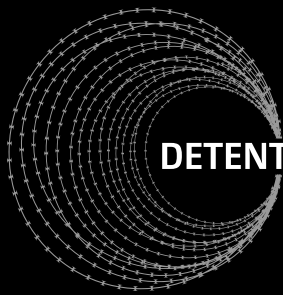


# FAST TRACK TO DESPAIR

The unnecessary detention of asylum-seekers



DETENTION ACTION



## DETENTION ACTION

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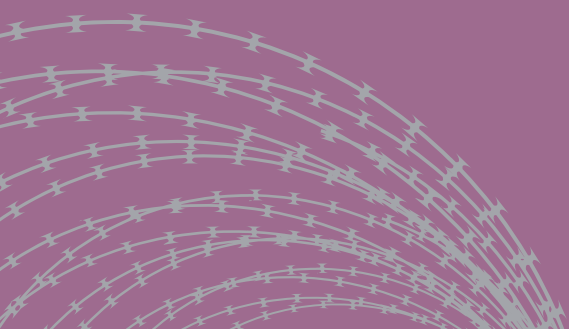
# Fast Track to Despair

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## Executive summary

**D**etention Action (formerly London Detainee Support Group) advocates for policy change on immigration detention in the UK and provides support and advice to people detained under immigration powers in the London area. Through our daily contact with asylum-seekers and other migrants in detention, we ensure that their voices are heard and their experiences contribute to debate on immigration detention.

This report provides both an overview and a critical analysis of the Detained Fast Track in Harmondsworth Immigration Removal Centre (IRC) near Heathrow Airport in London. The Detained Fast Track is an accelerated process for considering asylum claims, in which asylum-seekers whose claims are considered to be “straightforward” are detained throughout the process. Harmondsworth is the designated detention centre for male asylum-seekers whose claims are to be considered on the Detained Fast Track.

Our research suggests that the Detained Fast Track system is structured to the maximum disadvantage of asylum-seekers at every stage. Conditions and timescales operate to make it impossible for many asylum-seekers to understand or actively engage with the asylum process. Yet this system is entirely unnecessary, as the circumstances it was designed to address no longer exist.

Many asylum-seekers on the Detained Fast Track are confused and distressed. Held in conditions equivalent to a high security prison, they struggle to understand a complex procedure in an unfamiliar and hostile environment in which clear information is not always easily available. Such circumstances pose considerable obstacles to asylum-seekers’ ability to engage effectively with the asylum process.

Time is always against the asylum-seeker on the Detained Fast Track. The tight timescales are intended to minimise the unnecessary detention of asylum-seekers, yet Detention Action’s

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research found that they were detained for an average of two weeks before the process even started. Nearly one in five waited for over a month. Most have no access to legal advice during this period. Yet when the process finally begins, its speed poses huge challenges for asylum-seekers. Most meet their solicitor for a few minutes just before their interview, often without advance notice. 99% are refused asylum. They have two days to submit an appeal, for which 60% are unrepresented. Finally, after an asylum process at breakneck speed, they spend an average of 58 days in detention awaiting removal.

The fundamental unfairness of this process could be mitigated if adequate safeguards were in place to ensure that only the most straightforward cases were processed on the Detained Fast Track. Yet there is no means of reliably identifying straightforward cases. Effective screening is a structural impossibility, as the decision to detain an asylum-seeker on the Detained Fast

Track is taken when the UK Border Agency (UKBA) has little or no information about the asylum claim.

***An unfair,  
crude and  
outdated tool***

The Detained Fast Track is no longer necessary, even when judged against the justifications given for its introduction. It was developed as a response to unprecedentedly large numbers of asylum claims and an increasing backlog of cases awaiting decisions. The European Court of Human Rights ruled that seven days' detention in a low security regime was acceptable in these specific circumstances under an earlier version of the Fast Track in Oakington IRC.<sup>1</sup> However, not only are asylum-seekers on the Detained Fast Track now held for far longer and in far more oppressive conditions than was initially the case, but the numbers of new asylum claims are dramatically reduced.

The New Asylum Model (NAM) now processes 53% of claims within six months, with some asylum-seekers in the community having their initial interview faster than the people we interviewed on the Detained Fast Track. The UKBA has successfully resolved the great majority of outstanding "legacy" cases. Moreover, the UKBA is increasingly exploring projects that enable asylum-seekers in the community to actively engage with the system, through the provision of early legal advice and welfare support. Initial findings suggest that improved decision-making and increased voluntary return mean that these systems are to the benefit both of asylum-seekers and the UKBA. Their principle is the opposite of the Detained Fast Track, which assumes that asylum claims can only be efficiently processed in detention.

The Detained Fast Track is an unfair, crude and outdated tool of an asylum system that, over ten years ago, was at breaking point. It can no longer be justified. On the 60th anniversary of the Refugee Convention, it is time for it to be abolished.





# Introduction

**D**etention Action has been supporting people held in immigration detention in the London area since 1993. With volunteers and staff visiting and speaking to detainees in Harmondsworth on a daily basis, we have supported hundreds of asylum-seekers going through the Detained Fast Track since 2003. Countless volunteer visitors have reported the stress and disorientation experienced by asylum-seekers on the Detained Fast Track.

