with the history of the Detained Fast Track process and the Home Office policies that apply we now turn our attention to the practical day-to-day tasks that Fast Track work involves.

In this section we will cover what is best practice, from the taking of instructions through to the serving of the decision on the asylum claim.

It is helpful to consider the steps chronologically.

### Day 1

#### Step 1 Taking the case

##### Receiving instructions

You will receive instructions to represent in a variety of ways. You may already represent your client who has had the misfortune to have been detained and placed in the Detained Fast Track. She may be paying you privately or you may be advising her under Legal Help. If the latter you can continue to act under Legal Help if you have already undertaken five hours of work.

If you have been or intend to charge your client privately you must make her aware that whilst detained in the Fast Track for consideration of her claim she will be entitled to free advice and representation from a caseworker or solicitor accredited to Level 2 by the Solicitors' Regulation Authority who works for an organisation (known as a 'supplier') that has a Fast Track contract with the LSC.

##### Duty representatives – taking the call

The first step for such a supplier is to receive a telephone call from the Home Office asking them to take on the case of an unrepresented detained asylum applicant who is to be fast-tracked. The need for representation will have been identified in an 'induction interview' that takes place on the day of (or the day after) arrival in the detention centre. Suppliers are on duty on specified dates. They are usually on duty with up to three other suppliers and the Home Office will telephone the supplier at the top of the list for that day to see whether they are willing and able to take the case.

There is an agreement between the LSC and the Home Office that the duty advisor should be given 24 hours notice of an asylum interview. This means that the Home Office should not be calling you at 3pm asking you to represent a client who is due to be interviewed the next day at 10am. However, this does occur. If you refuse to take on the case because you have not been given the required 24 hours notice the Home Office will simply ring another supplier until they find one willing to take the case. If you accept the case you should make representations to the Home Office that the start time of the interview should be put back to give you at least 24 hours notice.

If you are not a duty supplier you should still insist that you be given the same 24 hours notice before the start of the interview.

## Step 2 Speak to your client by phone

Ring the immigration removal centre (IRC) and speak to your new client. In Harmondsworth and Yarl's Wood IRC detainees have phones in or near their rooms where they can receive incoming calls. Your client will have her own extension number which means in future you will not have to rely on the IRC switchboard. The IRC switchboard should give this to you when you first call your client.

### Interpreters

Your client may not speak or understand English. You will therefore need an interpreter for this telephone conversation. If you do regular Fast Track or detention work the organisation you work for should set up an account with Language Line ► See appendix 7 for contact details, or a similar service. They will provide you with an interpreter for your telephone conversations without prior notice 24 hours a day, seven days a week. You will need a conference calling facility on your phone. Given the nature of Fast Track work and its speed, use of Language Line to take urgent instructions would be a reasonable disbursement to incur and is recoverable from the LSC.

Alternatively, if you are using office-based interpreters you should ensure that you have a conference call facility in your telephone system.

### Initial phone instructions

Taking instructions over the telephone is no substitute for the face-to-face meeting that you will have with your client but it is well worth doing right at the start of the case to identify some key matters:

- What is her age? If she is claiming to be under 18 you know you have an age dispute case (see Suitability List (2007)).
- Does she have any health problems? If so, she may fall under the criteria that makes her unsuitable for fast tracking (see Suitability List (2007)).
- Is she a victim of torture? If so then you will want to take instructions on referral to the Medical Foundation and if you can take adequate instructions over the phone to complete the Medical Foundation referral form that may help you get an assessment appointment from the Medical Foundation before the asylum interview (see API – Medical Foundation).

- What interviews has she had with the Home Office or Immigration Service to date? What documents has she given to the Home Office? This will assist you in knowing what to ask for from the Home Office.
- What is her nationality and what are broadly the grounds for seeking asylum? This will assist you to identify your advanced reading prior to going to see your client, i.e. country information reports and country guidance cases, and to identify a potential country expert.
- Does she have a possible temporary admission address and does she know of any potential sureties for bail?

If you are unable to communicate with your client due to language difficulties or you cannot get to speak to the client you will need to take the same instructions during your first meeting with her, but that might not be until day 2. The advantage of taking these instructions over the phone before you see the client is that you can then set the wheels in motion to refer the case to country experts and get appointments with the Medical Foundation or Poppy Project which may then put you in a position to be able to make representations to have your client taken out of the Fast Track even before she is interviewed.

Remember that as long as you assess your client for Legal Help during this call, and assuming she is eligible, the advice call can be claimed. Necessary work done in relation to that advice prior to your attendance on the client for signature of the form, or to obtaining her signature on a faxed Legal Help form, can also be claimed. ► See chapter 7.

### Step 3 Request information and documents from the Home Office

Consider what documents you want to request from the Home Office and/or Immigration Service and then request them orally in a telephone call, if necessary backed up in writing. You should consider requesting the following:

#### Reasons for detention form IS91R

Your client has been detained. She must have therefore been served with an IS91R giving reasons for the detention, if not the detention is unlawful. (See *Saadi v UK* Application no. 13229/03 [2006] ECHR 732 and *R (Faulkner) v SSHD* [2005] EWHC Admin 2567). This is a very important document. It states that 'detention is only used where there is no reasonable alternative available' and then lists six possible reasons why it has been decided that your client should be detained:

- a You are likely to abscond if given temporary admission or release
- b There is insufficient reliable information to decide on whether to grant you temporary admission or release
- c Your removal from the UK is imminent
- d You need to be detained whilst alternative arrangements are made for your care
- e Your release is not considered conducive to the public good
- f I am satisfied that your application may be decided quickly using the fast track procedures

The form will have been ticked to show which of these six reasons apply, often there is more than one. If the *only* reason given is 'f' then you know to prepare yourself to argue that as soon as the application has been decided your client should be released from detention. If other reasons are given, you need to take your client's instructions on these and prepare to make representations to have the reasons reviewed once the decision on her asylum claim has been taken since she can then no longer be detained solely on the basis that her claim can be decided quickly.

The form 1S91R has, in addition to six possible reasons for detention, 14 possible factors that have been taken into account in reaching the decision. The one relevant to the Fast Track (and which should have been ticked) is 'on initial consideration it appears that your application may be one which can be decided quickly'.

### **Copies of all notices served authorising detention**

You need to know that your client has been lawfully detained. She should have been issued with a notice informing her that she is liable to be detained under the Immigration Act 1971. If not the detention is unlawful. The notice should tell you whether she has been treated as an overstayer, illegal entrant or port case.

### **Copies of the screening interview**

There must have been a screening interview before it was decided that your client was suitable for the Detained Fast Track process. Remember the Suitability List (2007), any claim where it appears *after screening* to be one that can be decided quickly. The standard screening interview record will document answers given by your client to questions about her personal details (including age and nationality, and indicate if these are in dispute), her health details (including whether she has a medical condition, is on medication or is pregnant), her family details, method of entry to the UK and documentation held (and whether forged and/or destroyed), employment and education history, and immigration history (including the important question 'what was the reason for coming to the UK?').

If there was no screening interview you should query how your client has been considered suitable for the Detained Fast Track process.

If there was a screening interview you need to read the record or notes of it carefully and take your client's instructions to confirm it is accurate.

### **Other interview records**

There may have been other interviews conducted prior to your client's transfer to the Fast Track. There may have been an illegal entrant or overstayer interview conducted under caution at the Asylum Screening Unit in Liverpool or Croydon, or in a police station or Immigration Office. There may be a record of an interview conducted at the port. The client may have already had a substantive asylum interview (perhaps in Oakington) and a decision taken to transfer the case into the Detained Fast Track so that the accelerated appeals procedure can apply following refusal. You need copies of all of these so that you can take your client's instructions on them.

## **Copy of client's passport and any other documents taken from the client and held on the Home Office or Immigration Service file**

The passport is important because the stamps in it will tell at least a part of the story of your client's immigration history. It will show whether she ever had a visa, or leave to enter or remain in the UK, at the time of the decision to detain. It will indicate how long she has lived in the UK. If she has lived in the UK for a long period, particularly if length of residence brings her within any policies based on long residence, then it is arguable that the case is not suitable to be considered within the Detained Fast Track process because time will be needed to put together all the evidence to prove long residence.

## **Copy of the Home Office and Immigration Service casework notes**

These would be available to your client under the Data Protection Act 1998 if a request was made to the Subject Access Bureau. Given the speed of the Detained Fast Track process it is legitimate to ask for copies to be made and faxed to you rather than having to make a formal Subject Access Bureau request. The caseworker's notes may reveal the thinking behind decisions to detain and fast-track which might not be within policy.

## **Copy of your client's medical records**

This is a request you should make to the Healthcare Centre in the IRC (and not to the Home Office). You will need a signed form of authority. If your client claims to be in poor health, suicidal or a victim of torture you should telephone the Healthcare Centre and ask them to fax you a copy of the record made by any nurses and/or the Doctor who should have examined your client within 24 hours of arrival at the IRC, as is required under the Detention Centre Rules 2001 (Rules 34 and 35), ►see chapter 2 for discussion of the rules. If the record refers to the client having been tortured then the record is 'independent evidence of torture' which would render the case unsuitable to remain in the Fast Track.

Do not take the lack of any reference to torture in the Healthcare Centre records as indicating that in your client's case such evidence cannot be provided. Evidence of torture may be subtle requiring forensic analysis to determine whether or not such signs and other psychological symptoms exist. Such forensic analysis is not the function of Healthcare Centre staff and they may decide not to record that which is not immediately obvious.

The issue of the adequacy of training of Healthcare Centre staff across the detention estate is under review at the time of writing – see *Inquiry into the quality of healthcare at Yarl's Wood immigration removal centre, 20–24 February 2006*, HM Inspectorate of Prisons.

A record suggesting very serious health problems may also render your client unsuitable for the Detained Fast Track process (see Suitability List (2007)).

## **Step 4 Consider documents disclosed and if appropriate make representations that the case is not suitable for the Fast Track and/or that the client should not be detained**

There should be no delay in the documents listed in step 3 being faxed to you. Any delay should lead to the timetable being appropriately extended.

You should consider the disclosed documents carefully. If it is not clear from them that there is a prima facie case that your client's claim for asylum can be decided quickly then make representations that her claim is unsuitable for the Fast Track and/or that she should not continue to be detained.

## **Step 5 Consider feasibility of interview timetable and make appropriate requests**

Rely on the agreement with the LSC that 24 hours notice should be given. You can request a gender-appropriate caseworker and interpreter for the interview ►see API on gender issues in the asylum claim and chapter 2. It is best practice to consider making such a request where a client has been the victim of sexual violence. However, always obtain your client's consent, they may have their own reasons for preferring an interviewer and interpreter of the opposite sex.

## **Step 6 Book a legal visit to take instructions and advise client**

You should ensure that you have adequate time with your client to take full instructions and advise on all matters requiring advice prior to an asylum interview. ILPA considers that at the very least you will require a minimum of two hours to do this.

If possible try to book a long legal visit in the afternoon or early evening of day 1 and/or a morning legal visit on day 2 for a 2pm interview. You should never accept a 9.30am legal visit for a 10am asylum interview if you have not attended the client the day before, this is bad practice but unfortunately is often proposed.

To give you adequate time you may need to make representations to the Home Office for the time of the interview to be put back to either 2pm or the following day. You should refer to the Operational Instruction on flexibility and the dicta of fairness set out in *R (RLC) v SSHD* [2004] EWHC 684 (Admin), ►see chapter 1. If they refuse to be flexible with the timetable consider judicial review, ►see chapter 6.

## Step 7 Prepare to attend your client and to attend the asylum interview

Prior to the legal visit you should look at relevant country material or country guidance cases of which you will need to be aware to take meaningful instructions from your client, to make the best possible representations, and to give her the best possible advice.

### Interpreter

You should ensure that you have arranged for a suitably qualified interpreter to attend the first meeting with your client and the subsequent asylum interview. Do not assume that because your client may speak adequate English to you over the phone that she is content to conduct all meetings and the asylum interview in English. Check that with her and, if you are in any doubt, use an interpreter.

Ensure the interpreter understands their role (see ILPA *Making an asylum application: a best practice guide*).

### Checklist of materials to take with you

You should ensure that you take with you to the first meeting with your client the following:

- if you are a legal aid supplier: a Legal Help form
- if you are a legal aid supplier: a Controlled Legal Representation (CLR) form (for a possible bail application)
- if you are a legal aid supplier: forms APP1 and MEANS 1 (in case of potential judicial review)
- a form of Authority for your client to sign, for any previous representative's file, medical records, Data Protection Act disclosure etc.
- Fast Track materials (for example, this best practice guide)
- a Medical Foundation referral form
- any documents relevant to the case disclosed to you by the Home Office or Immigration Service
- a letter from your organisation confirming the legal visit, clearly stating your name and the name of any interpreter
- photo ID for you and any interpreter.

## Day 1 or day 2

### Step 8 Attending your client to take instructions

You will need to pass through the security checks at the IRC.  
Allow enough time for this (30 minutes may be required).

This is the first time you will have met your client. She will probably be nervous and may even be suspicious of you or the interpreter.

You should ensure you:

- spend some time gaining your client's trust and explaining your role and that of your interpreter
- advise your client on the asylum procedure including the Detained Fast Track process, ensure she understands why she is there and what is expected of her
- advise on the suitability and flexibility criteria within the Fast Track and take instructions from your client as to whether she considers it should apply to her, do not assume it does not without explaining it to her
- advise on what it means to qualify for asylum or humanitarian protection, in essence, explain to her the Refugee or Person in Need of International Protection (Qualification) Regulations 2006 (SI 2006/2525) and the meaning of humanitarian protection in Part 11 of the Immigration Rules, all in a language she can understand (for example, what persecution means, what actors of protection are, etc.)
- advise on the different duties of an asylum claimant and the official who has to decide the claim as set out in the Immigration Rules
- then start taking instructions
- then advise.

You should take instructions and advise on the asylum claim in line with the best practice set out in ILPA's *Making an asylum application: a best practice guide*.

You should take instructions and advise on detention and bail in line with the best practice set out in ILPA's *Challenging immigration detention: a best practice guide*.

Key matters on which to take instructions in Fast Track cases are:

- is the client a victim of torture?
- is the client a woman victim of trafficking?
- is the client under 18?

This is because their instructions on these matters will determine whether you need to make immediate referrals to the Medical Foundation or the Poppy Project (see Home Office policies section), ►see chapter 2, or to argue that this is an age dispute case and ensure the age dispute policy has been applied (see Suitability List (2007)).

## Step 9 Representations to be made pre-asylum interview

Once you have taken your client's instructions you should make representations prior to the interview as to why she should *at this stage* be taken out of the Fast Track. You should make any appropriate representations regarding suitability and detention.

Your representations should be in writing referring to the Home Office policies on suitability and flexibility where appropriate depending on the reasons that you are putting forward. It is best practice to follow up your written representations with a telephone call to the Home Office to seek to persuade them orally. If your attendance with your client has taken place immediately prior to the asylum interview you will need to make your representations orally to the caseworker who intends to conduct the interview.

### Representations that case is unsuitable

From the information you have obtained from your client to date you may be able to make arguments based on the facts of the case as to why it is not suitable. Ask yourself:

- Does the case fall outside the suitability criteria?
- Can you identify at this stage any good reasons why it should be taken out?
- Are there experts that you need to instruct, evidence that you need to obtain, witnesses that you need to see, all of which lead to the conclusion that this is a case where a quick decision cannot be taken?

### Representations in respect to detention

If you have an argument that your client's case cannot be decided quickly then you should make representations that she be released from detention, which will also have the effect of releasing her from the Fast Track.

For a claim to have been fast-tracked, one of the reasons for detention must be that the detaining officer was 'satisfied that [the client's] application may be decided quickly using the Fast Track procedures'. That needs to be considered by reference to the Suitability List (2007), and the guidance set out in chapter 38.4 of the OEM ►see chapter 2.

If it becomes clear that your client is not fit to be detained, an application for temporary admission should be made immediately. You should also be considering the steps that you will need to take to lodge a bail application with a view to lodging one if temporary admission is refused (see ILPA's *Challenging immigration detention: a best practice guide*).

## Day 2

### Step 10 The interview

Assuming that your client has not been released from the Fast Track the next event will be the asylum interview.

#### Before the interview

Before allowing the asylum interview to start you should:

- Consider whether your client is fit and well enough to be interviewed. If there are any grounds for thinking that she is not you should make representations that the interview should be postponed. Refer to the Operational Instruction on flexibility in the case of illness.
- Consider whether the interpreter provided by the Home Office is competent. If not, ask that the interview be delayed to ensure competent interpretation. Refer to the Operational Instruction on flexibility in the case of inadequate interpretation.
- Consider whether you have had enough time to properly advise and take instructions. Have you covered everything that you need to so that your client has been fully advised and understands the purpose of the interview? If you need more time then you must ask for it and refer the Immigration Officer to the Operational Instruction on flexibility on additional time. Never proceed with an asylum interview if you need more time simply because the Immigration Officer insists. If necessary ask to speak to a more senior officer and advise your client that she has a right to be comprehensively advised and that it will not prejudice her claim to insist on this.

Only proceed with the interview if you and your client are ready. If you are not ready, you should advise your client not to proceed, but in the end you must act on her instructions.

During the interview have the API on Interviewing in mind, ►see chapter 2. Protect your client's interests and be prepared to intervene where necessary.

#### Approach to the interview

You should approach the interview with the following aims:

- to represent your client actively, rather than merely passively observe the interview
- to ensure that your client is able to give a full account
- to provide support and reassurance to your client
- to clarify questions or comments made by the interviewing officer if they are unclear, ambiguous or misleading
- to prompt the interviewing officer when relevant enquiries are being curtailed or have not been pursued
- to ensure that the official interpreter undertakes the role of interpreter only

- to intervene where appropriate, for example where there is an unresolved misunderstanding or confusion, or where there are significant problems with interpreting which cannot be left until the end of the interview, or where the interview has been conducted in an improper manner
- to ensure that the interview record is accurate and contains statements made by the client, and that she has had the opportunity to amend or add to the record
- to ensure fair conduct, appropriate breaks and refreshments at relevant points in the interview
- to keep a verbatim record of the interview and events surrounding the interview
- if there is no read-back of the interview to advise your client not to sign to the effect that she confirms the contents of the interview to be true.

### Representations at the end of the interview

At the end of the interview make oral representations as to:

- the conduct of the interview if any matters arise (for example poor interpretation, failure to ask appropriate questions)
- why you think your client should be recognised as a refugee or granted humanitarian protection
- why your client should now be released on temporary admission (the Immigration Officer must reconsider the reasons for detention once the application process through the Fast Track has been completed).
- why the case is not suitable to remain within the Fast Track, for example, it is clearly a complex case that cannot be decided quickly, or you and your client are obtaining supporting material evidence and it will not be available within a period consistent with Fast Track processing even if the timetable were to be extended (refer to second paragraph of the Operational Instruction on flexibility). ► See chapter 2.

## Step 11 After the interview

After the interview you should:

- take your client's instructions on any matters of concern arising from the interview (of concern to you and to her)
- clarify with her any inconsistencies in the account given in the interview with a view to putting forward explanations or clarifications
- ask the Home Office caseworker for up to five extra days before a decision is taken in order to put evidence in, refer to and rely on the 'post interview flexibility' policy set out in the Operational Instruction on flexibility. You are going to need this extra time
- tell the Home Office caseworker if you intend to make a referral to the Medical Foundation, Helen Bamber Foundation, or Poppy Project and ask for enough time to obtain a response. (Keep the caseworker advised if you need more time)
- consider whether an expert report is needed.

## Experts

Very early on you should be identifying appropriate experts in case you need a country expert, for example, from the ILPA directory of experts on the Electronic Immigration Network (EIN). ►See appendix 7 for contact details.

You should make contact with them and find out their timescale and the earliest date they could write a report (assuming they are instructed after the asylum interview has taken place). It is very likely that they will not be able to prepare a report within the Detained Fast Track process timetable and you should therefore be asking the Home Office to take your client out of the Fast Track to enable the expert evidence to be obtained (relying on the Operational Instruction on flexibility and the general principle of fairness).

