

ILPA Best Practice Guide to the Detained Fast Track

The following is intended to highlight significant changes that have been made since the ILPA Best Practice Guide to the Detained Fast Track was published in 2008, and indicate where new information may be obtained. However, in large part, this guide remains accurate, and the general guidance on dealing with these cases remains valid.

Some general observations are provided immediately below; and the table thereafter sets out some further specific updates.

- The Border and Immigration Agency has been replaced by the UK Border Agency.
- The Suitability List (2007) has been replaced by the DFT & DNSA – Intake Selection (AIU Instruction), Asylum Process Guidance.
- The Operational Enforcement Manual (OEM) has been replaced by the Enforcement Instructions and Guidance (EIG). However, some of the material that was contained in the OEM can now be found, with other important guidance relating to the Detained Fast Track, among the Asylum Process Guidance (APG). Key items include Chapter 55 of the EIG and the Detention section of the APG. Both the EIG and APG are available at: <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/>
- The AIT is no more. It has been replaced by the unified two-tier tribunal consisting of the First-tier Tribunal and the Upper Tribunal. Each of these tiers has its own Immigration and Asylum Chamber.
- The relevant appeals procedure rules are in large part unchanged. However, there are some discrete changes, including provision for appeals to the Upper Tribunal against decisions of the First-tier Tribunal.
- There are new Practice Directions and Practice Statements. These reproduce some, but not all, of the previous consolidated Practice Direction of the AIT.
- The relevant Rules, Practice Directions and Practice Statements are available at: <http://www.tribunals.gov.uk/tribunals/rules/rules.htm#pdspt>

Table of Updates:

Page No.	Note of Update
ix	<p>How does a case end up in the Detained Fast Track process? This section should now be replaced with a reference to the DFT & DNSA – Intake Selection (AIU Instruction), Asylum Process Guidance. The policy position, however, remains the same in substance as the following extract from that guidance reveals:</p> <p>2.2 Suitability Inclusion Criteria</p> <p>It is UK Border Agency policy that any asylum claim, whatever the nationality or country of origin of the claimant, may be considered suitable for DFT/DNSA processes where it appears, after screening (and absent of suitability exclusion factors), to be one where a <i>quick decision</i> may be made.</p>
xii	<p>The basic timeframes given are in large part correct. Specific note should, however, be taken of the following:</p> <p>There is no longer any review of reconsideration process, and references to reconsideration hearings are no longer valid. Applications for permission to appeal to the Upper Tribunal and appeals before the Upper Tribunal have replaced the review and reconsideration process. The timeframes in this process are very similar to the timeframes in the previous process. However, there is no timeframe within which the Upper Tribunal must give its decision, and the timeframe for making an application for</p>

	permission to appeal to the Court of Appeal is now 7 working days. Note also, that where the Upper Tribunal refuses permission to appeal to the Court of Appeal, an application may be made directly to that Court.
xiv	Many of the abbreviations used in this Guide are strictly redundant. Note what is explained in the general observations above.
4	The Grand Chamber judgment in <i>Saadi v UK</i> held that his detention was lawful. The judgment is available at: http://www.bailii.org/eu/cases/ECHR/2008/80.rtf The Grand Chamber judgment is not, however, an endorsement of the Detained Fast Track process since the reasons given no longer, in part, apply; and the fast track process being considered is not the one in operation at Harmondsworth and Yarl’s Wood.
7	The “Detained Fast Track processes: Operational Instruction on Flexibility” has not been revised. However, it may be useful to note that this can now be found in the Asylum Process Guidance section of the UKBA website.
18	The bullet points relating to those who are not suitable are no longer accurate, particularly that relating to trafficking victims. Also note that family cases (where there is at least one dependant minor child) are now an unsuitable category
23	The Solihull pilot has been completed. While consideration is being given to extending the pilot to a full NAM region, no decision has been taken on this as yet and there is currently no Solihull process in operation. However, the reference to Annex A at the end of the API on Interviewing remains accurate, and the extracts and commentary on that document are, therefore, current.
25-26	The API on Gender issues in the asylum claim has been revised; and is currently undergoing further revision.
28	A reference to section 2.2.3 of the DFT/DNSA – Intake Selection (AIU Instruction) should be given here. That includes: Cases where it is foreseeable that translations are required in respect of documents presented by an applicant, without which a fair and sustainable decision could not be made, where the necessary translations cannot foreseeably be obtained to allow a decision to take place in the normal indicative timescales.
31-34	This remains correct, but possibly not for much longer. UKBA has proposed changes to its policy in relation to referrals to Medical Foundation and Helen Bamber Foundation. Meantime, an important statement of policy is contained in the Ministerial response to the UNHCR QI 5 th Report, and in particular recommendation 16 of that report. The report and response are available at: http://www.ind.homeoffice.gov.uk/sitecontent/documents/aboutus/reports/unchrreports/
35-36	The DFT/DNSA – Intake Selection (AIU Instruction) does not make the same reference to the Poppy Project that the Suitability List did. While useful, the information given regarding trafficking victims, and the basis on which their cases may be removed from the DFT, may no longer be wholly reliable.
	Note the following from the DFT/DNSA – Intake Selection (AIU Instruction): 2.2.3 What is not likely to be a Quick Decision? As stated above, evidence may exist to suggest that a quick decision is not likely in a case. Cases where a quick decision <i>may</i> not be possible <i>may</i> include (but are not limited to): <ul style="list-style-type: none"> • Cases where it is foreseeable that further enquiries (whether by the UK Border

