

25th July 2014 – Update on Detained Fast Track Challenge

On 25th July Mr Justice Ouseley made an Order declaring that as at 9th July 2014 (the date judgement was handed down), the Detained Fast Track (DFT) process was operating unlawfully for vulnerable or potentially vulnerable asylum seekers who had not had sufficiently speedy access to lawyers for advice before the substantive asylum interview.

The Home Office was ordered to pay Detention Action's legal costs and both the Home Office and Detention Action have been granted permission to appeal to the Court of Appeal.

The judge declined to make orders on the following points:

- (i) Prohibiting the processing of cases in the DFT until the steps to remedy the defects had been taken;
- (ii) That the Home Office had to consent to the removal of all appeals from the DFT;
- (iii) Prohibiting the Home Office from removing from the UK any person whose claim had been processed in the DFT until that person had had the opportunity of seeking legal advice on the implications of the judgment for his/her claim for asylum and human rights protection;
- (iv) Suspending the operation of the DFT for a short period of time whilst the various steps under urgent consideration or being implemented by the Home Office were consulted and decided on and then put into effect.

The Home Office's position was that steps had been taken since the hearing of the claim ended on 20th December 2013 which meant that by 9th July, significant changes had taken place in the operation of the DFT. This was rejected by the judge. However, he took the view that the steps that the Home Office has taken since 9th July and continues to take have the potential to remedy the unlawfulness. The judge could not say whether or not the Home Office has remedied the unlawfulness as yet.

The judge considered that those operating the screening process and safeguards such as Rules 34 and 35 of the Detention Centre Rules would be aware of the judgment.

Mr. Justice Ouseley said that he expects the Home Office to allow representatives sufficient time (4 clear days) to take instructions and advise clients prior to the substantive interview.

He made it clear that the judgment handed down on 9th July 2014, requires First Tier Tribunal Immigration Judges to consider whether the process and the speed of the process affected the fairness of the Home Office decision to refuse the claim which was the subject of the appeal. This would include considering any deficiencies in the screening process and the operation of safeguards such as those provided by rules 34 & 35 of the Detention Centre Rules if those were relevant to the fair determination of the person's application for asylum and human rights protection.

The [Order](#) can be found here, along with the judgments given on [9th July](#) and [25th July](#).

You can read more about the Order on Detention Action's [website](#).