## Step 12 Written representations post-interview

This is a vital stage since it is your one opportunity to put in written form all your arguments as to why your client should be:

- released from the Fast Track as unsuitable or in the interest of fairness (for example where you need expert evidence to support the claim)
- granted refugee status or humanitarian protection (or possibly discretionary leave)
- released on temporary admission pending a decision.

Your arguments as to why your client should be granted asylum should be supported by relevant objective country material and reference to AIT country guidance cases where applicable.

Insist that the Immigration Officer gives you a response to any requests to be taken out of the Fast Track or for temporary admission ideally in writing but at least over the phone prior to serving any decision. This will enable you to consider whether it is appropriate to apply for judicial review, ►see chapter 6.

## Step 13 If not released on temporary admission consider lodging a bail application to the AIT at this point

You are likely to receive a decision on the claim on the day after the interview unless you have been given more time to make representations or obtain evidence. There may be no good reason for continuing your client's detention after she has been interviewed. If there are no good reasons to think your client would abscond then she should not be detained further and you should lodge a bail application. It is unlikely to be listed for three days by which time you may or may not have a decision on the case.

If you do get a decision which is positive your client will be released, if it is negative then she will probably wish to appeal and the bail hearing will, it is hoped, be listed before the appeal is listed enabling you to argue that your client should not be detained in the Fast Track for the purpose of her appeal, ►see chapter 4, bail.

## Day 3

### Step 14 The decision

Unless you have been given more time, the decision will usually be served on the day after the interview. We look at the next steps required in chapter 5.



# 4 Appeals

If you have reached this stage it means that:

- your client was considered suitable for the Fast Track and you were not able successfully to challenge this
- your client has been refused asylum
- your client is still detained within the Fast Track and was not considered suitable for temporary admission following refusal of the claim.

## Should your client still be detained?

An appeal will only ever take place in the Fast Track if your client meets the general detention criteria, ►see appendix 2, and has been refused temporary admission following the decision on her asylum claim because, for example, she is deemed an absconding risk. She should no longer be detained simply to fast-track her claim; that ground for detention only relates to the asylum claim, not the appeal. A fresh IS91R giving reasons for continued detention should have been served. If you have not yet challenged the reasons for continued detention do so now, and then start preparing the appeal.

## Tools

Representing clients up to decision requires you to be familiar with and to make use of Home Office policies. After your client has been refused asylum you need to be familiar with and make use of statute and rules.

Before embarking on an appeal in the Fast Track you need to ensure that you have with you the following materials:

- Asylum and Immigration Tribunal (Fast Track Procedure) Rules 2005 (SI 2005/560, as amended) – referred to hereafter as the AIT (Fast Track Procedure) Rules  
These are a special set of procedure rules that apply exclusively to Fast Track appeals.

- Asylum and Immigration Tribunal (Procedure) Rules 2005 (SI 2005/230, as amended) – referred to hereafter as the Principal Rules

You will need these since many of these provisions also apply to Fast Track appeals. It needs to be read alongside the AIT (Fast Track Procedure) Rules. There have been amendments to these Principal Rules since 2005 so ensure you have the amended version.

- The Asylum and Immigration (Fast Track Time Limits) Order 2005 (SI 2005/561)  
This provides the time limits for review and reconsideration applications in the Fast Track.
- The Asylum and Immigration Tribunal Practice Directions (Consolidated version April 2007)  
These are directions given by the President of the AIT and are intended to regulate the proceedings for practice and procedure in the AIT. Some of the directions apply to Fast Track appeals and some do not.

## When is an appeal a Fast Track appeal?

Your client's appeal will be subject to the Fast Track procedure only if, and whilst, your client comes within the scope of the AIT (Fast Track Procedure) Rules. The scope of these is set out in Rule 5:

- 5(1) This Part applies to an appeal to the Tribunal where the person giving notice of appeal –
- a) Was in detention under the Immigration Act at a place specified in Schedule 2 when he was served with notice of the immigration decision against which he is appealing: and
  - b) Has been continuously in detention under the Immigration Act at a place or places specified in Schedule 2 since that notice was served on him.
- 2) This part shall cease to apply if the Tribunal makes an Order under Rule 30(1).

Schedule 2 currently lists four specified places of detention:

- Campsfield House Immigration Removal Centre, Kidlington, Oxfordshire
- Colnebrook House Immigration Removal Centre, Harmondsworth, Middlesex
- Harmondsworth Immigration Removal Centre, Harmondsworth, Middlesex
- Yarl's Wood Immigration Removal Centre, Clapham, Bedfordshire

If your client was not in detention under Immigration Act powers at one of these four detention centres when she was served with the notice of the immigration decision against which she is appealing then the appeal should not be considered to be a Fast Track appeal.

If your client is transferred away from one of these detention centres to a centre other than the four listed, then the case ceases to be subject to the Fast Track appeal procedure.

If you are able to persuade the AIT to transfer out of the Fast Track procedure under Rule 30(1), then it is no longer subject to the Fast Track appeal procedures.

For the purposes of Rule 5 your client will be treated as being continuously in detention at one of the specified places even if she has left the detention centre and returned to it for any purpose between the hours of 6am and 10pm or if she is being transported from one place of detention to another place specified in Schedule 2 Rule 3.

## Making the appeal

It is very important to understand the differences between the procedure for making (or lodging) the appeal in the Fast Track compared with the standard asylum appeals procedure.

### Form AIT-1-FT

To make an appeal for a case that is in the Fast Track you need to complete form AIT-1-FT. You need to be aware that this special form exists. You should not use the standard in country appeal form. The form AIT-1-FT can be found in Schedule 1 to the AIT (Fast Track Procedure) Rules.

The AIT makes the forms available on its website at [www.ait.gov.uk](http://www.ait.gov.uk) and here they have designed two versions of form AIT-1-FT: one for Harmondsworth and one for Yarl's Wood. The only difference between these versions of the AIT-1-FT (which are included in the schedule to the AIT (Fast Track Procedure) Rules) is that they indicate the postal address and fax for the respective centres, otherwise they are identical. You can safely use either the version of the form in the Schedule 1 to the AIT (Fast Track Procedure) Rules, the versions of the form on the AIT website or the version given to your client by the Home Office when they serve the decision.

The form AIT-1-FT requires you to provide the following information:

- Home Office reference number
- case outcome ID – this is a number that will have been inserted onto the form if you are using the version sent to you by the Home Office
- the type of decision – whether it is asylum or non-asylum
- date of service and deadline for appeal – these dates will normally have been entered into the form given to you by the Home Office, otherwise you will need to calculate these carefully yourself
- address of the IRC where your client is being detained
- telephone number of the IRC
- your client's full name
- your client's date of birth
- your client's sex
- your client's nationality
- whether your client has a representative
- whether your client has appealed against any other immigration decision made in the UK and, if so, the type of decision, the date of the previous appeal and the appeal number if you know it
- details of whether, to the best of your knowledge, any member of your client's family has an appeal pending in the UK and, if so, their name, relationship and the appeal number if known
- to the best of your knowledge, details of any member of your client's family intending to appeal against an immigration decision
- whether you wish to have an oral hearing – in the Detained Fast Track you should always ask, on instruction, for an oral hearing

- details of who will be present at the oral hearing. – The client will be present. You will be present assuming you have granted Controlled Legal Representation (CLR) or are acting privately. You are requested to give details of any witnesses who will attend the hearing – their names and Home Office reference numbers if applicable. If you are not certain as to who will give evidence it is not necessary to give details at this stage and it will not preclude them from giving evidence at the hearing
- whether an interpreter will be required at the hearing and if so which language will be needed and which dialect, if applicable
- details of any special arrangements that will be needed for the hearing if you, your client, or a witness has a disability
- your grounds of appeal and any statement of additional grounds (see below)
- if appealing late, reasons for failing to submit the appeal in time
- a declaration from you as the representative confirming that the notice of appeal is given in accordance with your client’s instructions and that your client believes that the facts stated in the notice of appeal to be true – you must give full contact details for your organisation, confirm whether you are regulated by the OISC (in which case provide the OISC reference) and confirm whether or not your client is receiving publicly funded legal representation
- there is a notice to representatives on the form that states:
 

You must also immediately notify the Asylum & Immigration Tribunal and other parties, if you cease to represent the appellant or if your address and/or fax number changes. If the appellant changes representative, details of the new representative should be sent to the same address to which you are sending this form. Please give the Appellant’s full name, address and Home Office reference number.

given the speed of Fast Track it is essential that you do this if you cease acting

- there is a section with a ‘Declaration by the Appellant’. This only needs to be signed if the appellant is completing the form herself – it will not need to be signed if you, the representative, are completing the form on her instructions.

### Grounds of appeal

Section 3 of form AIT-1-FT requires that:

In this section you must set out the grounds for your appeal and give the reasons in support of these grounds – that is, why you disagree with the decision. You must do this now because you may not be allowed to mention any further grounds at a later date. Please refer to the paragraphs of the refusal letter when possible. You should include in this section any parts of your claim which you think have not been addressed in the refusal letter. You must say if you have raised these issues before. Give as much details as possible when using additional sheets of paper if you need to.

You should note the difference between this and the Grounds of Appeal section on the form AIT-1 for non Fast Track cases. The latter, in asylum cases, asks you to give specific detail in respect to, for example, the situation in your client’s country of origin, why she cannot live safely in another part of that country, responses to challenges to credibility etc. You are **not** required to set out grounds in this categorised way when completing the Grounds of Appeal section on a Fast Track AIT-1-FT appeal form.

Given that you have very limited time in which to complete the appeal form and lodge it, it is important that you do not set out in your grounds of appeal matters upon which you have not taken instructions from your client or had time properly to consider and apply the law.

If you have not had time to take full instructions or formulate detailed grounds it is best practice to limit your grounds to broad allegations such as:

- The Secretary of State's decision is in breach of the UK's obligations under the Refugee Convention because I will be at risk of persecution for a Convention reason if removed in consequence of the decision.
- The Secretary of State's decision is unlawful under Section 6 of the Human Rights Act 1998 and/or my removal from the UK consequent to the decision would be unlawful under Section 6 because my human rights would be breached.

The full range of grounds upon which you can appeal are set out in Section 84 of the Nationality, Immigration and Asylum Act 2002 and you should consider carefully whether any of these apply to the facts of your client's case. When in doubt include them.

The grounds are:

- the decision was not in accordance with the Immigration Rules (including the Immigration Rules relating to humanitarian and temporary protection)
- the decision was unlawful as in breach of Section 19B of the Race Relations Act 1976 (i.e. race discrimination)
- the decision was unlawful under s 6 of the Human Rights Act 1998 (i.e. the decision was contrary to your client's ECHR rights).
- your client is an EEA national (or the family member of an EEA national) and the decision is in breach of your client's rights under the Community Treaties
- the decision was not in accordance with the law (including where you are contending that the decision is unlawful on public law grounds because it is inconsistent with a Home Office policy)
- a discretion under the Immigration Rules should have been exercised differently
- removal of your client would be in breach of the UK's obligations under the Refugee Convention
- removal of your client would be in breach of the Human Rights Act 1998 as in breach of your client's ECHR rights

#### **Statement of additional grounds**

This section of the form only needs to be completed if the notice of decision required your client to make a statement of additional grounds. In this section you should not repeat any grounds and reasons already given. It is there to give your client an opportunity to set out any other reasons why she should be allowed to stay in the UK, or not be removed or required to leave.

When completing the appeal form you should ensure that you take instructions from your client in respect to any additional grounds. Given that you probably first took full instructions from her only a few days before it is unlikely, but not impossible, that there will be additional grounds of which you are not already aware and that you have not already put to the Home Office.

An example of when it might be appropriate to make a Statement of Additional Grounds would be where, having been refused asylum, your client tells you for the first time that she has a child in this country or a serious medical condition.

If you do put forward additional grounds of substance you should argue that the Home Office should consider and determine these before any appeal should proceed to a hearing. The Home Office should respond in a letter giving reasons for maintaining the decision in light of the additional grounds and this letter should supplement the notice of decision.

If you do include a Statement of Additional Grounds and the Home Office has not considered it and responded by the date of your appeal that should be grounds for seeking an adjournment of the appeal.

### **Varying grounds**

If your client needs to vary the Grounds of Appeal at any stage after the appeal form has been lodged, Rule 14 of the Principal Rules applies (by virtue of Rule 6(e) of the AIT (Fast Track Procedure) Rules). This means that your client may only vary Grounds of Appeal with the permission of the tribunal.

### **Time limit for appealing**

The time limit is to be found in Rule 8 of the AIT (Fast Track Procedure) Rules. This states:

- 8(1) A person who wishes to appeal must give a notice of appeal not later than two days after the day on which he is served with notice of the immigration decision against which he is appealing
- 8(2) Where a notice of appeal is given outside the time limit in Paragraph (1), the Tribunal must not extend the time for appealing unless it is satisfied that, because of circumstances outside the control of the person giving notice of appeal or his representative, it is not practicable for the notice of appeal to be given within that time limit.

The two-day time limit is one of the crucial differences between the Detained Fast Track process and the ordinary appeal procedure. In the ordinary appeal procedure the time limit for appealing is five days for a person in detention and ten days for those who are not detained.

It is important to calculate correctly the appeal deadline. It is important for two reasons: you need to lodge the appeal within the deadline and, given the nature of Fast Track, you are going to need as much time as possible to prepare for this appeal and it is worth maximising the two days to give you as much time as possible. If you lodge the appeal immediately on the same day that the decision is served you have lost two valuable preparation days, just make sure that you lodge it in time if maximising time.

To do this you need to identify the day on which your client has been served with notice of the immigration decision. This is governed by Rule 55 of the Principal Rules (applied to Fast Track cases by Rule 3(3) and 27 of the AIT (Fast Track Procedure) Rules).

Unless the contrary is proved, your client is treated as being served with or receiving the decision:

- for personal service, fax or email, the day on which it was sent, delivered to, or left with you or your client
- if the decision is sent by post or DX from and to a place in the UK on the second day after it was sent (highly unlikely in a Fast Track case since decisions are either served in person or by fax to the representative).

The day on which the period begins is ignored. If your client is treated as being served on Monday 15 January 2007 the first day of the two days will be Tuesday 16 January 2007. The appeal must therefore be lodged no later than 17 January 2007 (i.e. not after this date).

Since the time limit for giving a notice of appeal is less than ten days then Rule 57 of the Principal Rules apply:

- 57(1) Where a period of time for doing any act is specified by these Rules or is directed by the Tribunal, that period is to be calculated :
- a) Excluding the day on which the period begins: and
  - b) Where the period is 10 days or less, excluding any day which is not a business day (unless the period is expressed as a period of calendar days).
- 57(2) Where the time specified by these Rules or by direction of the Tribunal for doing any act ends on a day which is not a business day, that Act is done in time if it is done on the next business day.

The AIT (Fast Track Procedure) Rules has an interpretation of 'business day'. The interpretation is at Rule 2(3) of the AIT (Fast Track Procedure) Rules and states:

- 2(3) In these Rules, and in any provision of the principle Rules which applies by virtue of these Rules, 'business day' means any day other than a Saturday or Sunday, a Bank Holiday, 24 to 31 December, Maundy Thursday, Good Friday or the Tuesday after the last Monday in May

### **What if notice of appeal is given out of time?**

If the appeal is lodged more than two days after the date on which your client was served with a notice of decision the AIT will still fix a hearing date for the appeal and will consider as a preliminary issue at that hearing whether to extend the time for appealing. This means that in all cases you will have the opportunity of making representations orally as to why 'because of circumstances outside the control of' your client or yourselves 'it was not practicable' for a notice of appeal to be given within the time limit (AIT (Fast Track Procedure) Rules, Rule 8(2)).

This opportunity to argue these issues orally does not apply in the normal appeal procedure where a late notice of appeal issue is considered on the papers without a hearing (Rule 10 of the Principal Rules). The test for extending the time limit is also different: in a non Fast Track case, the test for whether an extension of time should be granted is whether the AIT is satisfied that there are 'special circumstances' which make it 'unjust' not to extend time (Rule 10, Principal Rules).

If you have had conduct of the case throughout the Fast Track process then you should not be lodging late appeals. You will have ensured compliance with the time limit.

You may however be instructed by a detainee who is unrepresented and may have not lodged an appeal against a Fast Track refusal of asylum for a variety of reasons. The case of *BO (Extension of time for appealing) Nigeria* [2006] UKAIT 00035 provides general guidance to immigration judges on when to extend time, although this is not a Fast Track case.

## How and where to serve notice of appeal

Once you have completed the appeal form you can serve it by fax or post to the AIT.

The address and fax number for service are currently set out on the forms individually tailored by the AIT for Harmondsworth and Yarl's Wood.

The addresses for service at the date of publication are set out in appendix 7 of this guide but you should ensure that you are sending it to the correct address or fax number which may have changed since the date of this publication.

Alternatively, your client can serve notice of appeal by handing the completed form to her custodian in the Immigration removal centre (IRC). There may be circumstances in which this is appropriate, for example, when you and your client are in the detention centre on the last day for serving notice of appeal and you do not have access to a fax machine.

If you send the notice of appeal to the AIT by fax transmission or recorded delivery you should always keep evidence of this as proof of delivery.

## Procedure up to the date of hearing

The timetable from service of notice of appeal to the date of the appeal hearing is a swift one.

It is to be found in Part 2 of the AIT (Fast Track Procedure) Rules and can be summarised in this way:

- Where the notice of appeal was served on a custodian the custodian must endorse on the notice the date that it is served on him and then forward it to the tribunal immediately (Rule 7).
- When the AIT receive a notice of appeal it must immediately serve a copy upon the respondent, i.e. the Home Office (Rule 9).
- The respondent must file certain documents listed in Rule 13(1) of the Principal Rules not later than two days after the day on which the AIT serves the Respondent with a notice of appeal. These documents are:
  - notice of decision to which the notice of appeal relates, and any other documents served on the appellant giving reasons for that decision
  - any Statement of Evidence Form completed by the appellant (unlikely to apply in a Fast Track case)
  - any record of an interview with the appellant
  - any other unpublished document referred to in any of the above or relied upon by the respondent.
  - the notice of any other immigration decision made in relation to the appellant in respect of which she has a right of appeal under Section 82 of the 2002 Act (Rule 10).

- The AIT shall then fix a hearing date which is:
  - a) not later than two days after the day on which the respondent files the documents under Rule 10: or
  - b) if the AIT is unable to arrange a hearing within that time, as soon as practicable thereafter (Rule 11).
- Having fixed the date of hearing the AIT must serve notice of the date, time and place of the hearing on every party as soon as practicable, and in any event not later than noon on the business day before the hearing (Rule 11(2)).

In calculating the time for any of these steps Rule 57 of the Principal Rules applies. This means you exclude the day on which the period begins, and when the period is ten days or less, as here, exclude any day that is not a business day. Where the time for doing any act ends on a day that is not a business day that act is done in time if it is done on the next business day.

## Practice Directions

The AIT Practice Directions (consolidated version April 2007) apply to Fast Track appeals save where they expressly state otherwise.

The Practice Directions that do not apply or only partially apply to Fast Track are as follows:

### **PD4 – Late notice of appeal**

This does not apply in the case of a Fast Track appeal. Instead, any issue of timeliness will be decided as a preliminary issue at the hearing (Rule 12 of the AIT (Fast Track Procedure) Rules).

### **PD6 – Case management review hearings and directions**

CMR hearings are not held in Fast Track appeals.

### **PD9 – Adjournments**

The standard Practice Direction states that applications for the adjournment of appeals listed for hearing before the tribunal must be made not later than 4pm on a clear working day before the date of the hearing. It is expressly stated at 9.1 that this does *not* apply to Fast Track appeals. Instead, 'any application for the adjournment of a Fast Track appeal must be made to the tribunal at the hearing and will be considered by the tribunal under rule 28 (adjournment) of the Fast Track Rules' (9.7).

