

The Detained Fast Track

October 2014

Introduction

The Detained Fast Track (DFT) process was first introduced in 2003 for male asylum applicants, and in 2005 for female. Male applicants who are placed in DFT are detained at the Harmondsworth Immigration Removal Centre, and female applicants at Yarls Wood IRC. UK Visas and Immigration policy is that any asylum claim, whatever the nationality or country of origin of the applicant, may be considered suitable for the DFT where it appears, after screening and in the absence of some specified exclusion factors, to be one where a quick decision may be made. In this context a quick decision is intended to mean a timescale of 3-4 days, although in practice timescales are often longer.

Which cases are unlikely to be suitable for a quick decision?

Instructions to UKVI caseworkers say that cases where a quick decision may not be possible *may* include, but are not limited to, cases where it is reasonably foreseeable that:

- Further enquiries by UKVI or the applicant are needed to obtain clarification, complex legal advice, or corroborative evidence material to the claim
- A level of consideration not possible within DFT timescales will be needed
- Translations are needed of documents provided by the applicant which are material to the claim and cannot be obtained within the DFT timescales

Which cases should be excluded from DFT?

UKVI policy is that certain people are unlikely to be suitable for entry to DFT. The main categories are:

- Women who are more than 24 weeks pregnant
- Families with children
- Children claiming asylum
- People with a disability which cannot be adequately managed in a detained environment
- People for whom a decision has been made by a competent authority that they are, or potentially are, a victim of trafficking
- People for whom there is independent evidence of torture

How many cases go into the DFT?

In 2013 a total of 4,286 asylum claimants were placed into the DFT. This represents over 18% of all asylum claims in 2013. This is the highest percentage in the last 7 years. The lowest percentage was in 2008 (6.5%).

The latest statistics do not give a breakdown into male and female asylum seekers, unlike earlier years. According to the Home Office this is because of changes in the way in which the claims are processed, with a new processing centre dealing with claims from both Harmondsworth and Yarls Wood, so that the figures are no longer split by centre.

Over the period 2010 – 2012 female asylum seekers have made up between 21% and 23% of the total number of applicants sent to the DFT, so it is likely that the 2013 figure would be approximately the same.

What are the outcomes of cases in the DFT?

The vast majority of cases in the DFT result in a refusal of the asylum claim. In 2013, out of 2,952 cases where a decision was made, only 131 people were granted refugee status, and 7 were granted humanitarian protection or discretionary leave to remain. This represents just below 5% of all the claims decided via the DFT. There were 399 cases where the claim was withdrawn. For comparison, for all asylum claims in 2013, 33% resulted in a grant of refugee status, and a further 4% in grants of humanitarian protection, discretionary leave to remain, or other grants of leave.

Compared with earlier years the success rates of applications in 2011, 2012, and 2013 were actually higher than in any of the previous three years, all of which had success rates under 2%.

Success rates at appeal were also low. In 2013, of 1,764 appeals determined, only 196 (just over 11%), were allowed. In recent years the proportion of successful appeals has ranged from 6.5% in 2011 to 12% in 2012. This compares with a success rate of 25% in appeals for asylum claims as a whole.

However 935 cases, just under 22% of the total, were taken out of the DFT before a decision had been made on the asylum claim. This is a slightly higher figure than earlier years. It is not possible to find how many of these cases resulted in the grant of refugee or other status.

Why are cases taken out of the DFT?

Home Office statistical publications do not give the reasons for cases being taken out of DFT. However, in response to Freedom of Information requests, it appears that there are a number of reasons for taking a case out of the DFT. The most common appear to be evidence from Freedom from Torture (formerly known as the Medical Foundation), problems related to obtaining travel documents for the person, that the person had been granted bail, or as a result of a judicial review. Other reasons included a determination that the person was a child, or had medical problems.

From which countries are applicants most likely to go into the DFT?

The published criteria for cases to go into the DFT do not include the country of origin. However the published statistics show that applicants from certain countries are much more likely to go into the DFT than others.

In 2013 just seven countries accounted for nearly 77% of all asylum applicants put into the DFT. These were Pakistan (34% of all DFT cases), Bangladesh (13%), India (10%), Nigeria (7%), Sri Lanka (4.5%), Albania (4%), and Afghanistan (4%). For these countries the percentage of asylum applicants who were put into the DFT ranged from 11% (Sri Lanka) to 50% (Bangladesh).

Concerns about DFT – the Refugee Council’s views

The Refugee Council is fundamentally opposed to the Detained Fast Track, in that the use of detention in combination with an accelerated process places people at a considerable disadvantage compared with asylum seekers in the community, but while it remains in use its operation should be improved.