Every day, we talk with people whose cases are being fast-tracked, and they tell us about their hopes, fears, confusion and despair. We see first-hand the damage that detention can do to human lives. When the new high security wings opened in Harmondsworth, we became increasingly concerned about the physical environment in which asylum-seekers on the Detained Fast Track were being held. We also noticed that many asylum-seekers were waiting weeks to see a legal representative and for their case to get properly underway.

We decided that it was time to research how the Detained Fast Track operates now, in the light of the criticisms that have been made by NGOs and monitoring bodies throughout its existence. In particular, we wanted to record the perspectives of the people going through the process.

In summer 2010, we began informally monitoring how long asylum-seekers were waiting to see a legal representative and to have their substantive interview. It became clear that long delays were a systemic problem rather than the exception. In January 2011, we began gathering data on delays at the start of the process and asking asylum-seekers directly about their experiences of the Detained Fast Track.

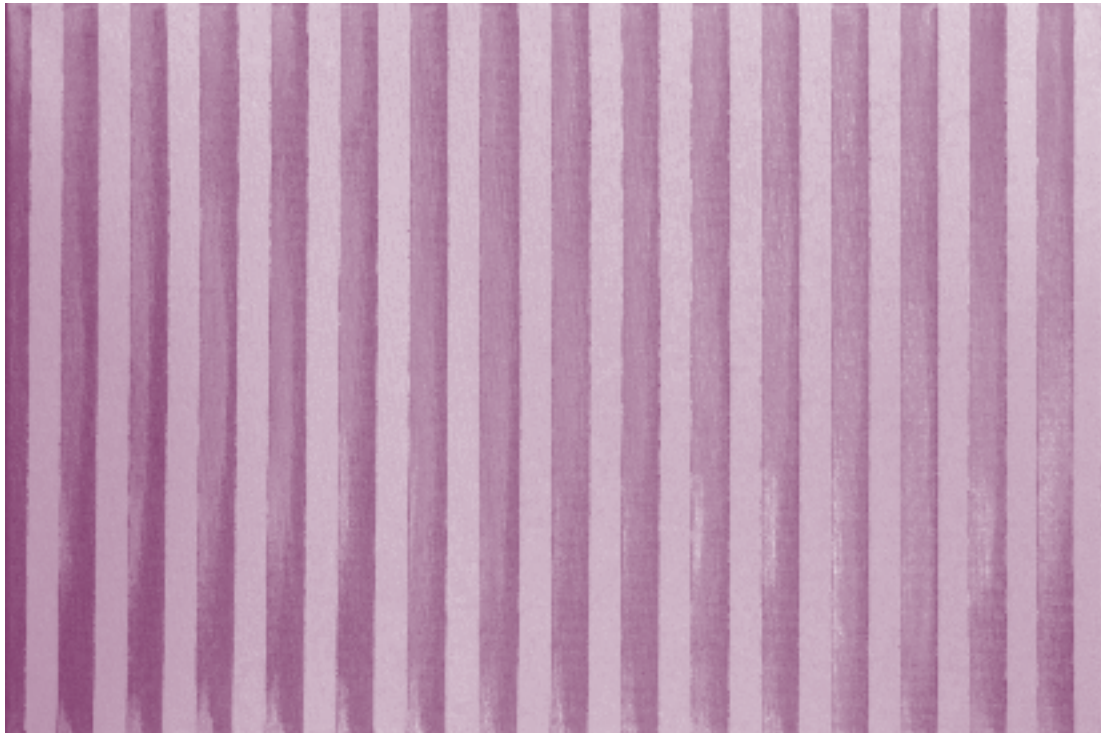
We also reviewed the historical development and context of the Detained Fast Track. We found that government justifications for detaining asylum-seekers have changed over time.

***We wanted  
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going through  
the process***

This report attempts to summarise and address these justifications. It also brings together the criticisms of the Detained Fast Track made by UNHCR and various NGOs over the years, each of which have focused on different aspects of the system.

***It is possible to envisage an asylum system in which the Detained Fast Track has no place.***

This report offers a critical overview of the Detained Fast Track, an insight into the experiences of those who go through it, and arguments for its abolition. One report, however, will not end the Detained Fast Track. We hope that it will promote discussion amongst NGOs, legal professionals and others on how to persuade Government to consider asylum claims outside detention. We also hope to contribute to dialogue between NGOs and policy-makers. With an open mind and joined-up thinking, we believe that it is possible to envisage an asylum system in which the Detained Fast Track has no place. We hope that this will be the legacy of the asylum-seekers whose voices are heard through this report, as well as the thousands of asylum-seekers passing through the Detained Fast Track whose experiences will never be known.