### **PD7 – Standard Directions in Fast Track appeals states:**

- 7.1 In the case of a fast track appeal the appellant and respondent shall respectively serve the material specified in direction 6.5(a) and (b) either at the hearing or, if practicable, on the business day immediately preceding the date of the hearing.
- 7.2 Subject to the point made in paragraph 6.7 witness statements served in pursuance of paragraph 7.1 shall stand as evidence in chief at the hearing.

The material specified in direction 6.5(a) and (b) (referred to in Practice Direction 7.1) comprises:

- i) witness statements of the evidence to be called at the hearing, such statements to stand as evidence in chief at the hearing
- ii) a paginated and indexed bundle of all the documents to be relied upon at the hearing with a schedule identifying the essential passages
- iii) a skeleton argument, identifying all relevant issues including human rights claims and citing all the authorities relied upon and
- iv) a chronology of events.
- v) the Respondent shall serve on the Tribunal and the appellant a paginated and indexed bundle of all the documents to be relied upon at the hearing with a schedule identifying the relevant passages, and a list of any authorities relied upon.

'The point made in paragraph 6.7' (Practice Direction 7.2) is:

- 6.7 Although in normal circumstances a witness statement should stand as evidence in chief there may be cases where it will be appropriate for appellants or witnesses to have the opportunity of adding to or supplementing their witness statement. Parties are referred to the judgment of the Court of Appeal in *R v Secretary of State for the Home Department ex-parte Singh* [1998] INLR 608.

## Applications to consider making at or prior to the hearing

Your client is at a clear disadvantage compared to those who have their appeals processed outside of the Fast Track. The disadvantage comes from the reduced period of time in which you can prepare the appeal and the very tight time limits that will apply if the appeal is dismissed and you have to apply for a review and reconsideration.

It is therefore essential that you consider making applications for:

- **bail**, which if successful will lead to your client being released and no longer subject to the Fast Track
- **a transfer out** of the Fast Track because there are exceptional circumstances which mean that the appeal cannot be justly determined (Rule 30)
- **an adjournment** because the appeal cannot be justly determined on the day on which it is listed (and there is an identifiable future date not more than ten days after the date on which the appeal is listed for hearing, by which it can be justly determined) (Rule 28 AIT (Fast Track Procedure) Rules).

## Bail

Your client will have been detained prior to the decision to refuse the asylum claim on one or more grounds. These grounds will have been set out in the written reasons for detention form served on her (form IS91R). One of the grounds for detention pre-decision is likely to have been 'I am satisfied that your application may be decided quickly using the Fast Track procedure'. This may or may not have been coupled with other grounds such as 'you are likely to abscond if given temporary admission or release'.

As we have seen, what the Home Office should do once they have made the decision to refuse the asylum claim is to review their decision to continue detention. They should issue a fresh IS91R giving reasons for continued detention if they are going to maintain detention after service of the refusal. If they fail to do this the detention becomes unlawful. Assuming you received fresh reasons you should consider these fresh reasons very carefully and take your client's instructions upon them and decide whether it would be appropriate to apply for bail.

That your client's appeal may be decided quickly under the AIT (Fast Track Procedure) Rules is not a legitimate ground for continuing detention. The only criteria that should be taken into account are the 'general detention criteria' such as a risk of absconding, the imminence of removal etc. The OEM at paragraph 38.4 refers to 'detention for a short period of time to enable a rapid decision to be taken on an asylum/human rights claim'. The decision referred to here is the decision on the asylum claim, not the decision on the appeal.

Remember that there is a presumption in favour of temporary admission and there must be strong grounds for believing that a person will not comply with conditions of temporary admission for detention to continue to be justified.

Any application for bail should be made in accordance with Part 4 of the Principal Rules. Exactly the same procedure and criteria apply as for bail applications outside of the Fast Track.

There are no special rules or guidance to immigration judges on bail applications where a person continues to be detained in the Fast Track following service of a notice of decision on their asylum claim. The standard bail guidelines to immigration judges therefore apply (these guidelines are no longer published on the AIT website but see Bail guidance notes for adjudicators at Appendix 2 to ILPA's *Challenging immigration detention: a best practice guide*).

The 30 April 2007 consolidated version of the AIT Practice Directions states:

A number of Guidance Notes were issued by the Chief Adjudicator (and Deputy Chief Adjudicator) between 2001 and 2004, covering issues such as sitting by part-time adjudicators, unrepresented appellants and bail proceedings.

Unless and until the Tribunal issues its own guidance, members of the Tribunal will have regard to these Guidance Notes, subject to any qualifications or modifications necessary as a result of the creation of the Tribunal and of any changes in the relevant legislation.

A list of the Guidance Notes is contained in the Annex.

The Bail Guidance notes are listed in the Annex and reference can therefore continue to be made to them.

If you are going to apply for bail it is best to lodge the bail application as soon as possible after receipt of the decision refusing asylum (you can lodge it prior to lodging the appeal). Your hearing should be listed within three working days in accordance with the Practice Direction so that you have an opportunity to make an application for bail prior to any date fixed for the Fast Track appeal hearing. A bail application received after 3.30pm will be treated by the AIT as having been received on the next business day so you should try to lodge it before 3.30pm.

If you are able to obtain bail for your client before the date of the substantive appeal hearing she will automatically come out of the Fast Track since she will no longer be detained at an IRC set out in the schedule to the AIT (Fast Track Procedure) Rules (the crucial criteria for being subject to a Fast Track appeal).

## Transfer out, Rule 30 applications

In all cases you must consider making an application to transfer your client's case out of the Fast Track under Rule 30 of the AIT (Fast Track Procedure) rules. Rule 30 is there presumably because the Government recognised that the Fast Track timescale is so swift that there will be cases where an appeal cannot fairly be decided within the timetable.

Rule 30 states:

- 30(1) Where Part 2 or 3 of these Rules applies to an appeal or application, the Tribunal must order that that part shall cease to apply –
- a) If all the parties consent:
  - b) If it is satisfied by evidence filed or given by or on behalf of a party that there are exceptional circumstances which mean that the appeal or application cannot otherwise be justly determined: or
  - c) If :
    - i) The respondent to the appeal has failed to comply with the provision of these Rules or the Principle Rules as applied by these Rules or a direction of the Tribunal: and
    - ii) The Tribunal is satisfied that the Appellant would be prejudiced by that failure if the appeal or application were determined in accordance with these Rules.

In other words Rule 30 can be used to take cases out of the Fast Track if:

- all parties consent
- exceptional circumstances exist which mean that the appeal cannot be justly determined whilst in the Fast Track
- the Home Office has failed to comply with a procedural rule or direction and your client would be prejudiced by that failure if the appeal remained in the Fast Track.

If any of the criteria of Rule 30 apply then the tribunal must transfer the case out of the Fast Track. In *The Immigration and Asylum Appeals (Fast Track Procedure) Rules 2003* (SI 2003/801, L 21) predecessor to the AIT (Fast Track Procedure) Rules, the equivalent Rule (Rule 23(1)) stated that the tribunal *may* transfer the case out of the Fast Track. This change from *may* in 2003 to *must* in 2005 strengthens the requirement for the tribunal carefully to consider the transfer out of the case.

The AIT can make an Order to transfer the case out of the Fast Track without an application being made by either the applicant or representative, i.e. at its own initiative. In most cases however you will need to make an application.

If an Order is made to transfer the case out of the Fast Track the AIT do this by adjourning the hearing of the appeal and giving directions relating to the further conduct of the appeal (Rule 30(2)). The AIT must fix a new date, time and place for the hearing and they do this under the provisions of the Principal Rules.

## Making a Rule 30 application

Applications under Rule 30 can be made at any time in writing to the AIT or at the hearing of the appeal itself. If you make a written request in advance of any hearing or before the hearing date has been set and the application is refused this does not prevent you from making a fresh application under Rule 30 at the hearing.

When considering making a Rule 30 application you need to be clear under which of the three heads you will be making it. We now look at these in turn.

### Consent of parties

If you think it is possible for both parties to consent to the transfer you should make oral or written representations to the Home Office seeking to persuade them that your client's appeal should not be heard in the Fast Track.

You should raise any issues regarding its complexity, suitability, or need for further time to obtain material evidence.

You should raise issues as to why your client should not continue to be detained under the usual detention criteria.

You may be able to persuade the Home Office to consent to the case being transferred out of the Fast Track even if you are unable to persuade them to release your client.

With their written consent to the case being taken out of the Fast Track you simply need to write to the AIT asking for an immigration judge to order, under Rule 30, that the case be transferred out of the Fast Track.

### Exceptional circumstances which mean that the appeal cannot otherwise be justly determined

There is no definition, interpretation or guidance in respect to what are 'exceptional circumstances' and what is required for an appeal to be 'justly determined'.

At the date of publication there has been no reported determination of the AIT interpreting this phrase. There have been no judgments relating to this Rule in the higher Courts. The case of *AM (Cameroon) v AIT* [2007] EWCA Civ 131 whilst not concerning Fast Track contains many helpful comments on just and fair procedures which you may find of use.

### Examples of exceptional circumstances

Applying a dictionary definition approach:

- 'Exceptional circumstances' are 'unusual circumstances'.
- 'Justly determined' means that the appeal must be determined in a 'fair way', 'a just manner', 'equitably'.

We would suggest the following (non exhaustive list) are examples of where exceptional circumstances exist so that the appeal cannot otherwise be justly determined:

- complex cases requiring skeleton arguments on multiple points of law
- cases where there is no AIT country guidance case to follow thus requiring the parties to prepare detailed objective country material bundles and commission experts, or cases where you are seeking to call experts to show a country guidance case is wrong or out of date
- when you know that there is a case on a point raised by your client's case that is pending in a higher court
- when the Home Office has failed to respond to a Statement of Additional Grounds in which your client has made an application that is pending
- where the client has medical problems which need examining by experts
- where the client has a long immigration history and is arguing Article 8 ECHR as well as asylum, based on strong family or other ties, and these need to be properly and fully documented and witnesses called
- where further documentation or disclosure is needed to support the client's case
- where witnesses are available to support the client's case and cannot be contacted or produced in time
- where the claim is factually complex and more time is needed to take instructions
- where the client is traumatised or vulnerable and more time is needed to take instructions and gain her trust.

It is not possible to give an exhaustive list.

Consider your client's case carefully to see what exceptional circumstances could be argued.

Some of the case studies in this guide give examples of successful Rule 30 applications, ►see chapter 8.

### Prejudiced by the failure of the Home Office to comply with Rules or Directions

To succeed on an application to transfer out on this basis you will need to show:

- that the respondent has failed to comply with the provision of the AIT (Fast Track Procedure) Rules or the Principal Rules or a Direction of the AIT, and
- that your client would be prejudiced by that failure if the appeal were determined in the Fast Track.

Examples of where the respondent might fail to comply with a provision of the Rules include:

- failure to file the documents listed in Rule 13 of the Principal Rules, or a failure to file these documents within the two day time limit (Rule 10 of the AIT (Fast Track Procedure) Rules).
- failure by the custodian to forward the notice of appeal immediately to the AIT (if there has been a delay as a result).

You would then need to show how your client has been prejudiced by these failures to such a degree that the case should be transferred out rather than adjourned.

## Adjournments, Rule 28 applications

If you do not have an argument for the case to be transferred out of the Fast Track, or if such an application has failed, you should consider making an application for an adjournment to give you and your client up to ten business days more in which to prepare for the appeal.

Rule 28 of the AIT (Fast Track Procedure) Rules sets out the criteria for the granting of an adjournment by the tribunal:

28 The Tribunal may only adjourn a hearing where:

- a) it is necessary to do so because there is insufficient time to hear the appeal or application which is before the Tribunal.
- b) a party has not been served with notice of the hearing in accordance with these Rules.
- c) The Tribunal is satisfied by evidence filed or given by or on behalf of a party that –
  - i) the appeal or application cannot be justly determined on the date on which it is listed for hearing; and
  - ii) there is an identifiable future date, not more than 10 days after the date on which the appeal or application is listed for hearing, by which it can be justly determined; or
  - iii) the Tribunal makes an Order under Rule 30.

### Examples of adjournment circumstances

The circumstances in which you should apply for an adjournment so that the appeal can be justly determined would include needing more time:

- to prepare your client's witness statement
- to prepare a bundle to comply with Practice Direction 8
- to prepare a skeleton argument to comply with the standard direction
- to take witness statements from third parties
- to undertake relevant country research
- to consider and take instructions upon any matters arising from material served on you by the respondent (particularly on the day of the hearing)
- to have documents properly translated into English to comply with Practice Direction 8.2(b)
- because you have instructed a medical or country expert to provide a report on a material matter that is in issue
- because the Home Office has failed to respond to any written representations which should be replied to for the appeal to be justly determined.

If you find yourself at any time thinking 'if only I had more time I could do x, y and z' you should not be proceeding to the hearing with a view to its going ahead, you should be making an adjournment request so that you can do 'x, y and z'. If you do not envisage that these can be done within ten business days from the date fixed for the hearing you should be applying for the case to be transferred out under Rule 30.

ILPA is of the view that it will be very rare that a representative will not be making an application for an adjournment or a transfer out of the Fast Track under Rule 30 in Fast Track appeals.

## Promulgation of determination

Once the AIT has heard the appeal the AIT must serve the determination on all parties to the appeal no later than two days after the date of the hearing (Rule 14 of the AIT (Fast Track Procedure) Rules).

You need to act quickly to consider that determination and take any instructions required from the client.

## Review and reconsideration

If you believe there are grounds for applying for a review of a determination (commonly known as a s 103A application) the time limit for doing so in Fast Track cases is only two days from receipt of the determination, with the AIT of the view that the deadline is 4pm on the last day. This time limit is to be found at Rule 3 of the Asylum and Immigration Tribunal (Fast Track Time Limits) Order 2005.

The application form to complete to make this is a form called Form 103A Application for Reconsideration. The AIT website ([www.ait.gov.uk](http://www.ait.gov.uk)) has two versions of this form, one for Harmondsworth and one for Yarl's Wood.

This form requires you to set out the grounds upon which it is contended that the tribunal made an error of law that may have affected its decision and reasons in support of those grounds.

### Grounds for review

You need to identify errors of law. The AIT errs in law by:

- making perverse or irrational findings on a matter or matters that were material to the outcome
- failing to give reasons or any adequate reasons for findings on material matters
- failing to take into account and/or resolve conflicts of fact or opinion on material matters
- giving weight to immaterial matters
- making a material misdirection of law on any matter
- committing or permitting a procedural or other irregularity capable of making a material difference to the outcome or the fairness of the proceedings
- making a mistake as to a material fact which could be established by objective evidence and where unfairness resulted from the fact that a mistake was made.

A decision not to transfer out under Rule 30 or not to adjourn under Rule 28 could well be an error of law if the immigration judge made any of the above errors in reaching his decision.

You should therefore consider not only errors of law relating to the substantive decision on whether your client is a refugee or entitled to humanitarian protection but also errors of law in respect to any decision by the immigration judge either not to transfer the case out of the Fast Track under Rule 30 or not to grant an adjournment under Rule 28.

## Deciding the application for review

In Fast Track cases (unlike in mainstream appeals) the AIT serve the application for a review on the other party and that party may file submissions in response, but not later than one day after the day on which they were served with the application (Rule 17 of the AIT (Fast Track Procedure) Rules). The immigration judge must then decide the application for a review and serve the decision on every party one day later (Rule 19).

## High Court opt in

If you are refused a review you have the right to 'opt in' to the High Court procedure to request a Statutory Review under section 103A of the Nationality, Immigration and Asylum Act 2002. The one difference with Fast Track cases is that the time limit for doing so is only two days (Paragraph 3 of the Fast Track Time Limits Order 2005).

## Reconsideration hearing

If an order for reconsideration is made then the reconsideration hearing must be fixed to take place no later than two days after the day on which the order was served on both parties (Rule 21 AIT (Fast Track Procedure) Rules). At the reconsideration hearing you can rely once again on Rule 30 and Rule 28 of the AIT (Fast Track Procedure) Rules to make applications to transfer out or for an adjournment.

## Onward appeal to the Court of Appeal

If your appeal is dismissed after the reconsideration hearing you can appeal to the Court of Appeal as in mainstream cases. The only difference is the time limit. Once again it is reduced to two days (Paragraph 4 of the Fast Track Time Limits Order 2005).

## A concluding remark

What you should have learned from this chapter is that your client is seriously prejudiced by the extraordinary tight deadlines, not to mention the pressure under which you will have to work compared to the time frame under which you would be working if your appeal were not being fast-tracked. It is because of this that it is so important to make transfer out, adjournment, and bail applications.



# 5

## Representing your client step by step part 2: from decision to final determination

This chapter builds upon the previous chapter on appeals (chapter 4) and sets out a summary of the practical steps to follow from decision to appeal.

5  
Representing  
part 2

### Step 1 Service of the decision and taking of instructions

We assume that the decision is a refusal of asylum. If it is a grant your client will be released.

You can either accept service of the decision and reasons for refusal letter by fax or you can agree to attend the interview which will take place between the Home Office caseworker and your client where your client will be served with the decision in person.

It is best practice to attend the interview because your client is likely to be nervous and distressed by receiving a refusal decision. It will give you an opportunity to advise your client immediately following receipt and also to make representations orally to the officer serving the decision as to why your client should now be released if there are no grounds for detention other than to fast track the application.

If you do not attend the interview when your client is served in person you must arrange a legal visit as soon as possible to advise the client on the contents of the refusal letter and advise her on her appeal rights and bail rights.

You will need to take instructions on the new IS91R that should have been served giving fresh reasons for detention.

You should consider the merits of a bail application.

## Step 2 Exercise Controlled Legal Representation merits test

If you are representing your client under legal aid this is a crucial step to take.

Do not refuse Controlled Legal Representation (CLR) unless you are certain that the prospects of success are poor.

The most common criticisms of practitioners from those in the voluntary sector helping detainees are criticisms of decisions to refuse to grant CLR for appeals. Remember that the LSC specification requires that if you are unclear as to the prospects, or if the case is borderline, you should grant CLR to at least carry out further investigations. ►See 12.5.4 of the specification, chapter 7.

ILPA is of the view that given the speed of the Detained Fast Track process it will be rare to be satisfied that there are poor prospects of success at this early stage, which means that in most cases, a grant of CLR will be justified.

If you do refuse CLR you must:

- explain to your client why you are refusing CLR so that she understands that you believe the prospects of success are poor and why you believe this to be the case – you should invite her to make any comments and be prepared to reconsider your decision in the light of these
- complete form CW4, which is the form to send to the LSC to request a review of your decision to refuse CLR – you should assist your client with lodging it with the LSC
- take your client's instructions as to whether she wants you to write to the AIT informing the AIT that a review of the CLR decision has been requested and ask the AIT that the appeal not be listed until the review has been determined
- advise her on how to lodge the appeal to the AIT if she wants to appeal; you may also decide to help her do this even though it will not be covered by legal aid.

Even though you have refused CLR for the substantive asylum claim you have a continuing duty to advise your client in respect of detention. Your Legal Help file should remain open for this and you should also consider granting CLR for bail alone. ►See chapter 7, letter from the LSC dated 1 June 2006.

## Step 3 Lodge bail application

If you think there is any merit in challenging the reasons given for continuing detention you should lodge a bail application as soon as possible. The AIT should list this within three days in accordance with its practice so that you should have a bail hearing listed before the date of any substantive appeal.

## Step 4 Lodge appeal form

You have to lodge this within two 'business days', 3see chapter 4 for definition. To maximise preparation time do not serve the appeal immediately, wait the full two days.

## Step 5 Make written Rule 30 or Rule 28 applications if appropriate

Consider arguments for either an adjournment (if there are steps that need to be taken that can be done within ten days of the first date of hearing) or a Rule 30 application to have the case taken out of the Fast Track altogether. If you think there are any arguments you can make a written application (you do not have to wait until the hearing). Send it by fax to the AIT hearing centre where the appeal will be heard.