There has never been any official statement that there is any relationship between the ability to decide a case quickly and the likelihood of a grant of refugee status or a refusal. However the very high refusal rate and the concentration of DFT cases on certain countries suggests that the DFT itself, or the selection of cases deemed suitable for inclusion, contributes to the refusal rate.

Consideration should be given to extending the exclusion criteria to:

- Applicants claiming to be children where the issue of age is unresolved
- People with disabilities or learning difficulties
- Anyone over the age of 65
- Applicants with mental health problems
- Pregnant women, at any stage of pregnancy
- Applicants asserting they are a victim of gender based violence
- Applicants whose claim is based on gender identity or sexual orientation

It is also unrealistic to expect applicants to produce independent evidence of trafficking or torture, given that they will have had little opportunity to seek help or advice before the asylum process starts.

The redesign of screening to elicit more detailed information at that stage, as suggested by the Chief Inspector (see below) would not be reasonable unless it included provision and funding for legal representatives to be present at all interviews. There are inherent problems in, for example, asking women to disclose sensitive personal information at such an early stage in a claim.

Very often the applicant can only discuss their case with a legal representative on the same day as, or the day before, their substantive interview. Because of this they do not have the same chance as other applicants to prepare their case and corroborative evidence, which may well relate to the high refusal rate.

Concerns about DFT – the High Court

In July 2014 the High Court delivered judgement on an application by Detention Action to have the DFT declared unlawful. The judge did not find that the DFT was inherently unlawful but ruled that the DFT as operated carries an unacceptably high risk of unfairness.

He criticised the delay in lawyers being allocated after a case was taken into the DFT, saying that “the period in detention before lawyers are allocated and the proximity of allocation to the substantive interview means that in too high a proportion of cases, and in particular for those which might be sensitive, the conscientious lawyer does not have time to do properly what may need doing”.

He criticised the screening process, saying that there were not focussed questions which looked at the individual circumstances, the nature of the claim, and the effect of the DFT timetable on its fair determination in detention.

He also raised concerns about the way in which cases involving victims of torture and sexual violence were handled within the DFT and the current process for removing such cases from the DFT. In addition he said that the process for identifying trafficked women whose cases are being dealt with in the DFT was flawed. He concluded that there were deficiencies in the approach to mental health, both at the screening stage and later when new material is presented.

Concerns about DFT – the Independent Chief Inspector of UKBA’s report

The Chief Inspector published a report on the operation of the DFT in February 2012, based on an inspection in 2011. He had a number of concerns. He found that the process was not happening as quickly as intended, with cases taking on average 13 days for an initial decision on the asylum claim. Screening was not tailored to fully capture information to determine whether a case was suitable for the DFT. There was a particular risk that the victims of torture or trafficking could be allocated to the DFT, contrary to policy. A significant number of people (30% of his sample) were taken out of detention at some stage, and most of these were released before a decision had been taken on the asylum claim. The reasons for release were most commonly health issues and evidence of trafficking or torture, or problems in obtaining travel documents for removal.

Among his recommendations he suggested that at the initial screening interview applicants should be encouraged to disclose personal information which might affect their suitability for the DFT. As detailed above, the Refugee Council does not see this as a sufficient safeguard.

Links

Statistics:

<https://www.gov.uk/government/statistics/immigration-statistics-april-to-june-2014>

Home Office Instructions to Caseworkers on the DFT:

<https://www.gov.uk/government/collections/detention-and-reporting-asylum-instructions>

Report of the Chief Inspector:

http://icinspector.independent.gov.uk/wp-content/uploads/2012/02/Asylum_A-thematic-inspection-of-Detained-Fast-Track1.pdf

UKBA Response to the Chief Inspector’s Report:

<http://icinspector.independent.gov.uk/wp-content/uploads/2012/02/UK-Border-Agency-response-to-Detained-Fast-Track-report.pdf>

Refugee Council Response to the Chief Inspector’s Report:

British Refugee Council, (commonly called the Refugee Council) is a company limited by guarantee registered in England and Wales, [No 2727514] and a registered charity, [No 1014576].
Registered office Gredley House, 11 Broadway, Stratford, E15 4BQ, United Kingdom VAT reg no: 936 519 988

http://www.refugeecouncil.org.uk/latest/news/773_independent_chief_inspectors_report_on_detained_fast_track_our_response

Refugee Council Comment on High Court Case and link to Detention Action Information:

http://www.refugeecouncil.org.uk/latest/news/4112_detained_fast_track_leads_to_unacceptable_risk_of_unfairness