	<p>Agency or the applicant) are necessary to obtain clarificatory or corroborative evidence, without which a fair and sustainable decision could not be made, where those enquiries cannot foreseeably be concluded to allow a decision to take place in the normal indicative timescales;</p> <ul style="list-style-type: none"> • Cases where it is foreseeable that translations are required in respect of documents presented by an applicant, without which a fair and sustainable decision could not be made, where the necessary translations cannot foreseeably be obtained to allow a decision to take place in the normal indicative timescales.
39 <i>et seq</i>	<p>Note that Detention Service Orders are now available on the UK Border Agency website.</p> <p>The API on Credibility has been replaced by the API on Assessing credibility in asylum and human rights claims, last updated October 2009.</p> <p>Generally, the question of legality of detention, particular as regards where procedural safeguards have not been complied with, may be less clear in view of the Court of Appeal judgment in <i>SK (Zimbabwe)</i> [2008] EWCA Civ 1204, though note judgment from Supreme Court is pending.</p>
57 <i>et seq</i>	<p>Note the new unified tribunal has replaced the AIT, and there are new forms. The Rules, as indicated above, are in large part unchanged.</p> <p>There is no review and reconsideration process. The new unified tribunal reintroduces a two-tier appeal system; and this means that reference will need to be made to Rules of the Upper Tribunal and of the First-tier Tribunal.</p>
58	<p>Schedule 2 now also lists Oakington Reception Centre, Longstation, Cambridgeshire (also Colnbrook is misspelled); and as a consequence the reference to ‘four listed’ should be replaced with ‘five listed’</p> <p>Reference to ‘Schedule 2 Rule 3’ is (and was) badly expressed: Rule 3 is the Rule that specifies the meaning of continuously in detention including in relation to those transported between places specified in Schedule 2</p>
59	<p>The relevant form is no longer to be found in Schedule 1 of the relevant Rules (at least it is not in the amended version of the Rules now provided on the Tribunal Service website). The form can be found at http://www.tribunals.gov.uk/ImmigrationAsylum/FormsGuidance/FormsGuidance.htm</p>
64	<p><i>Need to consider whether anything to add to or better than BO (Nigeria)</i></p> <p>Nb. references to ‘date of publication’, which may be affected by any changes made</p> <p>Reference to ‘referred to in any of the above’ is (and was) wrong, it should be ‘referred to in the notice of decision or any other document served on the appellants giving reasons for that decision’</p> <p>AIT is now the unified tribunal, and it is divided into the First-tier Tribunal (Immigration and Asylum Chamber) and the Upper Tribunal (Immigration and Asylum Chamber)</p> <p>Address for service can now be found at: http://www.tribunals.gov.uk/ImmigrationAsylum/FormsGuidance/FormsGuidance.htm</p>
65	<p>Practice Statement, section 3 has replaced PD4</p> <p>Practice Direction, section 7 has replaced PD6</p> <p>Practice Direction, section 9 has replaced PD9</p> <p>Practice Direction, section 2 has replaced PD2</p>

67	<p>Questions of the legality of detention may need to be reconsidered in the light of the pending Supreme Court judgment in <i>SK (Zimbabwe)</i></p> <p>Whereas the previous bail guidance may be of interest, there is no current guidance; and the 30 April 2007 extract from the consolidated AIT Practice Directions no longer applies</p>
72-73	<p>There is no Review and Reconsideration process any longer. Applications may be made for permission to appeal to the Upper Tribunal. What appears here under the heading ‘Grounds for review’ continues to be good guidance on errors of law, which remains the threshold for seeking to challenge a decision of what is now the First-tier Tribunal. There is no High Court opt-in. An application may be made direct to the Upper Tribunal if the First-tier Tribunal has refused permission to appeal to the Upper Tribunal.</p> <p>The Rules no longer include provision for the other party to the appeal to be served with a copy of any application seeking to challenge the determination and giving time for that party to make representations. In the Fast Track, the provisions of the Principal Rules concerning review of a decision by the First-tier Tribunal do not apply.</p> <p>The Upper Tribunal Rules now provide a timeframe for the hearing of an appeal against the determination of the First-tier Tribunal. That is now in Rule 36(a) and will mean (if the notice of the grant of permission to appeal is served electronically or in person) the hearing must be begun no later than 2 working days after the notice was sent.</p> <p>The time limit for applying for permission to appeal to the Court of Appeal against a decision of the Upper Tribunal is 7 working days or 5 working days where the decision is sent electronically or delivered personally (see Upper Tribunal Rules, Rule 44).</p> <p>Note also the additional test (important point of principle or practice, or some other compelling reason) introduced by section 13(6), Tribunals, Courts and Enforcement Act 2007.</p>
85 <i>et seq</i>	<p>At the time of review, it remains correct that “legal aid is going through a period of important change...”</p> <p>However, while much in this section remains correct, some of the references to paragraphs of the LSC contract and supporting material need revision.</p>
Appendices	<p>Appendix 1 – unchanged</p> <p>Appendix 2 – replaced (see above)</p> <p>Appendix 3 – revised</p> <p>Appendix 4 – this may have been revised</p> <p>Appendix 5 – unchanged</p> <p>Appendix 6 – would be possible to obtain some more recent data</p> <p>Appendix 7 – revised</p>

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