## Step 6 Prepare well for the substantive hearing

Do not count on a Rule 30 application succeeding. You have to prepare the appeal on the basis that it will proceed on the day of the hearing. You should follow the best practice set out in ILPA's *Best practice guide to asylum and human rights appeals*.

## Step 7 The hearing

Make appropriate applications including Rule 30, Rule 28 and bail applications. If acting under CLR, if you do not apply for bail at the hearing you have to make a note of the reasons why not on your file. If your applications are not granted represent your client in the substantive appeal to the best of your ability.

## Step 8 Consider the determination if the appeal is refused

Consider errors of law. An error of law may include a decision not to take the case out of the Detained Fast Track process under Rule 30 or not to adjourn.

## Step 9 Apply for review and reconsideration if appropriate

This must be done within two 'business days' and the AIT regards 4pm as the deadline on the last day. If this is under CLR it will not be 'at risk' work. You do not need a Section 103D order in Fast Track cases. If refused by the AIT consider opting in to the High Court procedure.

## **Step 10** Keep on representing your client after all appeal rights exhausted

Many detainees who go through the Fast Track and lose their appeal continue to remain in detention for many weeks and months. This is often because the Immigration Service cannot remove them due to lack of documentation or country policies. You must continue to monitor the client in detention and if it appears that there are barriers to removal make applications for temporary admission or bail. If new evidence emerges which was not available within the speed of the Fast Track process this may form the basis for a fresh asylum or human rights claim.

# 6

## Judicial review

What do you do if you have asked the Home Office to apply their suitability or flexibility policy and they do not?

What do you do if an immigration judge acts in a way that you think is grossly unfair?

Judicial review may be the answer. It has an important role to play in Fast Track cases and you should be aware of its potential and scope. Remember though that judicial review is a remedy of last resort. Where the AIT's power to order transfer of the case out of the Fast Track under Rule 30 of the AIT Fast Track (Procedure) Rules will provide the remedy you need, then that is the remedy to pursue. However, there will be cases where that remedy is not appropriate. You will need to decide on a case by case basis.

6  
Judicial  
review

### Judicial review of the Home Office

If you have requested that your client's case be taken out of the Detained Fast Track process because it is not suitable, or you have requested more time under the Operational Instruction on flexibility, what do you do if the Home Office refuses? You should always persist with your arguments, repeating them and if necessary asking for a senior officer to look at the case. Ultimately your legal remedy will be to apply for judicial review. Failure by the Home Office to apply a policy, or an application of that policy which is irrational, can be challenged in the High Court by way of judicial review. Administrative law principles apply.

If, for example, the Home Office is insisting on proceeding with an interview or reaching a decision post-interview when in your view it would be unlawful to do so because it would breach a policy, then judicial review provides you with a remedy, namely an order from the Court restraining the Home Office from acting unlawfully and/or the quashing of any decision that has been reached unlawfully.

The Home Office may argue that the appropriate remedy is to appeal to an immigration judge if asylum is refused and, if you believe the decision should not remain in the Fast Track, make a Rule 30 application. This is incorrect. Your client has a legitimate entitlement to a fair process in the *taking* of the Home Office decision. It is no answer to say that an appeal lies to an immigration judge. As the Court of Appeal explained in *R (Refugee Legal Centre) v SSHD* [2004] EWHC 684 (Admin): 'An applicant is entitled not only to a fair appeal but to a *fair initial hearing* and a *fair minded decision*'. (emphasis added).

In some cases it may not be possible to remedy the consequences of an unfair refusal to take a case out of the Fast Track pre-decision without applying for judicial review, such as where there is an asylum interview that reflects badly on your client's credibility and handicaps her at later stages of the appeal process.

Your client is also entitled to proper reasons for any decisions not to be transferred out of the Fast Track. The purpose of reasons is to concentrate the decision-maker's mind on the right questions and show that these have been conscientiously addressed. Failure to give any or adequate reasons can be challenged by way of judicial review.

Each case depends on its facts. To refuse to remove a case from the Fast Track on grounds of fairness in accordance with the judgment in the Refugee Legal Centre case (*op. cit.*) or to fail to apply Home Office policies regarding suitability for the Detained Fast Track process (or flexibility within it) is wrong and should be challenged. Where the unfairness or breach of policy is clear, best practice is to consider bringing a claim for judicial review as well as an appeal to the AIT, and then to seek to stay the proceedings in the AIT pending disposal of the application for judicial review.

However, it is likely to be only in obvious and serious cases of prejudice that the court will conclude that the appeal to the AIT is not a sufficient remedy so you should think carefully before applying for judicial review and consider the case of *AM (Cameroon), R on the application of, v AIT* [2007] EWCA Civ 131, in particular paragraphs 89–90, 109, 128 and 144).

If you are going to use judicial review you should send a letter before action to the judicial review unit of the Border and Immigration Agency in Croydon.  
► See appendix 7 for contact details.

In your letter before action you should set out:

- details of the matter being challenged (for example, decision not to transfer out of the Detained Fast Track process)
- the issues arising (for example failure to follow the Operational Instruction on flexibility or failure to give reasons for not removing your client from the Detained Fast Track process)
- the details of the action that you ask the Home Office to take (for example transfer out of the Detained Fast Track process, or allow additional time for further evidence to be submitted)
- details of information sought and any documents that are considered relevant (for example any internal Home Office guidance the decision-maker relies on)
- the proposed reply date, i.e. the date by which you expect a reply otherwise you will issue proceedings. Bearing in mind the time scale of the Detained Fast Track process it may be legitimate for that reply date to be 'by close of business today' or 'within 24 hours'.

The experience of ILPA members to date is that some letters before action have led the Home Office to review their decision not to take a client out of the Detained Fast Track process and reverse that decision. In some cases proceedings for judicial review have been issued. Very few of these cases to date have resulted in reported judgments from the High Court, tending to suggest that the Home Office has settled the cases.

## Judicial review of an immigration judge

Judicial review can also, in theory, be used to challenge an immigration judge's decision even though a review and reconsideration procedure is available once the determination has been promulgated. This was the finding of the Court of Appeal in the case *AM Cameroon, R on the application of, v AIT* [2007] EWCA Civ 131. In such a case the actions of the immigration judge will need to amount to gross procedural unfairness. Such unfairness may occur in Fast Track appeals and practitioners should be aware of the availability of judicial review in addition to applications under Rules 30 and 28 of the AIT (Fast Track Procedure) Rules. Where no such unfairness can be shown the High Court on judicial review will generally decline to entertain a challenge to an interlocutory decision on the ground that the challenge is premature (see *R (G) v IAT; R (M) v IAT* [2004] EWCA Civ 1731, *R (Wani) v SSHD* [2005] EWHC 2815, at 24, and the decision in *AM Cameroon* itself, especially paras 105, 129 and 150 of judgment).

For example, at the appeal hearing, during the giving of evidence by your client, the Home Office produces documents that you have never seen before which they claim shows that your client is not who she claims to be and that she is of a different nationality. You ask for an adjournment so that you can take instructions from your client on the documents. The immigration judge refuses and insists that your client answer the questions being asked. Is that gross procedural unfairness? You ask for an adjournment so that you can get an expert to comment on the documents. An adjournment is refused. Is that gross procedural unfairness? It will be a matter for your judgement, given your instructions, whether to proceed or whether to decline to take any further part in the proceedings and issue a claim for judicial review to challenge the immigration judge's decision on the adjournment request.

The immigration judge will determine the appeal (assume negatively). If you are challenging the decision to refuse the adjournment request by judicial review you should also apply for a Review and Reconsideration of the determination pursuant to s 103A of the Nationality Immigration and Asylum Act 2002, on the grounds that the unfairness amounted to an error of law.

### An example of judicial review

An example of the use of judicial review in Fast Track is the case of *Sidibe* [2007] EWCA Civ 191. Four days after the detainee had been refused asylum, and before the hearing of his appeal before the AIT, the solicitors representing the detainee requested that the Home Office takes the case out of Fast Track because they needed to get an expert report. The expert had confirmed that the case raised complex issues. The Home Office replied by saying that the detainee needed to make these representations to the AIT. A request was made to the AIT to take the case out of Fast Track and this too was refused. Judicial review of both the Home Office decision and the AIT decision was subsequently lodged. By the time it came before the Court of Appeal on a renewed application the issue had become academic because the case had been removed from the Fast Track.

However, the comments of Lord Justice Moses are helpful and indicate the approach that the courts are likely to take in these cases:

The next matter arises in relation to the refusal of the Secretary of State to remove the case from the fast track. The matter has, however, been removed from the fast track system because counsel with the aid of his solicitors were sufficiently diligent to persist in claiming that it should be so removed. He was compelled to go to the IAT by virtue of a letter sent by the Home Office to the applicant's solicitors dated 18 October 2005, which asserted that the applicant needed to make representations to the IAT for the case to be taken out of fast track.

...that seems quite contrary to the policy in relation to fast track, certainly as it was recorded by this court in the *Crown on the application of the Refugee Legal Centre v the Secretary of State for the Home Department* [2004] EWCA Civ 1481. At paragraph 4 sub paragraph 4(2) the court set out the system which they were told would apply, which emphasises that experienced officials must be aware of the possibility that any applicant may need to be taken out of the fast track where other evidence may need to be obtained or the claim turns out not to be so straightforward as was initially believed. Further, the evidence of the project manager at paragraph 12 says that claims which require expert evidence will be removed from the system. That does not appear to have happened in this case at the time. Rather the matter was sent to the Immigration Appeal Tribunal. That seems to be quite contrary to what this court was told in the *Refugee Legal Centre* case to which I have already referred, but in the long term did not cause harm to this applicant because he is, as I have said, out of that system and his appeal is shortly to be heard.

The second matter in relation to the system which also causes Mr Grieves and his instructing solicitors concern is the approach of the immigration judge, who refused permission for the matter to be taken out of the fast track procedure. The judge's jurisdiction is different from that of the Secretary of State and his officials. The Secretary of State and his officials have to adopt a flexible approach, as was the evidence given to the court in the *Refugee Legal Centre* case. That requires the Secretary of State and his officials to make an independent judgment as to the propriety or not of taking the case out of the fast track system. It was wholly wrong to refuse that merely on the basis that it ought to be sent to an immigration judge. I have not heard what the Secretary of State said about that but the only argument advanced in resisting the application for judicial review by Mr Tam on behalf of the Secretary of State was that the point was academic. So it may have been, but at the moment I cannot envisage any circumstances in which an application to take a case out of the fast track system can merely be met by a letter in the terms that were sent in this case. But again I do not have to decide this matter nor is it appropriate for me to do so in the absence of representations from the Secretary of State.

It is now acknowledged that the matter should not be in the fast track system and it is not. Bearing in mind that what appears to have happened in this case is quite contrary to what this court was told would happen in the *Refugee Legal Centre* case, I cannot see that any further proceedings for judicial review or any further comments by this court will add anything to what the court was told in that case. In short, now that the matter is out of the fast track I agree with Newman J that it would be academic and unnecessary to allow judicial review merely for the court to repeat what it has already said on an earlier occasion.

## Applying for judicial review

If you decide to make an application for judicial review the procedure is covered by the Civil Procedure Rules (Part 54 and accompanying Practice Direction). These can be found on the Ministry of Justice website at [www.justice.gov.uk](http://www.justice.gov.uk)

Submitting an application for judicial review is relatively simple, although it requires funding and in general benefits from the involvement of an experienced barrister to draft the grounds. Procedurally, it involves the completion of the claim form, payment of a fee and lodging of documents with the Administrative Court. The claim form should be served on the Treasury Solicitor (if the Secretary of State for the Home Department is the Defendant) or the President of the AIT (if the AIT is the Defendant).

The Defendant then has 21 days in which to decide whether to contest the claim and file a defence. There is a procedure for expediting applications and for seeking urgent interlocutory orders in urgent situations. The forms and further information on the procedure are available from the Administrative Court website at [www.hmcourts-service.gov.uk/cms/admin](http://www.hmcourts-service.gov.uk/cms/admin)



At the time of writing legal aid is going through a period of important change. The Legal Services Commission (LSC) is proposing that from April 2008 it will enter into exclusive contracts with a small number of suppliers to provide legal aid advice to all detainees in each Immigration removal centre (IRC). These exclusive contracts will also cover Detained Fast Track work. There will continue to be exceptions where suppliers without exclusive contracts can represent detained clients including those in the Detained Fast Track process.

For those representing clients under legal aid it is very important that you understand what is expected of you and your obligations to your client under the legal aid regulations and LSC policy current at the time.

What follows are key things to note. All quotes are from the draft Legal Services Commission unified contract civil specification that comes into force from October 2007. The immigration specification at section 11 of that document is to be read in conjunction with the Legal Services Commission Fast Track specification (appended to the Fast Track schedules signed by suppliers agreeing to undertake Fast Track work from 1 October 2005).

## Exclusive contracts

You can only do Fast Track work and be paid for it by the LSC if your organisation has an exclusive contract to undertake this work or one of the exceptions apply:

- 11.93 You may not provide Controlled Work to a Client where the Client's case is subject to a pilot or scheme specified by us as work to be carried out under our Exclusive Contracting arrangements. Work covered by Exclusive Contracting shall be set out:
- i) in this Specification;
  - ii) in your Office Schedule; or
  - iii) by notice in writing to you;
- 11.94 Unless otherwise notified in writing the following work is subject to Exclusive Contracting:
- i) ...
  - ii) cases subject to the detained Home Office fast track process at Oakington, Harmondsworth or Yarl's Wood and cases subject to that process where the Client is detained elsewhere in England or Wales; and
  - iii) detained fast track process for potentially non-suspensive appeal cases at locations and from dates to be specified.
- ...

11.96 Paragraph 11.93 does not apply to cases:

- a) where you were performing Contract Work on the Client's case before any date specified for the commencement of the application (of that Paragraph) to a specified location, pilot or services relevant to the case; or
- b) Once a Client has left, or been removed from any specified location, pilot or other arrangements subject to Exclusive Contracting.

**Exceptions:**

11.97 You may provide Controlled Work under Paragraph 11.93 to 11.96 where:

- a) A Supplier contracted to provide Controlled Work under 11.93 above refers the Client to you. You must keep a record of the referral, including the date and the name of the Supplier who made the referral, on your file;
- b) The Client is a close family member of an existing Client and knowledge of the family's circumstances is material to the new Client's case (A close family member for the purpose of this rule is a member of the family who is the Client's spouse, partner, child, sibling, parent, grandparent or grandchild.); or
- c) The Client is an existing Client on whom you have attended in the UK and carried out at least five hours work (excluding travel and waiting) prior to the case being subject to one of the advice services outlined above.

## Telephone advice

As soon as you are asked to take on a case as duty solicitor you should phone and speak to the client. You can be paid for telephone advice given to the client prior to the signing of the Legal Help form. The LSC have confirmed to ILPA that you can also carry out essential other work after giving this advice and prior to the signature of the form (such as obtaining documents from the Home Office, considering these, conducting case specific research, identifying and contacting experts).

2.19 You may give advice to a Client over the telephone before that Client has signed the application form where:

- a) the Client cannot for good reason attend your office; and
- b) the Client meets the criteria for the provision of Legal Help (including financial eligibility)

and may make a Claim for this work provided that Client subsequently signs the application form.

2.20 Good reason is as defined in Rule 2.14. The reason relied upon should always be noted by you and kept on the file (Rule 2.20). Rule 2.14 states 'good reason will be where:

- a) the Client is in custody or detention, for example in a prison, police station, immigration detention centre or mental hospital, or is otherwise being prevented from attending your office; ...

## Costs limit and merits

All fast track work is paid at hourly rates and not as graduated fixed fees. Costs and merits limits apply.

The mere fact that the case is an asylum application within the Fast Track means that the sufficient benefit test will be met for Legal Help and you should continue to act right up to the reaching of your costs limit. Only at that stage will you be required to address the issue of whether the sufficient benefit test continues to be met.

Remember when working out if you have reached the costs limit that the costs of the interview (including travel and waiting) is in addition to your costs limit.

Under the Fast Track Specification you must provide Legal Help before, during and after the interview and it is envisaged that you attend the Removal Centre to advise on the decision.

Rule 14 of the draft Fast Track Specification states:

An Asylum Adviser who has provided Legal Help to a Fast Track asylum seeker will be notified by the Removal Centre when the decision on the Fast Track asylum seeker's application for asylum has been made. The Asylum Adviser must then agree with the Removal Centre when they will attend the Removal Centre, so that they can provide further Legal Help when the decision has been given to the Fast Track asylum seeker.

On refusal of asylum you have to decide whether the case meets the merits test for the grant of Controlled Legal Representation (CLR). In many Fast Track cases the prospects of success will be *unclear* because you will only have had a very limited amount of time to take instructions and prepare the case.

You should grant CLR where the prospects are *unclear* or *borderline*. They may remain unclear until you have taken full instructions from your client on the reasons for refusal, applied the law to the facts, obtained any expert evidence or objective country material relevant to your case, interviewed any witnesses and had full disclosure of relevant documents from the Immigration Service/Home Office.

### Criteria applying to Controlled Legal Representation

These are at sections 4 and 13.3 to 13.5 of the Funding Code Criteria. Regard should be had to the Guidance on these Criteria at section 21.6 of the Funding Code Guidance.

The guidance given under the old General Civil Contract was:

... What are the prospects of the appeal being successful?

These must be estimated in one of the following three categories:

- a) Moderate or better – prospects are clearly over 50%.  
If so, Controlled Legal Representation may be provided (assuming that all the other Criteria are satisfied).
- b) *Unclear* or *Borderline* – where it is not possible to predict the chances of success or where those chances appear to be 50:50. In those circumstances, you should refuse Controlled Legal Representation unless any of the following three factors apply:

- i) The case is of overwhelming importance to the client, that is, it concerns the life, liberty or physical safety of the client or his or her family, or the roof over their heads. This will often be true of asylum cases; or
- ii) The case raises significant issues of human rights; or
- iii) The case has a significant wider public interest, that is, the proceedings have the potential to produce real benefits for members of the public other than the client and their family, other than any benefits that normally flow from proceedings of the type in question.

Where these factors apply and the prospects of success are unclear or borderline, Controlled Legal Representation will usually be granted provided all other criteria are satisfied. However if the prospects of success are poor then CLR should be refused or withdrawn even if (i) to (iii) above apply.

- c) Poor – prospects are clearly below 50%. Controlled Legal Representation must be refused where the appropriate advice to the client would be that in the circumstances of the case their appeal is more likely to fail than to succeed.

There may be circumstances when you can complete the appeal form under Legal Help and delay carrying out the CLR merits test (for example, where it has not been possible within the tight Fast Track time limits to have the CLR form signed).

Even if the CLR merits test is not met for the appeal it may still be justified to grant CLR for a bail application (for example, if client is undocumented and unlikely to be removed in the near future).

## Refusing or withdrawing Controlled Legal Representation

If you refuse CLR you must inform your client of her right of review to the LSC's Independent Funding Adjudicator and provide her with the LSC's form CW4 having completed your part. You can assist your client in completing the application for review under Legal Help. If she wishes to apply for a review, and an appeal is lodged or to be lodged to the AIT against the decision on the asylum claim, it is best practice to notify the AIT of this and ask that the appeal not be listed until the Independent Funding Adjudicator has heard the appeal.

- 11.141 An initial application to grant Controlled Legal Representation should be refused where the Client fails to satisfy the means or the merits test.
- 11.142 You should cease to provide Controlled Legal Representation where the case no longer satisfies the merits test.
- 11.143 The date and reasons for the refusal or withdrawal should be recorded on the CW4 and retained on file. A copy must also be given to the Client.
- 11.144 You must inform in writing the Client of their right of review of your (or our) decision based on the merits of the case only, advise them that they must give reasons for the application for a review and provide them with the review notification form (CW4) in all cases where you have refused Controlled Legal Representation. You must also advise the Client of the time limit in which such a review should be made under paragraph 11.147.

- 11.145 Where you have refused or withdrawn Controlled Legal Representation, you should make it clear to the Client that you are refusing or withdrawing on behalf of us and applying the Criteria set out in the Funding Code and the rules and guidance contained in this Contract. You must complete the section on the review notification form (CW4) giving your reasons for the refusal based on the merits of the case.
- 11.146 Where you have refused or withdrawn Controlled Legal Representation you must report you decision on a form specified by us. You should submit the form to us on the 10th of each month. All decisions made by you in the previous month must be reported on the form.

**Review by the Independent Funding Adjudicator**

- 11.147 Where an application to grant or amend Controlled Legal Representation is refused or where Controlled Legal Representation is withdrawn, your Client may within 5 days of the date of refusal or withdrawal apply on the form specified by us to have the decision reviewed by the Independent Funding Adjudicator, and may make representations in writing in support of the application.
- 11.148 Where an appeal date is already set then the application should be submitted immediately and the urgency of the application should be clearly stated. You should provide your Client with the address of the London Regional Office to which the Client should appeal or you can, if you are instructed, submit the form to us on the Client's behalf.
- 11.149 There is no right of review of a decision based on the means of the Client.

## Legal Services Commission guidance and reporting

### LSC immigration policy letter

In June 2006 the LSC sent specific guidance to all Fast Track Duty Scheme solicitors, i.e. all suppliers with Fast Track contracts, making clear many of the points made above and requiring suppliers to report monthly on the number of applications that they had made for bail, to take the case out of Fast Track and provide other figures.

The letter is set out in full on the next page:

## Legal Services Commission immigration policy letter

1 June 2006

As you will be aware the Commission has been concerned for some time about fast track clients being able to exercise their right to bail whilst in detention. As a result of this concern we changed the fast track contract in October 2005 to make it a requirement for suppliers to consider whether a bail application should be made at the appeal hearing (Clauses 24 of the Fast Track specification). Under the specification suppliers must record reasons why they do not make a bail application and provide the client with the opportunity to request a review of the advisors decision not to grant controlled legal representation (CLR). An application for a review will be considered by the Funding Review Committee (FRC) [now the Independent Funding Adjudicator].

On accepting instructions from a fast track client, our expectation is that those instructions will continue (as a minimum) for as long as the client is in detention, (i.e. until they get leave to remain, temporary admission or they are removed from the UK), unless the client specifically ceases to give instructions. You will of course continue to apply the normal merits test for funding throughout those instructions in the same way as you would for any client. The fact that the client is in detention will obviously be a factor in that assessment of merit. If they require advice on the lawfulness of the continuance of detention the appropriateness of making temporary admission or bail applications at any particular time (including when appeal rights have been exhausted) then there will be sufficient benefit to the Client in receiving that advice.

Suppliers are reminded that the Home Office agreement with the Commission is that the duty advisor should be given 24 hours notice of an asylum interview and it is expected that suppliers will attend upon a client and take full instructions and advise prior to an interview. Our expectation is that any client whose case satisfies the sufficient benefit test for Legal Help will also have an attendance with their fast track supplier following the Home Office decision on their case even where their application for asylum has been refused. At this attendance the supplier will explain the reasons for refusal and decide whether the case satisfies the merits test for CLR and where the merits test is satisfied funding will be granted. Suppliers are reminded that if the prospects of success are unclear or borderline then CLR can still be granted subject to the guidance set out in the Immigration specification.

If the case does not satisfy the CLR merits test for the appeal the supplier should explain to the client how they can appeal to the Asylum & Immigration Tribunal against the refusal of asylum, how they can request a review by the FRC of the refusal of funding and the supplier should complete the CW4 explaining the reasons for refusal (in accordance with Rule 12.5.5(5) (of the General Civil Contract Immigration Specification). This information should subsequently be provided to the client in writing and the time spent providing this information should be claimed under Legal Help (this will not usually be more than 30 minutes). At this point you should submit a *stage claim with accordance with 12.6 Para 1(a) using third end point code R*.

However, the Legal Help file should remain open to give any further advice that might subsequently be required in respect to ongoing detention or removal issues. Paragraph 12.5.4(16) of the Contract makes clear that if CLR is refused for the appeal Legal Help cannot be continued for the *appeal work*. But it 'may continue to be available to enable you to make representations on the client's behalf that are not in connection with this appeal.'

You should also consider the merit of any application for temporary admission or bail and in the latter case whether a bail application merits CLR funding. For the avoidance of any doubt, you are reminded that, even where a client's substantive appeal lacks merits and therefore would not warrant the grant of CLR for the appeal, the case may still warrant the grant of CLR funding for a bail application. CLR can be granted for the sole purpose of making a bail application (subject to the means and merits test) therefore even when you decide that a client's substantive asylum case no longer warrants public funding the issue of the client's detention will require you to continue to keep the client's file open and advise the client in relation to an application for bail/temporary admission. Once appeal rights are exhausted a client may face lengthy periods in detention because the Immigration Service are unable to effect a removal within a reasonable time. Suppliers should consider making appropriate representations are Legal Help and where the merits test is met making an application for bail under CLR.

We believe that in fast track cases the legal advisor is in the best position to assess the merits of the case. We will monitor the outcomes of FRC decisions in relation to fast track cases. Where we find that FRC are reversing advisors decisions to refuse/withdrew CLR, we will raise these issues with you. This may lead to your organisation's suspension from the fast track rota where it appears that clients have been placed at risk (i.e. that clients may not have received representation before the AIT when they should have). We do not expect advisors to use the FRC as a 'safety net'.

Where a client successfully appeals against your refusal of funding the client will be able to choose between continuing to instruct you and choosing another supplier from the rota. Where the client chooses another supplier we would expect you to provide a copy of your file to the new supplier immediately and then make your final claim for costs.

Where the FRC upholds your decision to refuse funding or where the client does not challenge your refusal, you should keep the client's file open and under review until either the client formally ceases to give instructions, is released from the detention centre or dispersed from the area or is removed from the country. At this point you should close your file and make your final claim for costs. You should be able to keep the client's case under review without the need to attend on the client unless you want to make a bail application.

## Monthly report form for LSC

This is the information that your firm or organisation currently has to provide to the LSC on a monthly basis:

- Did the client appeal against the decision on their application?
- Did you grant Controlled Legal Representation (CLR) for the appeal?
- If you refused CLR, did the client exercise their right of review?
- Did the Funding Review Committee grant CLR?
- Did the client make an application for bail?
- Did you grant CLR for bail?
- If you refused CLR did the client exercise their right of review?
- Did the FRC grant CLR?
- Did you make an application for temporary admission?
- Did you apply for the client to be taken out of the Fast Track process?

The LSC wants this information because it expects you to be:

- making applications to have cases taken out of the Fast Track
- making bail applications
- granting CLR where the merits test is met and helping your client to exercise their right of review where you decide it is not.

In other words: following best practice.

# 8

## Case studies

The following case studies are all real life cases of claimants who have been detained in the Fast Track. We have included them in this guide to give you some indication of how the best practice we have set out in this guide can be put into effect for your clients.

### **Misozi** Interview times and flexibility

Misozi is from Malawi and is detained in the Yarl's Wood Fast Track. The duty representative is notified that the interview will take place the following day at 2pm. The legal representative telephones to book a legal visit. The 10.30am to 12.00 noon slot is offered and booked. The legal visits section in Yarl's Wood then ring the duty representative back saying that they thought the legal representative was an Immigration Officer booking a room for an interview. They say that there are no interview rooms available for legal representatives. It will not be possible to see the client before the 2pm interview. The duty representative contacts the Immigration Service at Yarl's Wood who tell her that they can delay the start of the interview to 2.30pm. The duty representative would then be able to see the client from 2pm to 2.30pm. The duty representative says that this is not satisfactory and refers to the flexibility policy and the agreement that a duty representative should be given 24 hours notice of an interview so that they can have a long legal visit prior to the interview. The Immigration Service ring back soon after agreeing to make a room available for a legal consultation from 10am to 12 noon.

### **Mohamed** Medical Foundation referral

The duty representative is referred a case at 2.30pm for an interview the following day in Harmondsworth at 2pm. The duty representative, using Language Line, speaks to the client over the telephone. The client is called Mohamed and is from Sudan. He alleges torture in the Sudan. The representative asks Mohamed for full details of this torture. He does this by asking the questions on the Medical Foundation referral form. He then faxes this form to the Medical Foundation. Following consideration, the Medical Foundation faxes back a letter offering Mohamed an appointment for an assessment with them in two weeks time.

The representative faxes a letter to the Immigration Service referring to their policy that cases of victims of torture are not suitable for the Fast Track and on removing from the Detained Fast Track process people who have appointments with the Medical Foundation. The Immigration Service cancel the Fast Track interview and take Mohamed out of the Detained Fast Track process. He is granted temporary admission.

The subsequent assessment by the Medical Foundation produces a report that concludes that Mohamed has a variety of different scars which are highly consistent with the description he gave of their causes and that he is suffering from symptoms of depression.

## **Azia** Taken out of Detained Fast Track process post-interview but pre-decision (with the threat of judicial review)

Azia is from Uganda. She is detained in the Yarl's Wood Detained Fast Track process. The duty representative is appointed and takes instructions from Azia prior to the asylum interview. He ascertains that Azia claimed to have been tortured in Uganda and is able, prior to the interview, to send requests to both the Medical Foundation and the Helen Bamber Foundation for those organisations to consider accepting Azia for assessment. He considers the AIT country guidance cases on Uganda and identifies the likely legal issues that a Ugandan case will throw up.

He contacts a Professor using the ILPA Directory of Experts and emails the Professor asking him to consider preparing an expert report for the case. He also contacts a friend of Azia who says that he has some documents including newspaper reports relevant to the case which he will send for from Uganda.

Azia is interviewed. Following the interview the legal representative makes written representations as to why the case is not suitable for the Detained Fast Track process, relying on Azia's allegation of torture. He also refers to the pending referrals to the medical and country experts and to the documentary material including newspaper reports being sent from Uganda and directs the Home Office to its Operational Instruction on flexibility. He faxes this letter to the Immigration Service on the morning of the day after the interview, before the Home Office caseworker reaches a decision. At the same time he faxes a letter before action to the judicial review unit of the Home Office threatening to issue judicial review proceedings if the case is not taken out of the Fast Track. The following day the Immigration Service write to inform him that the case is being taken out of the Fast Track and Azia is released on temporary admission.

## Arjan Using judicial review in the Detained Fast Track procedure

Arjan is a Kosovan Albanian detained in the Harmondsworth Fast Track. He alleges torture. The duty representative refers him to the Medical Foundation for an assessment but based on the information provided by the duty representative they are unable to offer an appointment because it is not clear what kind of torture Arjan has experienced. The duty representative therefore refers Arjan to the Helen Bamber Foundation who agree to assess the client. The duty representative asks that Arjan be taken out of the Fast Track because he is a victim of torture and because the Helen Bamber Foundation have agreed to assess him. The Immigration Service refuse to do so on the grounds that they have an agreement with the Medical Foundation but this agreement does not extend to the Helen Bamber Foundation.

The duty representative makes written representations arguing that the organisations have the same purpose and it is perverse not to treat them in the same way. At the same time the duty representative sends a letter before action to the judicial review unit of the Home Office threatening to issue judicial review proceedings if Arjan is not taken out of the Fast Track. A request for disclosure is made asking for all documents held by the Home Office regarding the assessment of allegations of torture in the context of the Fast Track process. The Immigration Service reply the next day saying they will need 14 days to provide the documents requested. The following day they decided to release Arjan from detention and from the Fast Track.

## Ms R Poppy Project referral and Rule 30 application

Ms R is from Guinea. The duty representative is called to take on her case. She is detained in the Fast Track in Yarl's Wood. The duty representative reads the screening interview notes, which refer to Ms R having been involved in opposition politics in Guinea and having been brought to the UK by an agent. It refers to her having been kept in the house of the agent for some time and not allowed to leave. On attending Ms R for the first time and, being aware of the trafficking of women, the representative is able to elicit from Ms R that she was sexually abused by the agent and forced into prostitution. Aware of the Poppy Project and the policy of the Home Office in respect of trafficked women, the representative makes a referral to the Poppy Project who agree to come to Yarl's Wood to assess Ms R. In the meantime the Fast Track asylum interview goes ahead. At the end of the interview the representative asks that no decision be taken until the Poppy Project have made their assessment and expert evidence has been obtained on the risk to Ms R if returned to Guinea.

The Immigration Service refuses to take the case out of the Fast Track and make a decision refusing Ms R asylum. The duty representative grants CLR for an appeal and lodges an appeal to the AIT. Following assessment by the Poppy Project, who visit Ms R in Yarl's Wood, the Project write a detailed letter stating that in their view Ms R has been a victim of trafficking and that she has various physical and mental health problems arising and needs specialist support that the Poppy Project are willing to give.

The Project ask in their letter that she be taken out of the Detained Fast Track process and released from detention into the care of the Project as a matter of urgency.

Ms R's appeal before the AIT has been listed for four days later. The representative sends a written request to the AIT requesting that the case be removed from the Fast Track process under Rule 30 of the AIT (Fast Track Procedure Rules) 2005. The representative sends a copy of the letter from the Poppy Project and informs the AIT that a country expert has agreed to prepare a report but will not be able to prepare it in time for the hearing. On the day before the appeal hearing the representative receives a telephone call from the AIT informing him that an immigration judge has decided that the case should be transferred out of the Fast Track under Rule 30. Ms R is released from detention into the care of the Poppy Project.

## Mr Q Rule 30/Rule 28 applications

Mr Q is an Afghan national who fears persecution as a member of the Afghan army who had received threats from the Taliban because of this. The legal representative had made a request that the case be taken out of the Detained Fast Track process following Mr Q's interview. One of the reasons put forward was that there were documents available in Afghanistan which would support his case, including certificates of service from the Afghan military and photographs of him in the army. Since his involvement in the army was crucial to his credibility, it was submitted that it was necessary for the Home Office to consider this evidence before a fair decision could be taken on his claim. It was argued that he was not therefore suitable for the Detained Fast Track process. The Immigration Service did not take Mr Q out of the Fast Track. His asylum claim is refused and his credibility doubted.

Controlled Legal Representation (CLR) is granted for the appeal pending receipt from Afghanistan of the documents to prove he was in the Afghan army. Until these are received the view of the representative on the merits of the case is unclear. The case is listed very quickly before an immigration judge. At that hearing an application is made under Rule 30 for the case to be taken out of the Fast Track. The immigration judge refuses to do this but agrees to adjourn the hearing for ten days under Rule 28 to see if the documents from Afghanistan arrive. By the date of the next hearing the evidence has arrived. The Home Office accepts that Mr Q was in the Afghan army. A submission is made that the case should be taken out of the Fast Track under Rule 30 on the grounds that it is a complex case and there is no country guidance on whether former members of the Afghan army are at risk. It is necessary for an expert's report to be obtained. The immigration judge agrees to transfer the case out of the Fast Track and have the matter listed for a Case Management Review hearing under the standard AIT procedure. Mr Q is released on temporary admission pending his appeal.

## Mr T Adjourment under Rule 28

Mr T is from Turkey. His claim is that he is a member of a political party that is illegal in Turkey, that his cousin was shot dead by the authorities in Turkey and that his father and two of his uncles were prosecuted for membership of an illegal party. He fears that if he is returned to Turkey he may face prosecution or extra-judicial killing.

His case is considered suitable for the Detained Fast Track process. A decision is taken to refuse his application for asylum. The Secretary of State does not believe that Mr T was a member of the political party, that his cousin was shot or that his father and uncles were prosecuted. The Secretary of State takes the view that Mr T is an economic migrant.

The appeal is listed within four days of the appeal being lodged in accordance with the AIT (Fast Track Procedure) Rules 2005. On the day before the hearing four documents are received by the solicitor representing Mr T. They have been sent by fax and are from Turkey. The first document shows Mr T had owned a flat and a mini market in Turkey. The second document shows that Mr T had applied to join the illegal political party. The third document relates to the death by shooting of Mr T's cousin. The fourth document relates to the prosecution of a number of people including Mr T's father and two uncles for membership of an illegal political party.

At the appeal hearing the solicitor representing Mr T asks that the appeal be adjourned under Rule 28 of the AIT (Fast Track Procedure) Rules 2005 on the grounds that the appeal cannot be justly determined without first having all the documents translated so that their contents can be properly considered by the solicitor and so the solicitor can take instructions from Mr T.

The Home Office Presenting Officer agrees that the document relating to the prosecution of Mr T's father is material to the appeal and agrees that it would not be just for the appeal hearing to commence without Mr T's representative having the opportunity to consider translations of the documents and to take instructions on them.

The immigration judge adjourns the appeal for ten business days and directs that Mr T's representative file and serve certified translations of the documents within seven business days. It is further directed that the Appellant's representatives use their best endeavours to obtain and to bring to the hearing the originals of the documents.

## Ms N Rule 30 and review and reconsideration

Ms N is from Nigeria. She was detained in the Fast Track at Yarl's Wood. Her claim is based on gender-based persecution and in particular a fear of being subjected to female genital mutilation. The Secretary of State takes the view that Ms N's claim was not credible and submits that s 8 of the Asylum and Immigration (Treatment of Claimants Act) 2004 applies because Ms N has not made a claim at the earliest opportunity and has provided false information to the authorities in the UK. It is submitted that even if her claim were credible she could avail herself of internal flight within Nigeria.

The appeal is heard four days after the notice of appeal is lodged. Prior to the hearing Ms N reveals to her solicitors for the first time that she has been trafficked to the UK. By the date of the hearing the solicitors have set up three expert assessments. The first is with the Poppy Project. The appointment is for the following day and its purpose is to assess whether in the opinion of the Project Ms N has been trafficked and requires their support services. The second assessment is with a psychiatrist from an organisation set up to care for survivors of human rights violations. That appointment is for seven days later. The third assessment is for nine days later, with an organisation providing a comprehensive range of services aimed at facilitating recovery from experiences of violence.

Ms N is extremely distressed and the solicitor representing her finds it difficult to take instructions. She is concerned that Ms N has serious mental health problems.

At the appeal hearing an application is made by the solicitor for the case to be transferred out of the Fast Track under Rule 30 on the grounds that there are exceptional circumstances which mean that the appeal cannot otherwise be justly determined. It is submitted that the three assessments need to take place to establish whether Ms N is a victim of trafficking and to assess her mental health. The Home Office Presenting Officer opposes but does not object to the hearing being adjourned for up to ten days to enable the Poppy Project assessment to take place.

The immigration judge refuses the request to take the appeal out of the Fast Track and refuses to adjourn on the basis that there is no evidence in the documentation before him that indicates that Ms N has been a victim of trafficking. When he announces his decision the solicitor asks for an adjournment so that she can apply for a judicial review of this decision. The immigration judge refuses. Ms N is advised by her solicitor not to give oral evidence. The solicitor limits her submissions to the unfairness of determining the appeal. The immigration judge dismisses the appeal finding Ms N not to be credible and concluding that she is an economic migrant.

Ms N's solicitor lodges an application for a reconsideration of the immigration judge's determination. It is argued that the immigration judge erred in law in failing to take the case out of the Fast Track under Rule 30 or to adjourn the hearing under Rule 28.

The application for reconsideration is granted by a senior immigration judge who states 'It is arguable, as is contended in the grounds, that the immigration judge erred in refusing an adjournment and in concluding that the case should remain within the Fast Track system'. In accordance with the AIT (Fast Track Procedure) Rules the case is listed for a reconsideration hearing two days later. The day before the reconsideration hearing the Home Office decides to withdraw the original decision made in Ms N's case. Ms N is released on temporary admission and thereby out of the Fast Track.

## Waseem Refusal of CLR

Waseem is from Pakistan. He had previously claimed asylum and this had been refused. His appeal had been dismissed by an immigration judge. He was on temporary admission but he absconded. He returned to Pakistan and then came back on a false passport. He made a further claim for asylum under a false name. The Immigration Service identified that he had previously claimed in another identity and had been refused.

Waseem is placed in the Harmondsworth Detained Fast Track. He presents the same claim for asylum as before adding a vague account of an attack on him by people when he returned to Pakistan. He is refused asylum. The duty representative is of the view that the prospects of the case succeeding on appeal are poor. There is no reason for treating the case as borderline or unclear. The representative meets with Waseem and takes his instructions on the reasons for refusal letter. Nothing that Waseem says makes the representative feel any different about the merits test. He advises Waseem that the case does not meet the CLR merits test. He advises Waseem that he still has the right to appeal to the AIT and tells him how he can go about appealing. He provides Waseem with an appeal form and explains how it should be completed and to whom to hand it in within two days.

The representative completes form CW4 setting out in detail on page two the reasons why CLR was refused. He gives this to Waseem and explains the need to complete page three and sign and date the form and then send it to the Legal Services Commission (LSC) if Waseem wishes to appeal against the decision to refuse CLR. The representative provides him with the address of the LSC. When he gets back to the office the representative sends a letter to Waseem confirming the reasons why he withdrew the CLR setting out again the address where Waseem can send the form CW4 and providing a further copy of that form. He explains to Waseem that although he is refusing CLR for the appeal he can continue to help Waseem after the appeal if it is dismissed and Waseem remains in detention.

A month later the duty representative contacts the Immigration Service at Harmondsworth to find out whether Waseem has been removed or released from detention. He has not: he is still detained. The representative considers whether there are any grounds for making an application for temporary admission or bail.

## Ali The Detained Fast Track process used for a fresh claim for asylum

Ali is from Chad. He fled Chad because the authorities suspected him of supporting a rebel movement. He entered the UK in the back of a lorry and then went to the screening unit at Liverpool where he claimed asylum. He was detained under the Harmondsworth Detained Fast Track process and interviewed. His application for asylum was refused on the grounds that he was not believed. He lodged an appeal against this decision within the Fast Track. That appeal was dismissed within two weeks of the refusal of asylum. He was then removed on a European Union Emergency Travel Certificate. On arrival in Chad he was refused entry by the authorities on the grounds that he did not have a valid Chadian passport. He was returned to the UK the next day and he claimed asylum again on arrival.

Ali is detained in the Harmondsworth Detained Fast Track process and interviewed again concerning his asylum claim. His application is refused, and, because the Home Office does not consider that his new claim was significantly different from the earlier claim, they refuse to treat it as a fresh asylum claim under the Immigration Rules. Ali is therefore not entitled to appeal against the decision.

Ali's representative identifies an expert willing to write a report on Ali's case and asks that the matter be taken out of the Fast Track so that this expert's report can be obtained. The Immigration Service refuse to take the case out of the Fast Track for this reason. The representative persists with getting the expert's opinion and is able, within two weeks of the refusal (and before Ali can be removed), to submit this expert evidence to the Immigration Service at Harmondsworth. The expert evidence is sufficient to meet the fresh claim threshold. Ali is released from Harmondsworth on temporary admission.

## Appendix 1

# Operational Instruction on flexibility April 2005

► See Chapter 2, and checklist page 41

Date of Issue	26 April 2005
Subject	Flexibility
Who does it affect?	All Operational Fast Track Staff
Author/Contact point	020 8750 2292
Expiry date	Open

### Flexibility in the Fast Track process

The Fast Track timetable is an indicative one, which should be varied as appropriate in accordance with the guidance below where circumstances require it. This document is a guide to responding to the situations that are most likely to raise issues on the flexibility of the timetable. While it is important that the integrity of the Fast Track process should be maintained insofar as it is reasonably possible to do so, this guidance must be applied in accordance with the key principle of ensuring fairness in the asylum determination procedure. It must be remembered that at this stage in the process, the applicant is entitled both to have his claim heard fairly and to a fair-minded decision. This document gives guidance on when the timetable should be enlarged to ensure fairness within the Detained Fast Track system. It does not offer specific guidance on when cases should be removed altogether from the process, but caseworkers must be aware that cases should be removed from the process if it is not possible to consider the claim with the requisite degree of fairness within the fast track timescales (even when flexibly applied in accordance with the guidance set out in this document) and consequently the claim is not one which is capable of a quick decision. This might be the case, for example, if the caseworker is satisfied that the applicant is obtaining supporting evidence, that fairness requires that it be taken into account when making the initial decision on the asylum claim, and that it will not be available within a period consistent with Fast Track processing even if the timetable were to be enlarged. It must be remembered that removal from the fast track process should be considered in other situations where the requirements of fairness demand it.

## **Flexibility in the case of illness**

Where an applicant indicates at the time of the asylum interview that he or she is unwell, it should first be established whether they wish to proceed with the interview that day. If they do wish to proceed, access to medical facilities before the interview commences should be offered. It should be noted whether such access has been either accepted or declined. The comments of the representative should also be noted. However, if an applicant wishes to proceed and the representative expresses a contrary opinion, the wishes of the applicant should normally be regarded as taking priority, unless there is some obvious reason why the stated wishes of the applicant should be regarded as unreliable (for example, if the wishes are expressed against a background of obviously confused or irrational thought or behaviour). If a delay is authorised, the applicant should be informed of the rescheduled date and time. The new interview date and time should normally be within 24 hours of the date and time of the interview which is being delayed. If the delay is being authorised on the grounds of illness, it should be stressed to the applicant that there will be no further delays to the interview if they fail to seek medical attention from healthcare without a good explanation being given as to why the applicant has been unable to attend a healthcare department. Any question of a further delay to the interview on the grounds of illness should be considered with the benefit of additional information from the appropriate removal centre healthcare department.

## **Flexibility in the case of non- or late attendance of representative**

Where the failure of a representative to attend (either to interview the applicant or to attend the asylum interview) would have the consequence that an asylum interview could only be conducted with the applicant being unrepresented, the interviewing officer should in the first instance make contact with the appropriate legal firm and find out the reason for nonattendance. Where the non-attendance is due to problems unrelated to the applicant, the situation should be fully explained to the applicant, who should be offered the options of conducting the interview without the representative or of delaying the interview (normally for no more than 24 hours). If the interview is delayed, the representative should be notified at once of the rescheduled date and time. If the representative is so late as to make the asylum interview impractical on the day on which it is scheduled, the interview should be re-arranged for the following day. If the non-attendance of a representative is due to a late change of representation by the applicant, without informing the duty office, advice should be sought by the caseworker from a senior officer but in most cases one delay of no more than 24 hours should be considered.

## **Flexibility in the case of inadequate interpretation**

Where the interpreter booked to attend the interview is not competent for the purpose (for example, if there are difficulties with the language or dialect spoken, or the interpreter has insufficient vocabulary), then the interview should be delayed to ensure proper interpretation. Subject to the availability of suitable interpretation, any delay for this reason should not normally be for more than 24 hours. This guidance is subject to the proviso that if it is only the representative who expresses concern, the applicant himself appearing to have no difficulty with the interpreter and vice versa, and the caseworker is satisfied that the interpreter is competent for the purpose, then the interview should normally proceed. If the applicant expresses a desire to be interviewed in a language that is different from the one previously requested and booked, then this should be dealt with in line with guidance found in Asylum Process Manual (Chapter 2 8.5).

## Flexibility in the case of non co-operation

Where an applicant who is represented and has adequate interpretation and has no outstanding health issues refuses to comply with the interview process, it will be normal practice to explain the non-compliance procedure fully to the individual and invite them once more to comply. If they choose not to the claim should be considered as per the non-compliance guidelines found in Asylum Policy Instructions (Non-Compliance). A delay will not normally be appropriate in these circumstances.

## Flexibility if the applicant or their representative asks for more time to prepare for the interview

Where additional time is requested by any party prior to an asylum interview, due regard should be taken of the date that the representative took conduct of the case. Caseworkers must consider the reason for the request. In most circumstances, it will not be appropriate to delay the interview because the timetable for the Fast Track process should have already afforded both the applicant and the representative sufficient time to prepare for the interview, the representative having had the opportunity to ascertain from the applicant the basis of his claim and the applicant having had the opportunity to explain it to the representative with the assistance of the representative's questions. Both will be freshly aware of all the important aspects of the claim. However, there will be cases where the opportunity has been insufficient, for example where through no fault of the applicant a representative has been instructed on the same day as the scheduled interview. And there will be other situations in which circumstances mean that it would be unfair to insist on the interview going ahead as originally scheduled when more time is needed by the applicant or his representative to prepare for it; every request must be considered in the light of the proffered reasons for the request. In all cases where such a delay to the start of an asylum interview will result in the interview not occurring on the day on which it was originally scheduled, whether because the applicant or the representative asks for a delay of that magnitude or because the start time is delayed for so long that the interview cannot practicably be started and finished on the same day, advice and authority from a senior officer should be sought. In all circumstances detailed file minutes should be made and the representative and applicant informed of the procedure.

## Post interview flexibility

If, following an interview, a representative says that more time is required for them to file material relevant to the claim, then a caseworker must consider whether that proposed evidence is probative of the claim and decide whether to delay the decision. In order to decide whether to do so, the caseworker should ascertain what further material it is proposed to obtain and the timescale in which it is expected to become available. The caseworker will also, by this time, have a good idea of the issues on which the decision is likely to turn. The key question is whether it would be unfair to the applicant to proceed to a decision without considering the further material or at least giving him a reasonable opportunity to obtain it. The question of fairness will depend, amongst other things, on whether the further material is central or critical to the issues on which the decision is likely to turn, or whether it relates to an issue which is only peripheral. This can only be assessed in the light of the way that the issues in the case have emerged during the interview. Timing, and the likelihood of the material being successfully obtained, are also important. In most circumstances it will not be appropriate to delay the decision, but if the caseworker, in discussion with a senior colleague, feels that it would be unfair to proceed with a decision, then the Fast Track timetable should be enlarged and time given for further material to be presented and delivered before the decision is made.

Whilst it is perfectly possible to delay a decision for over five days, which is the usual time for further representations in the mainstream system, this should only happen in the most exceptional circumstances. The same principles will apply to any proposed legal research, or evidential research into readily-available objective materials, which the representative wishes to have considered before a decision is made. However, the nature of this material means that it is much more likely to be available quickly so that, if any delay is needed, it can be relatively short.

## **Flexibility**

In addition to the above, the Fast Track timetable can be extended in other circumstances in order to ensure the fair processing of claims in the Fast Track process.

Enquiries relating to this instruction should be addressed to the Detained Fast Track Team at Harmondsworth or Yarl's Wood.

## Appendix 2

# Chapter 38 of the Operational Enforcement Manual, detention and temporary release

Extract : paragraphs 38.1 – 38.10

### Note on the version of the extract reproduced here

This extract from Chapter 38 of the OEM is taken from the version published on the BIA website at [www.bia.homeoffice.gov.uk](http://www.bia.homeoffice.gov.uk) as at August 2007. Chapter 38 has changed little over the years but it is essential that you are familiar with the most up to date version of the OEM if relying on it in representations.

## 38.1 Policy

### General

In the 1998 White Paper 'Fairer, Faster and Firmer – A Modern Approach to Immigration and Asylum' the Government made it clear the power to detain must be retained in the interests of maintaining effective immigration control. However, the White Paper confirmed that there was a presumption in favour of temporary admission or release and that, wherever possible, we would use alternatives to detention (see 38.20 and chapter 39).

The White Paper went on to say that detention would most usually be appropriate:

- to effect removal;
- initially to establish a person's identity or basis of claim; or
- where there is reason to believe that the person will fail to comply with any conditions attached to the grant of temporary admission or release.

Since March 2000, asylum applicants may be detained at Oakington where it appears that their claim is straightforward and capable of being decided quickly. Detention for this purpose is commonly referred to as being under the 'Oakington criteria'. Following the introduction of the Detained Fast Track process at Harmondsworth in March 2003 the former 'Oakington' detention criterion was widened so as to be capable of applying to a Fast Track process at any removal centre. The policy on detention for Fast Track processes was updated in February 2006 and the current position is set out in paragraph 38.4 below.

These criteria (including the fast-track process) were reiterated in the 2002 White Paper 'Secure Borders, Safe Haven' and represent the Government's stated policy on the use of detention. To be lawful, detention must not only be based on one of the statutory powers and accord with the limitations implied by domestic and Strasbourg case law but must also accord with this stated policy.

## Use of detention

In all cases detention must be used sparingly, and for the shortest period necessary. It is not an effective use of detention space to detain people for lengthy periods if it would be practical to effect detention later in the process once any rights of appeal have been exhausted. A person who has an appeal pending or representations outstanding might have more incentive to comply with any restrictions imposed, if released, than one who is removable. The routine use of prison accommodation to hold detainees ended in January 2002 in line with the Government's strategy of detaining in dedicated removal centres. Nevertheless, the Government also made clear that it will always be necessary to hold small numbers of individual detainees in prison for reasons of security and control. There is a presumption in such cases of transfer to a removal centre in Britain unless the person concerned expresses a desire to remain in Northern Ireland.

### 38.1.1 Implied Limitations on the Statutory Powers to Detain

In order to be lawful, immigration detention must be for one of the statutory purposes for which the power is given and must accord with the limitations implied by domestic and ECHR case law. Detention must also be in accordance with the Government's stated policy on the use of detention.

#### 38.1.1.1 Article 5 of the ECHR and domestic case law

Article 5(1) of the ECHR provides:

'Everyone has the right to liberty and security of person'

No one shall be deprived of his liberty save in the circumstances specified in Article 5(1)(a)–(f) and in accordance with a procedure prescribed by law. Article 5(1)(f) states that a person may be arrested or detained to prevent his effecting an unauthorised entry into the country, or where action is being taken against them with a view to deportation or extradition.

To comply with Article 5 and domestic case law, the following should be borne in mind:

- a) The relevant power to detain must only be used for the specific purpose for which it is authorised. This means that a person may only be detained under immigration powers for the purpose of preventing his unauthorised entry or with a view to his removal (not necessarily deportation). Detention for other purposes, where detention is not for the purposes of preventing unauthorised entry or effecting removal of the individual concerned, is not compatible with Article 5 and would be unlawful in domestic law;
- b) The detention may only continue for a period that is reasonable in all the circumstances;
- c) If before the expiry of the reasonable period it becomes apparent that the purpose of the power, for example, removal, cannot be effected within that reasonable period, the power to detain should not be exercised; and
- d) The detaining authority (be it the immigration officer or the Secretary of State), should act with reasonable diligence and expedition to effect removal (or whatever the purpose of the power in question is).

Article 5(4) states that everyone who is deprived of his liberty shall be entitled to take proceedings by which the lawfulness of his detention is decided speedily by a court. This Article is satisfied by a detainee's right to challenge the lawfulness of a decision to detain by habeas corpus or judicial review in England and Wales, or by judicial review in Scotland.

### 38.1.1.2 Article 8 of the ECHR

Article 8(1) of the ECHR provides:

‘Everyone has the right to respect for private and family life....’

It may be necessary on occasion to detain the head of the household only, thus separating a family. Article 8 is a qualified right. Interference with the right to family life is permissible under Article 8(2) if it is (i) in accordance with the law; (ii) for a legitimate aim and (iii) proportionate. It is well established that the interests of the State in maintaining an effective immigration policy for the economic well-being of the country and for the prevention of crime and disorder, justifies interference with rights under Article 8(1). It is therefore arguable that a decision to detain which interferes with a person’s right to family life in order to enforce immigration control and maintain an effective immigration policy pursues a legitimate aim and is in accordance with the law. But it would have to be shown to a court that the decision to detain (and thereby interfere with family life) was proportionate to the legitimate aim pursued. Assessing whether the interference is proportionate involves balancing the legitimate aim in Article 8(2) against the seriousness of the interference with the person’s right to respect for their family life. The conclusion reached will depend on the specific facts of each case and will therefore differ in every case.

## 38.2 Power to detain

The power to detain an illegal entrant, seaman deserter, person liable to administrative removal (or someone suspected to be such a person) is in paragraph 16(2) of Schedule 2 to the 1971 Act as amended by section 140(1) of the Immigration and Asylum Act 1999 and section 73(5) of the Nationality, Immigration and Asylum Act 2002. Paragraph 16(2) states:

‘If there are reasonable grounds for suspecting that a person is someone in respect of whom directions may be given under any of paragraphs 8 to 10 or 12 to 14, that person may be detained under the authority of an immigration officer pending a) a decision whether or not to give such directions; b) his removal in pursuance of such directions’.

Section 62 of the Nationality, Immigration and Asylum Act 2002 introduced a free-standing power for the Secretary of State (i.e. an official acting on his behalf) to authorise detention in cases where he has the power to set removal directions.

The power to detain a person who is subject to deportation action is set out in paragraph 2 of Schedule 3 to the 1971 Act. This includes those whose deportation has been recommended by a Court, those who have been served with a notice of intention to deport and those who are the subject of a deportation order. *Detention in these circumstances must be authorised at senior caseworker level in the Criminal Casework Team (CCT)* (see 38.5.2).

Detention can only lawfully be exercised under these provisions where there is a realistic prospect of removal within a reasonable period. (The power to authorise the detention of a person who may be required to submit to examination, or further examination under paragraph 2 or 2A of Schedule 2 to the 1971 Act, pending his examination and pending a decision to give or refuse him leave to enter/cancel his leave to enter, is in paragraph 16(1) and 1(A) of Schedule 2 to the 1971 Act. This is not relevant to enforcement cases).

### 38.3 Factors influencing a decision to detain (excluding pre-decision fast track cases)

- 1 There is a presumption in favour of temporary admission or temporary release.
- 2 There must be strong grounds for believing that a person will not comply with conditions of temporary admission or temporary release for detention to be justified.
- 3 All reasonable alternatives to detention must be considered before detention is authorised.
- 4 Once detention has been authorised, it must be kept under close review to ensure that it continues to be justified.
- 5 Each case must be considered on its individual merits.

The following factors must be taken into account when considering the need for initial or continued detention.

#### For detention:

- what is the likelihood of the person being removed and, if so, after what timescale?
- is there any evidence of previous absconding?
- is there any evidence of a previous failure to comply with conditions of temporary release or bail?
- has the subject taken part in a determined attempt to breach the immigration laws? (e.g. entry in breach of a deportation order, attempted or actual clandestine entry)
- is there a previous history of complying with the requirements of immigration control? (e.g. by applying for a visa, further leave, etc)
- what are the person's ties with the United Kingdom? Are there close relatives (including dependants) here? Does anyone rely on the person for support? Does the person have a settled address/employment?
- what are the individual's expectations about the outcome of the case? Are there factors such as an outstanding appeal, an application for judicial review or representations which afford incentive to keep in touch?

#### Against detention:

- is the subject under 18?;
  - has the subject a history of torture?;
  - has the subject a history of physical or mental ill health?
- (see also sections 38.6 – detention forms, 38.7 – detention procedures and 38.9 special cases)

### 38.4 Fast Track Processes

Since March 2000 asylum applicants have been detained at Oakington where it appears that their claims are capable of being decided quickly. Detention for this purpose is commonly referred to as being under the 'Oakington criteria' although it is now set out under the title 'Detained Fast Track processes suitability list'. Detention for a short period of time to enable a rapid decision to be taken on an asylum/human rights claim has been upheld as lawful by the House of Lords [*Saadi et al*].

From 7 November 2002 a separate procedure was introduced for dealing with cases which are capable of being certified as clearly unfounded under section 94 of the Nationality, Immigration and Asylum Act 2002 (commonly referred to as 'NSA' cases).

In addition, since 10 April 2003 there has been a Detained Fast Track process at Harmondsworth which includes an expedited in-country appeals procedure for male claimants. In May 2005, the Detained Fast Track was expanded to include the processing of female claimants at Yarl's Wood. Claimants in the latter Detained Fast Track process may be detained only at sites specified in the relevant Statutory Instrument (currently the Asylum and Immigration Tribunal (Fast Track Procedure) Rules 2005 (as amended) which came in to force on 4 April 2005.

The policy in relation to detention for Fast Track processes was updated in February 2006.

Oakington, Harmondsworth and Yarl's Wood are designated places of detention and any person could be detained there under immigration powers for any of the published reasons for detention. Detention other than for Fast Track processing must be arranged via the normal process.

When officers come across a person who makes an application for asylum, they should consider whether he or she meets the Suitability List (2007) criteria. All potentially suitable applicants must be referred to the Asylum Intake Unit (AIU) Oakington co-ordinator who will confirm if they are accepted into either the process at Oakington, Harmondsworth or Yarl's Wood. The use of detention to Fast Track suitable claims under these processes is necessary to achieve the objective of delivering decisions quickly.

Any claim may be referred to the Detained Fast Track, whatever the nationality or country of origin of the applicant, where it appears after screening to be one that may be decided quickly. To assist staff in making referrals, the 'Detained Fast Track processes suitability list', includes a list of countries which may well give rise to claims which may be decided quickly, within the indicative timescales for the Detained Fast Track. Generally speaking, any asylum claim from a national of the countries listed on the Suitability List (2007) should be referred to the NIU unless the claimant falls within one of the excluded categories. The Suitability List (2007) includes advice as to which claims are unsuitable for referral.

The following will usually be unsuitable for the Detained Fast Track:

- Unaccompanied minors (always unsuitable, see 38.9 Young Persons);
- Age dispute cases. The policy of detaining age dispute cases for the purposes of Fast Tracking was updated in February 2006 (see below);
- Disabled applicants, except the most easily manageable;
- Pregnant females of 24 weeks and above;
- Any person with a medical condition which requires 24 hour nursing or medical intervention;
- Anybody identified as having an infectious/contagious disease;
- Anybody presenting with acute psychosis e.g.: schizophrenia and requiring hospitalisation;
- Anybody presenting with physical and/or learning disabilities requiring 24-hour nursing care;
- Violent or uncooperative cases; for non-suspensive appeal nationalities, local enforcement offices (LEOs) should try and secure detention accommodation at an alternative removal centre and then refer to Oakington for them to be processed as a 'remote case';
- Those with criminal convictions, except where specifically authorised.
- Where detention would be contrary to published criteria.

### Age dispute cases in Detained Fast Track (DFT)

Applicants claiming to be under 18 should be accepted into DFT processes only if one or more of the following criteria apply:

- There is credible and clear documentary evidence that they are 18 years of age or over;
- A full 'Merton-compliant' age assessment by Social Services is available stating that they are 18 years of age or over. *Please note that assessments completed by social services Emergency Duty Teams are not acceptable evidence of age.*
- Their physical appearance/demeanour very strongly indicates that they are *significantly* 18 years of age or over and no other credible evidence exists to the contrary.

Any age dispute case not falling within at least *one* of the criteria above is not suitable for DFT and it should not be referred to the NIU. If there is any room for doubt as to whether a person is under 18 they should *not* be referred to the NIU.

Where it is decided that an age dispute case is suitable for the DFT, an age dispute referral form (annexed to the Suitability List (2007)) should be completed by the officer making the referral and faxed to the NIU after the initial contact has been made with NIU by telephone.

Forms BP7 and IS97M have also been amended to reflect the revised policy on age dispute cases. Form IS97M must be served on the claimant and copied to file. Form BP7 must be held on file.

## 38.5 Levels of authority for detention

Although the power in law to detain an illegal entrant rests with the IO, or the relevant non-warranted immigration caseworker under the authority of the Secretary of State, in practice, an officer of at least CIO rank, or a senior caseworker, must give authority. Detention must then be reviewed at regular intervals (see 38.8).

### 38.5.1 Authority to detain an illegal entrant or person served notice of administrative removal

An illegal entrant or person served with notice of administrative removal can be detained on the authority of a CIO/HEO (but see 38.5.3 and 38.8).

### 38.5.2 Authority to detain persons subject to deportation action

The decision as to whether a person subject to deportation action should be detained under Immigration Act powers is taken at senior caseworker level in CCT. Where an offender, who has been recommended for deportation by a Court or who has been sentenced to in excess of 12 months imprisonment, is serving a period of imprisonment which is due to be completed, the decision on whether he should be detained under Immigration Act powers (on completion of his custodial sentence) pending deportation must be made at senior caseworker level in CCT in advance of the case being transferred to CCT. It should be noted that there is no concept of dual detention in deportation cases (see 38.11.3).

### 38.5.3 Authority to detain – special cases

Detention in the following circumstances must be authorised by an officer of at least the rank stated:

- **Sensitive cases:** Inspector/SEO or Assistant Director;
- **Women:** CIO/HEO (see 38.9.1);
- **Spouses of British Citizens or EAA nationals:** initially, an Inspector/SEO, but if strong representations are made, Assistant Director (see 38.9.2);
- **Unaccompanied young persons, under 18, whilst alternative care arrangements are made (including age dispute cases where the person concerned is being treated as a minor):** initially, an Inspector/SEO but as soon as possible by an Assistant Director. Detention should in any case be reviewed by an Assistant Director if it goes beyond 24 hours. Such persons may only be detained overnight and in a place of safety as defined in the Children and Young Persons Act 1933 (for England and Wales), the Social Work (Scotland) Act 1968 (for Scotland) or the Children and Young Persons Act (Northern Ireland) 1968 (for Northern Ireland) – see 38.9.3;
- **Children of illegal entrants/deportees to be detained with their parent(s):** either an Inspector/SEO or Assistant Director, preferably in advance of their detention see 38.9.4;
- **Detention in police cells for longer than two nights:** Inspector/SEO;
- **Deportees and persons recommended for deportation by a court where detention is being maintained beyond length of sentence:** senior caseworker in CCT

## 38.6 Detention forms

The Government stated in the 1998 White Paper that *written reasons for detention* should be given in all cases at the time of detention and thereafter at monthly intervals. Recognising that most people are detained for just a few hours or days, the Government stated that initial reasons would be given by way of a checklist similar to that used for bail in a magistrates' court. The forms IS 91RA 'Risk Assessment' (see 38.6.1), IS91 'Detention Authority' (see 38.6.2), IS91R 'Reasons for detention' (see 38.6.3) and IS91M 'Movement notification' (see 38.6.4) replace all of the following forms: The old IS91, IS150A, IS150B, IS160, IS161, IS166, IS167, IS91D, IS91E, IS91E (Annex) and IS91 (Fingerprinting).

### 38.6.1 Form IS 91RA Risk Assessment

Once it has been identified that the person is one who should be detained, consideration should be given as to what, if any, level of risk that person may present whilst in detention. IOs should undertake the checks detailed on form IS91RA part A 'Risk Factors' (in advance, as far as possible, in a planned operation/visit when it is anticipated detention will be required). The results of these checks should be considered by the IO along with information available regarding other aspects of behaviour (as detailed on the form) which may present a risk, and the conclusions regarding each aspect identified.

It is vital to the integrity of the detention estate that all potential risk factors detailed on this form are addressed, with the form being annotated appropriately. Conclusions should be recorded as to whether or not the individual circumstances may present a potential area of risk. Amplifying notes must be added in the 'comments' section as appropriate and the form must be signed and dated.

Once detention space is required the IS91RA must be faxed to the Detainee Escorting and Population Management Unit (DEPMU) (in the case of single adults) or the Management of Detained Cases Unit (MODCU) (for family cases). The appropriate Unit will assess risk based upon the information provided on the IS91RA part A and decide on the detention location appropriate for someone presenting those risks and/or needs. The issue of an IS91 'Detention Authority' will be authorised with the identified risks recorded in the 'risk factors' section of this form. Risk assessments should also be completed on the appropriate forms for Fast Track cases.

In cases where the potential risk factors cannot be addressed in advance they should be undertaken immediately and the IS91RA part A despatched as above. However, it may not always be possible to do this if the potential detainee has, for example, been arrested by the police or picked up in the field and either an IO cannot immediately attend or the checks cannot be completed due to the lateness of the hour. In such cases it will be appropriate to issue an IS91 to the police, as below, with the 'risk factors' section of the form completed as far as possible. However, in such circumstances the IS91RA part A should be completed and forwarded to DEPMU as soon as possible and, in all cases, no later than 24 hours after entry into detention at a police station and always before entry into the IS detention estate is sought.

Risk assessment is an ongoing process. Should further information become available to the LEO which impacts upon potential risk (either increasing or decreasing risk) during a detainee's detention, that information should be forwarded to DEPMU using form IS91RA part C. On receipt of this form (which can also be completed by other IS or removal centre management/medical staff) DEPMU will reassess risk and reallocate detention location as appropriate. Any alteration in their assessment of risk will require a new IS91 to be issued on which up-to-date risk factors will be identified. The LEO must fax this new IS91 to the detention location on receiving DEPMU's reassessment of alteration in potential risk.

### 38.6.2 Form IS91 Authority to Detain

Once DEPMU has decided on detention location they will forward an IS91RA part B to the detaining office detailing the detention location and the assessment of risk. This must be attached to form IS91 and served by the IO on the detaining agent. This allows for the subject to be detained in their custody under Immigration Act powers. The IO must complete the first three sections of the form, transferring the assessment of risk as notified by DEPMU onto section 3, complete the first entry of section 4 transfer record and sign and date the form on page 1. The detaining agent completes the further entries on section 4 of the form, the Transfer Record. The IO must staple a photograph of the detainee to the form and authenticate this by signing and dating it before handing the form, in a clear plastic pouch, to the detaining agent. *Detaining agents have been instructed not to accept detainees without the correct documentation.* The only exception to this will be when there is no IS presence at a police station – normally in absconder cases – and so the IS91 will need to be faxed. In such cases, DEPMU will advise as to where the original IS91 should be sent. Form IS91 is issued once and only once for any continuous period of detention, irrespective of how many detaining agents there are during the course of a person's detention. The exception to this is cases where there is alteration in risk factors when DEPMU will authorise the issue of a new IS91, which should be sent to the detention location to be attached to the original form. Where there is a change in the detaining agent, for example from the police to the escort contractor, it is for the first detaining agent to complete the Transfer Record on the form and forward it to the second detaining agent along with the detainee. Form IS91 must be issued for each person detained including for each minor. The immigration officer *must complete all sections of the form as indicated.* The completed form should then be handed to the detaining authority (e.g. the in-country escorting contractor). The detaining authority will not accept a detainee without correct original documentation.

IS91s are to be returned by the final detaining authority to the Detention Cost Recovery Unit (DCRU) of the Finance and Planning Group (FPG), 2nd Floor, Green Park House. Any IS91s that are returned to an enforcement office at the end of a period of detention must be forwarded to DCRU without delay.

### 38.6.3 Form IS91R Reasons for Detention

This form is in three parts and must be served on every detained person at the time of their initial detention. The IO must complete all three sections of the form. The IO must specify the power under which a person has been detained, the reasons for detention and the basis on which the decision to detain was made. The detainee must also be informed of his bail rights and the IO must sign, both at the bottom of the form and overleaf, to confirm the notice has been explained to the detainee (using an interpreter where necessary) and that he has been informed of his bail rights.

It should be noted that the reasons for detention given could be subject to judicial review. It is therefore important to ensure they are always *justified and correctly stated*. A copy of the form must be retained on the caseworking file. If any of the reasons for detention given on the form IS91R change, it will be necessary to prepare and serve a new version of the form.

It is important that the detainee understands the contents of the IS91R. If he does not understand English, officers should ensure that the form's contents are interpreted. Failure to do so could lead to successful challenge under the Human Rights Act (Article 5(2) of the ECHR refers).

The six possible reasons for detention are set out on form IS91R and are listed below. The IO must tick all the reasons that apply to the particular case:

- You are likely to abscond if given temporary admission or release
- There is insufficient reliable information to decide on whether to grant you temporary admission or release
- Your removal from the United Kingdom is imminent
- You need to be detained whilst alternative arrangements are made for your care
- Your release is not considered conducive to the public good
- I am satisfied that your application may be decided quickly using the Fast Track procedures

Fourteen factors are listed, which will form the basis of the reasons for the decision to detain. The IO must tick all those that apply to the particular case:

- You do not have enough close ties (e.g. family or friends) to make it likely that you will stay in one place
- You have previously failed to comply with conditions of your stay, temporary admission or release
- You have previously absconded or escaped
- On initial consideration, it appears that your application may be one which can be decided quickly
- You have used or attempted to use deception in a way that leads us to consider that you may continue to deceive
- You have failed to give satisfactory or reliable answers to an Immigration Officer's enquiries
- You have not produced satisfactory evidence of your identity, nationality or lawful basis to be in the United Kingdom
- You have previously failed, or refused to leave the United Kingdom when required to do so
- You are a young person without the care of a parent or guardian
- Your health gives serious cause for concern on grounds of your own wellbeing and/or public health or safety
- You are excluded from the United Kingdom at the personal direction of the Secretary of State

- You are detained for reasons of national security, the reasons are/will be set out in another letter
- Your previous unacceptable character, conduct or associations
- I consider this reasonably necessary in order to take your fingerprints because you have failed to provide them voluntarily

### **38.6.4 Form IS91M Movement Notification**

This form will only be used in very few cases where neither the detention nor the movement of a detainee is being arranged via DEPMU – for example in South East District cases in Dover Harbour Board Police Station. The form must be completed and used to notify both the detaining agent and the escorting authority of the proposed move.

## **38.7 Detention procedures**

### **38.7.1 Procedures when detaining an illegal entrant or person served with notice of administrative removal**

- Obtain the appropriate authority to detain;
- issue IS 98 and 98A (bail forms) and advise the person of his right to apply for bail;
- conduct 'risk assessment' procedures as detailed in paragraph 38.6.1
- complete IS91 in full for the detaining authority;
- complete and serve form IS91R on the person being detained, explaining its contents to the person (via an interpreter if necessary);
- confirm detention to DEPMU as soon as possible and they will allocate a reference number;
- complete IS93 for the port/local enforcement office casework file;
- always attach a 'detained' flag, securely stapled, to the port/local enforcement office casework file;
- review detention as appropriate.

### **38.7.3 Changing place of detention**

If DEPMU arranges for the transfer of a person in detention, DEPMU must inform the port/LEO, and in turn, the port/LEO must inform the relevant immigration caseworker of any changes in place of detention.

## **38.8 Detention reviews**

Initial detention must be authorised by a CIO or Inspector (see section 38.5). Continued detention in all cases of persons in sole detention under Immigration Act powers must be subject to administrative review at regular intervals. This includes those who have been recommended for deportation by a court and who have either served a period of imprisonment or were not sentenced to a term of imprisonment. Detention must be reviewed after 24 hours by an Inspector and thereafter, as directed, usually weekly by an Inspector. If circumstances change in the interim, however, an Inspector must review detention again.

MODCU will request an application for long-term detention at day 20 prior to the Inspector 28 day review. Detainees who have been recommended for deportation or who are being considered for deportation must be referred to a senior caseworker in CCT to authorise continued detention and the file transferred to CCT. MODCU may override the decision to maintain detention if it is deemed necessary based on the information contained in the detention application.

If the case is accepted into long-term detention MODCU/CCT will take over responsibility for conducting the detention reviews, preparing bail summaries, considering written requests for temporary release and will ask for the files to be transferred with casework responsibility to MODCU/CCT. The EO in MODCU reviews detention at the one and two months stage and the SEO reviews at months 3 and 4. An Assistant Director reviews detention from months 5–7 inclusive and the Deputy Director from 8–11 months. IS Directors review cases at month 12 and at three monthly intervals thereafter. Reviews are conducted in between Director reviews at Deputy Director level.

Cases involving children are reviewed on a regular basis to ensure the decision to detain is based on the current circumstances of the case and detention remains appropriate. Managers in MODCU formally review cases where children are detained after 7 days in detention (by HEO), 10 days (SEO) and 14 and each subsequent 7 days (AD). A system of Ministerial authorisation for the detention of children beyond 28 days was announced in December 2003. In CCT an HEO reviews detention up to 2 months. An SEO/HMI reviews detention up to 4 months, the Assistant Director/Grade 7 up to 8 months, the Deputy Director up to 11 months and the Director at 12 months and over. In TCU detention is first reviewed by an IO within 7 days of the case being accepted into a TCU bed. Detention is then reviewed weekly by IOs/CIOs and at 28 days by the HMI and at 40 days by the AD.

Staff making submissions as part of one of the regular administrative reviews of detention should consider the HRA implications of the case and flag up to senior officers any areas in which IS might be vulnerable. \*Such a review can be conducted early (on the 26th or 27th day) or, with prior authorisation, be conducted by a CIO on the Inspector's behalf in his absence. The CIO must apprise the Inspector of the outcome of any such reviews undertaken on his behalf as soon as is practicable as the authority for continued detention still rests with the Inspector.

## 38.9 Special cases

### 38.9.1 Detention of women

Pregnant women should not normally be detained. The exceptions to this general rule are where removal is imminent and medical advice does not suggest confinement before then, or, for pregnant women of less than 24 weeks, at Oakington and Yarl's Wood as part of a fast-track process.

### 38.9.2 Spouses of British citizens or EEA nationals

Immigration offenders who are living with their settled British spouses may only be detained with the authority of an Inspector/senior caseworker in the relevant caseworking section. Where strong representations for temporary release continue to be received, the decision to detain must be reviewed by an Assistant Director as soon as is practicable.

If an offender is married to an EEA national, detention should not be considered unless there is strong evidence available that the EEA national spouse is no longer exercising treaty rights in the UK, or if it can be proved that the marriage was one of convenience and the parties had no intention of living together as man and wife *from the outset of the marriage*. For further guidance, refer to chapter 36.5 and 36.5.1.

### 38.9.3 Young Persons

Unaccompanied minors (i.e. persons under the age of 18) must only ever be detained in the most exceptional circumstances and then *only normally overnight*, with appropriate care, whilst alternative arrangements for their care and safety are made. This includes age dispute cases where we are treating the person concerned as a minor. This exceptional measure is intended to deal with unexpected situations where it is necessary to detain unaccompanied minors very briefly for their care and safety.

In circumstances where responsible family or friends in the community cannot care for children they should be placed in the care of the local authority as soon as practicable.

In all cases, unaccompanied young persons may only be detained with the authority of an Inspector/senior caseworker in the relevant caseworking section. An Assistant Director must review detention at the earliest opportunity and in every case of an unaccompanied child as soon as detention has exceeded 24 hours.

Juveniles may only be detained in a place of safety as defined in the Children and Young Persons Act 1933 (for England and Wales), the Social Work (Scotland) Act 1968 (for Scotland) or the Children and Young Persons Act (Northern Ireland) 1968 (for Northern Ireland). The Children and Young Persons Act 1933 defines a place of safety as 'any home provided by a local authority under Part 11 of the Children Act 1948, any remand home or police station or any hospital, surgery or any other suitable place, the occupier of which is willing temporarily to receive a child or young person'. The Social Work (Scotland) Act 1968 defines a place of safety as 'any residential or other establishment provided by a local authority, a police station, or any hospital, surgery or other suitable place, the occupier of which is willing temporarily to receive a child'. The Children and Young Persons Act (Northern Ireland) 1968 defines a place of safety as 'any remand home, any home provided by [the Ministry of Home Affairs] under Part VII, any constabulary station, any hospital or surgery, or any other suitable place, the occupier of which is willing temporarily to receive a child or young person'.

If detention accommodation is required exceptionally for a young person, the request must be made via the DEPMU CIO (see 38.12).

#### 38.9.3.1 Persons claiming to be under 18

Sometimes people over the age of 18 claim to be minors in order to prevent their detention or effect their release once detained. In all such cases people claiming to be under the age of 18 must be referred to the Refugee Council's Children's Panel. The Panel can be contacted at:

The Refugee Council Panel of Advisers for Unaccompanied Refugee Children  
240–250 Ferndale Road, London SW9 8BB  
Tel: 020 7582 4947  
Fax: 020 7820 3005

IND will accept an individual as under 18 (including those who have previously claimed to be an adult) unless one or more of the following criteria apply:

- there is credible and clear documentary evidence that they are 18 years of age or over;
- a full 'Merton-compliant' age assessment by Social Services is available stating that they are 18 years of age or over. (Note that assessments completed by social services emergency duty teams are not acceptable evidence of age);
- their physical appearance/demeanour very strongly indicates that they are significantly 18 years of age or over and no other credible evidence exists to the contrary

IND does not commission medical age assessments. However the claimant may submit medical age assessment independently. This must be considered and due weight must be attached to it when considering an age dispute case. It should be noted though that the margin for error in these cases can be as large as 5 years either way. This is a complex area and, if in doubt, caseworkers should seek the advice of the Children and Family Asylum Policy Team in the Asylum Appeals Policy Directorate.

Once treated as a minor the applicant must be released as soon as suitable alternative arrangements have been made for their care.

Where an applicant claims to be a minor but their appearance very *strongly* suggests that they are significantly 18 years of age or over, the applicant should be treated as an adult until such time as credible documentary or other persuasive evidence such as a full 'Merton-compliant' age assessments by Social Services is produced which demonstrates that they are the age claimed, and the appropriate entry made in section 1 of the IS91.

In borderline cases it will be appropriate to give the applicant the benefit of the doubt and to deal with the applicant as a minor.

It is IND policy not to detain minors other than in the most exceptional circumstances. However, where the applicant's appearance very *strongly* suggests that they are an adult and the decision is taken to detain it should be made clear to the applicant and their representative that:

- we do not accept that the applicant is a minor and the reason for this (for example, visual assessment suggests the applicant is 18 years of age or over), and
- in the absence of acceptable documentation or other persuasive evidence the applicant is to be treated as an adult.

#### 38.9.4 Families

The decision to detain an entire family should always be taken with due regard to Article 8 of the ECHR (see 38.1.1.2). Families, including those with children, can be detained on the same footing as all other persons liable to detention. This means that families may be detained in line with the general detention criteria (see 38.3). Form IS91 must be issued for each person detained including for each minor.

Detention of an entire family must be justified in all circumstances and, as in any case, there will continue to be a presumption in favour of granting temporary release. Detention must be authorised by an Inspector at whatever stage of the process it is considered necessary and, although it should last only for as long as is necessary, it is not subject to a particular time limit. Family detention accommodation should be pre-booked by arrangement with MODCU. Full details of all family members to be detained must be provided to MODCU. As a matter of policy we should aim to keep the family as a single unit. However, it will be appropriate to separate a child from its parents if there is evidence that separation is in the best interests of the child. The local authority's social services department will make this decision. In such cases, prior arrangement and authority will be required from MODCU and the child's parents should provide agreement in writing. As long as the child is taken into care in accordance with the law, and following a decision of a competent authority, Article 8 of the ECHR will not be breached (see 38.1.1.2).

No families should be detained simply because suitable accommodation is available.

## 38.10 Persons considered unsuitable for detention

Certain persons are normally considered suitable for detention in only very exceptional circumstances, whether in dedicated IS accommodation or elsewhere. Others are unsuitable for IS detention accommodation because their detention requires particular security, care and control.

The following are normally considered suitable for detention in only very exceptional circumstances, whether in dedicated IS detention accommodation or elsewhere:

- unaccompanied children and persons under the age of 18 (but see 38.9.3 above);
- the elderly, especially where supervision is required;
- pregnant women, unless there is the clear prospect of early removal and medical advice suggests no question of confinement prior to this (but see 38.4 above for the detention of women in the early stages of pregnancy at Oakington or Yarl's Wood);
- those suffering from serious medical conditions or the mentally ill;
- those where there is independent evidence that they have been tortured;
- people with serious disabilities;

### 38.10.1 Criteria for detention in prison

Immigration detainees should only be held in prison establishments when they present specific risk factors that indicate they are unsuitable for immigration removal centres, for reasons of security or control. Immigration detainees will only normally be held in prison accommodation in the following circumstances:

- national security – where there is specific (verified) information that a person is a member of a terrorist group or has been engaged in terrorist activities
- criminality – those detainees who have completed prison sentences of four years or more, have been involved in the importation of Class A drugs, committed serious offences involving violence, or committed a serious sexual offence requiring registration on the sex offenders' register
- security – where the detainee has escaped or attempted to escape from police, prison or immigration custody, or planned or assisted others to do so
- control – engagement in serious disorder, arson, violence or damage, or planning or assisting others to so engage

When a detainee meets the above criteria DEPMU will refer them to the Population Management Unit (PMU) of the National Offender Management Service (NOMS) who will consider their allocation to a prison.

Where it is agreed with the DEPMU CIO that a person normally considered unsuitable may, exceptionally, be detained in a dedicated IS removal centre, full details must initially be detailed on the IS91RA part A and entered on the 'risk factors' section of form IS91 served on the detaining agent (see 38.6).

All cases who have completed a prison sentence will be assessed by DEPMU on an individual basis as to whether they should remain in prison or be transferred to an IS removal centre. Any individual may request a transfer from prison to an IS removal centre and, if rejected by DEPMU, will be given reasons for this decision.

## Appendix 3

# Extract from the Immigration Rules (HC395): Considering an asylum application

339I When the Secretary of State considers a person's asylum claim, eligibility for a grant of humanitarian protection or human rights claim it is the duty of the person to submit to the Secretary of State as soon as possible all material factors needed to substantiate the asylum claim or establish that he is a person eligible for humanitarian protection or substantiate the human rights claim, which the Secretary of State shall assess in cooperation with the person.

The material factors include:

- i) the person's statement on the reasons for making an asylum claim or on eligibility for a grant of humanitarian protection or for making a human rights claim;
- ii) all documentation at the person's disposal regarding the person's age, background (including background details of relevant relatives), identity, nationality(ies), country(ies) and place(s) of previous residence, previous asylum applications, travel routes; and
- iii) identity and travel documents.

339J The assessment by the Secretary of State of an asylum claim, eligibility for a grant of humanitarian protection or a human rights claim will be carried out on an individual basis. This will include taking into account in particular:

- i) all relevant facts as they relate to the country of origin or country of return at the time of taking a decision on the grant; including laws and regulations of the country of origin or country of return and the manner in which they are applied;
- ii) relevant statements and documentation presented by the person including information on whether the person has been or may be subject to persecution or serious harm;
- iii) the individual position and personal circumstances of the person, including factors such as background, gender and age, so as to assess whether, on the basis of the person's personal circumstances, the acts to which the person has been or could be exposed would amount to persecution or serious harm;
- iv) whether the person's activities since leaving the country of origin or country of return were engaged in for the sole or main purpose of creating the necessary conditions for making an asylum claim or establishing that he is a person eligible for humanitarian protection or a human rights claim, so as to assess whether these activities will expose the person to persecution or serious harm if he returned to that country; and
- v) whether the person could reasonably be expected to avail himself of the protection of another country where he could assert citizenship.

339K The fact that a person has already been subject to persecution or serious harm, or to direct threats of such persecution or such harm, will be regarded as a serious indication of the person's well-founded fear of persecution or real risk of suffering serious harm, unless there are good reasons to consider that such persecution or serious harm will not be repeated.

- 339L It is the duty of the person to substantiate the asylum claim or establish that he is a person eligible humanitarian protection or substantiate his human rights claim. Where aspects of the person's statements are not supported by documentary or other evidence, those aspects will not need confirmation when all of the following conditions are met:
- i) the person has made a genuine effort to substantiate his asylum claim or establish that he is a person eligible humanitarian protection or substantiate his human rights claim;
  - ii) all material factors at the person's disposal have been submitted, and a satisfactory explanation regarding any lack of other relevant material has been given;
  - iii) the person's statements are found to be coherent and plausible and do not run counter to available specific and general information relevant to the person's case;
  - iv) the person has made an asylum claim or sought to establish that he is a person eligible for humanitarian protection or made a human rights claim at the earliest possible time, unless the person can demonstrate good reason for not having done so; and
  - v) the general credibility of the person has been established.
- 339M The Secretary of State may consider that a person has not substantiated his asylum claim or established that he is a person eligible for humanitarian protection or substantiated his human rights claim if he fails, without reasonable explanation, to make a prompt and full disclosure of material facts, either orally or in writing, or otherwise to assist the Secretary of State in establishing the facts of the case; this includes, for example, a failure to attend an interview, failure to report to a designated place to be fingerprinted, failure to complete an asylum questionnaire or failure to comply with a requirement to report to an immigration officer for examination.
- 339N In determining whether the general credibility of the person has been established the Secretary of State will apply the provisions in s.8 of the Asylum and Immigration (Treatment of Claimants, etc.) Act 2004.

## Appendix 4

# Medical Foundation referral form

► See Chapter 2, Referrals to the Medical Foundation

You can download a pdf or Word file from [www.torturecare.org.uk](http://www.torturecare.org.uk)  
Complete both sides in full.

Please fax to the Medical Foundation on 020 7697 7740

### SOLICITOR'S DETAILS

Firm	_____
Address	_____
	_____
	_____
Fax number	Reference number
_____	_____
Solicitor handling case	_____
Direct phone line	_____

### CLIENT'S DETAILS

Last name	First name
_____	_____
Date of arrival in UK	Date left country of origin
_____	_____
Interviewed by Home Office? yes/no	Date of birth
_____	_____
Nationality	_____
Refused? yes/no	Date of appeal
_____	_____
a) Occupation in country of origin?	_____
b) Brothers? How many?	Where are they?
_____	_____
c) Sisters? How many?	Where are they?
_____	_____
d) Where are parents?	_____

### Detentions in country of origin

How many times?	When?
_____	_____
Where arrested?	_____
Why?	_____
	_____
	_____
By whom?	_____
Taken to?	For how long?
_____	_____
Released how/why?	_____
	_____

page 2

Solicitor \_\_\_\_\_

Client's name \_\_\_\_\_

**Evidence of physical torture**  
(as seen/reported)

**Description of torture**  
(narrative)

Which of the following? If applicable, please circle

Suspended? yes/no	Sexual assault? yes/no	Toe/fingernails? yes/no
Suffocated? yes/no	Burnt? yes/no	Beaten/kicked? yes/no
Submerged? yes/no	Cut? yes/no	Lost consciousness? yes/no
Kept naked? yes/no	Electric shock? yes/no	Solitary confinement? yes/no

**Current physical/psychological condition**  
(as stated):

Effect on sleep? \_\_\_\_\_

Effect on appetite? \_\_\_\_\_

Bodily pains? \_\_\_\_\_

Current health/other worries \_\_\_\_\_

**Medical treatment**

Any treatment/ surgery in country of origin? If so, what?

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Any treatment/surgery in uk? If so, what?

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GP in UK? If so, name and address

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## Appendix 5

# Extract from *Working against the clock: inadequacy and injustice in the Fast Track system*

Bail for Immigration Detainees, July 2006

In March 2006 Bail for Immigration Detainees (BID) carried out research into 22 random Fast Track cases appearing before the AIT at Harmondsworth. They observed the hearings and where possible interviewed the claimants and their representatives (if they had one). The subsequent report is the only published study of claimants' experience of Fast Track. It demonstrates the need for representatives to follow best practice and highlights the difficulties of the Fast Track system itself. The report contains a summary of key findings which are set out below.

The full report can be read at [www.biduk.org](http://www.biduk.org)

## Key findings

### Outcome of the appeal/decision by the immigration judge

Appeal refused	14 cases out of 22 studied
Appeal adjourned	2 cases
Removed from the Fast Track procedure and therefore released from detention	3 cases
The applicant chose to withdraw claim for asylum	2 cases
The refusal of asylum by the Home Office was successfully appealed	1 case

### Representation at appeal

Fast Track detainees with no public funded legal representation at their appeal hearing	17 of the 22 (approximately 77%)
Of these, those with privately funded legal representation at their appeal hearing	4 (approximately 22%)
Detainees with no legal representation at their appeal hearing.	13 (approximately 60%)

Over half of the detainees who were refused public funding for their case told BID they were not aware of their right to apply for a review of this decision to the LSC, or their right to do so was not fully explained to them, or they had no time to find alternative representation.

In 4 cases, immigration judges stated in court to unrepresented appellants that their lack of legal representation would not prejudice the outcome of the appeal.

### Length of time detained

60 days after the appeal hearing, 6 detainees (almost one third) were still detained and had not been removed from the UK.

### **Exercising the right to apply for bail at the appeal hearing**

An application for bail was made at the appeal hearing in only 1 of the 22 cases.

3 of 7 legal representatives interviewed stated that they were unable to prepare a bail application alongside preparation for an appeal within the time constraints.

### **Lack of time to adequately prepare the case**

The vast majority of detainees interviewed (11 of 16) and every legal representative interviewed felt that they did not have enough time to gather evidence to present their appeal.

All of the legal representatives interviewed felt that the time constraints of the Fast Track system did not allow them to adequately prepare and present their client's case for asylum.

### **Claims of torture are made but not investigated due to time constraints, risking a breach of detention policy**

In 4 of 22 cases, allegations were made that the applicant had been a victim of torture. Detention policy states that those with independent evidence of torture should not normally be detained, but because of the lack of time, there is a risk that cases unsuitable for the Fast Track are being put into the system.

### **Failure to make applications to have cases taken out of Fast Track**

In 18 of the 22 cases (approximately 80%) no application to take the case out of the Fast Track procedure or to adjourn it were made. This was the case even though every legal representative felt they had inadequate preparation time at the appeal stage and frequently (4 out of 7) disagreed with the Fast Tracking of their client's case.

### **Restricted communication between lawyer and client**

1 detainee interviewed mentioned that he had practical difficulties contacting his legal representative, whilst 4 of the 7 legal representatives interviewed mentioned access to Fast Track clients as being problematic and restricted.

There was a common dissatisfaction shared by detainees and legal representatives about their restricted access to each other, which sometimes prevented face to face meetings. 4 legal representatives raised this as a major problem with the Fast Track system.

### **Widespread confusion about the system amongst detainees**

Amongst the detainees interviewed, a high level of confusion existed about what the Fast Track system was and why they were in it.

### **BID concludes:**

BID's casework experience is that the system is too fast to be fair, that detention policy is not followed, and that current rules governing publicly funded representation leave many detainees without representation at appeals and unable to apply for bail.

BID's experience is that detainees may feel unable to disclose crucial information to support their asylum claim due to the speed of the process, and that people are languishing in detention for many months as they cannot be removed quickly even when their case fails, at great human and financial cost

## Detained Fast Track in statistics

Statistics can provide a snapshot of how claimants succeed or fail with their claims within Fast Track at any one period of time. Here are a few snapshots

Information was provided by the Home Office under the Freedom of Information Act to Bail for Immigration Detainees (BID) showing the numbers refused and granted asylum, and the range of reasons why cases were taken out of the **Harmondsworth** Detained Fast Track, over the period surveyed **1 October 2005 to 31 May 2006**.

<b>Total initial decisions</b> 881	Refused asylum	877 (99.5%)
	Granted asylum/HP/DL	4 (0.5%)
	Taken out of the process before the decision	112
	Taken out of the process after the decision	172
<b>Reasons for taking cases out of the Fast Track before the decision</b>	Granted temporary admission by the Home Office	62
	Released by Home Office due to Medical Foundation appointment	21
	Claimant accepted as a minor	7
	Bail granted by AIT	3
	Transfer to Oakington	4
	Transfer to third country unit	5
	Other	9
	<i>Average time in detention before being taken out</i>	<i>6.8 days</i>
<b>Reasons for taking cases out of the Fast Track after the decision</b>	Case transferred out by AIT	53
	Given TA by the Home Office due to documentation issues	35
	Given TA by the Home Office for other reasons	25
	AIT allowed the appeal	20
	AIT granted bail	13
	Home Office accepted claimant was a minor	2
	Released by the Home Office due to Medical Foundation appointment	2
	Released by the Home Office for 'other reasons'	22
	<i>Average time in detention before being taken out</i>	<i>39.6 days</i>

Figures provided by **AIT Yarl's Wood** show that between May 2005 and August 2006 there were 345 Fast Track appeals heard. Of these 6 were allowed and 339 were dismissed. Appellants were represented in 256 of these appeals and unrepresented in 89 (Access Rights Unit, DCA, 25 September 2006).

Figures provided by **AIT Harmondsworth** show that between 1 January and 13 March 2006, 290 appeals were heard, of which 7 were allowed, 233 dismissed, 10 withdrawn and 50 adjourned

In its **Five Year Strategy** for Asylum and Immigration published in February 2005, the Home Office announced plans to extend the use of Fast Track, aiming for up to 30% of new claimants to be processed in detention

## Appendix 7

# Contact details

### Harmondsworth

#### Immigration removal centre

Harmondsworth Removal Centre  
Colnbrook By-Pass  
Harmondsworth  
West Drayton UB7 0HB  
Telephone: 020 8283 3850  
Fax: 020 8750 5231

#### Home Office at Harmondsworth

Detained Harmondsworth Fast Track  
2nd Floor  
Harmondsworth Removal Centre  
Colnbrook By-Pass  
Harmondsworth  
West Drayton UB7 0HB  
Telephone: 020 8750 4522  
Fax: 020 8750 4535

#### AIT at Harmondsworth

Harmondsworth AIT Hearing Centre  
Colnbrook By-Pass  
Harmondsworth  
West Drayton UB7 0HD  
Telephone: 020 8750 7760  
Fax: 020 8750 7771

### Yarl's Wood

#### Immigration removal centre

Yarl's Wood Removal Centre  
Twinwoods Road  
Clapham, Bedford MK41 6HL  
Telephone: 01234 821000  
Fax: 01234 821152  
Telephone for legal visit: 01234 821167

### Home Office at Yarl's Wood

Detained Fast Track Yarl's Wood  
Yarl's Wood Removal Centre  
Twinwoods Road  
Clapham, Bedford MK41 6AE  
Telephone: 01234 424000  
Fax: 01234 424093

#### AIT at Yarl's Wood

Yarl's Wood AIT Hearing Centre A  
Top of Twinwoods Road  
Clapham, Bedford MK41 6HL  
Telephone: 01234 224410  
Fax: 01234 224411

### Judicial review

#### Judicial Review Unit

Immigration and Nationality  
Directorate  
10th Floor, St Ann's House  
20–26 Wellesley Road  
Croydon CR0 3AJ  
Fax: 0208 604 1884

### Medical and other experts

#### Medical Foundation for Care of Victims of Torture

111 Isledon Road  
Islington, London N7 7JW  
Telephone: 0207 697 7777  
Legal Officer fax:  
0207 697 7740 (for referrals)  
General fax: 0207 697 7799  
[www.torturecare.org.uk](http://www.torturecare.org.uk)

#### Helen Bamber Foundation

5 Museum House  
25 Museum Street  
London WC1A 1JT  
Telephone: 0207 631 4492  
Fax: 0207 631 4493  
[www.helenbamber.org](http://www.helenbamber.org)

**Poppy Project**

2nd Floor, Lincoln House  
Kennington Park  
1–3 Brixton Road  
London SW9 6DE  
Telephone: 0207 735 2062  
Referrals: 020 7840 7129  
Fax: 020 7820 8907  
[www.poppyproject.org](http://www.poppyproject.org)

**The ILPA directory of experts on  
the Electronic Immigration Network**  
can be found at  
[www.ein.org.uk/resources/  
full.shtml?x=181530](http://www.ein.org.uk/resources/full.shtml?x=181530)

**ILPA office**

40/42 Charterhouse Street  
London EC1M 6JN  
Telephone: 020 7251 8383  
Fax: 020 7251 8384  
[www.ilpa.org.uk](http://www.ilpa.org.uk)

**Bail For Immigration Detainees**

[www.biduk.org](http://www.biduk.org)

*Main office, London*

Telephone: 020 7247 3590

Fax: 020 7247 3550

*BID South office*

for detainees at Haslar

Telephone : 023 9258 7567

Fax: 023 9258 7666

*BID Oxford office*

for detainees at Campsfield House

Telephone : 0845 3304 536

Fax: 0845 3304 537

**Translation**

Language Line Services

25th Floor, 40 Bank Street

Canary Wharf

London E14 5NR

Telephone : 0800 169 2879

Fax: 0800 783 2443

[www.languageline.co.uk](http://www.languageline.co.uk)