Nikoloz Sakhanberidze: *Bars*





# Methodology

In January 2011, Detention Action began formally monitoring the experiences of asylum-seekers on the Detained Fast Track, having gathered anecdotal evidence over the previous six months which suggested that delays and confusion were a major problem. This report is the outcome of that primary research, as well as a review of previous research by other NGOs and monitoring bodies including Human Rights Watch, Bail for Immigration Detainees (BID), the UNHCR and Immigration Law Practitioners' Association (ILPA). Detention Action has also spoken with legal representatives and other professionals in the asylum sector to further develop our analysis of the Detained Fast Track.

Interviews with asylum-seekers were carried out by a team of five Detention Action volunteers, with support from staff and a Pashtu interpreter. Volunteers assisted with transcribing qualitative interviews.

## Quantitative data

The quantitative data is designed to build up a picture of how long asylum-seekers on the Detained Fast Track spend in detention until the initial decision on their claim. Between January and March 2011, Detention Action attempted to contact every asylum-seeker on the Detained Fast Track who accessed our services during this period. Inevitably, the sample is limited to those individuals who were already known to Detention Action, having contacted us for emotional or practical support through our freephone service or on-site advice surgeries. This could lead to some bias in our sample, as asylum-seekers who stay longer in Harmondsworth are more likely to make contact with us. However, any bias is likely to be small, as many asylum-seekers made contact with us early in the process. Moreover, there is no necessary connection between a long stay in detention and delays in starting the Detained



Ahmed Ali:  
*Give me a Break –  
Answer Your Phone*

Fast Track process, as the longest periods of detention tend to be caused by delays after refusal pending removal.

Most interviewees were held in Harmondsworth, but some had been moved to other detention centres after their case had been decided. Quantitative data was gathered over the telephone, mainly in English but also in Hindi, Urdu, Bengali, and Pashtu.

We explained that we were researching people's experience of the Detained Fast Track and asked if they would be prepared to give us basic information about key dates during the progress of their asylum claim. We asked:

- When did you claim asylum?
- When were you detained?
- When were you told that you were on the Detained Fast Track?
- When did you first speak to your solicitor?
- When did you first meet your solicitor?
- When was your substantive interview?
- When did you get a decision from the Home Office?

The primary data analysed throughout this research is therefore self-reported.

In total, we gathered quantitative data from 45 asylum-seekers. It was not possible to gather data from every asylum-seeker we knew on the Detained Fast Track as some did not have telephones and could not be contacted, while others were removed from the country before we could discuss the research with them. Where not all interviewees responded to a question, we have noted how many responded. Where interviewees also told us anecdotally about their experience, this was noted and has been used to inform the research.

Date detained on the Detained Fast Track	Number of interviewees
June 2010	2
July 2010	1
August 2010	0
September 2010	1
October 2010	5
November 2010	6
December 2010	6
January 2011	13
February 2011	9
March 2011	2
<b>Total</b>	<b>45</b>

Some had already been through the full Detained Fast Track process, while others were at the start or midway through. Where this was the case, we stayed in regular contact as their case was processed.

## Qualitative interviews

We gathered testimony from individuals to provide further information about how the Detained Fast Track is currently operating, how far asylum-seekers are able to engage with the process and its impact on their lives. This ensures that the research is firmly based on the experiences of those going through the Detained Fast Track and that asylum-seekers themselves have the opportunity to have their voices heard in policy discussions. Semi-structured qualitative interviews were conducted over the telephone with 18 asylum-seekers who had expressed an interest in giving a fuller picture of their experiences on the Detained Fast Track. In order to obtain informed consent, at least two conversations were held with potential interviewees prior to the interviews taking place. Potential interviewees were told of the aims of the research and how it would be used. In some cases, interviews were not completed where the asylum-seeker was particularly vulnerable or needed to focus on their case. After the interview, they were asked if they wished to be anonymised and any sensitive information was highlighted to ensure they were comfortable with it being included. Some names have been changed. The interviews were either recorded and then transcribed verbatim or detailed notes were taken while the interview was in progress, according to the preference of the interviewee.





# Background

## An overview of the Detained Fast Track

### The process

**T**he Detained Fast Track operates in Harmondsworth IRC for men and Yarl's Wood IRC for women. Any adult asylum-seeker can be detained under the Detained Fast Track when it appears that their case can be decided quickly, regardless of their country of origin. This decision is made by the UKBA following an initial screening interview which only covers basic factual questions but not, crucially, the details of the asylum claim. The UKBA provides guidance to its staff on cases which may or may not be suitable for the Detained Fast Track in its Asylum Intake Unit Instruction.<sup>2</sup> The Instruction states that “any asylum claim, whatever the nationality or country of origin of the claimant, may be considered suitable for DFT/DNSA [Detained Non-Suspensive Appeals] processes where it appears, after screening (and absent of suitability exclusion factors), to be one where a *quick decision* may be made”.<sup>3</sup>

The Detained Fast Track process differs from the mainstream asylum system in that the entire process takes place in detention and the timescales are much quicker. A UKBA case owner is assigned to take responsibility for an individual case throughout the process. Following a substantive interview in which asylum-seekers are asked detailed questions about their reasons for claiming asylum and any evidence they may have, the UKBA case owner decides whether to grant or to refuse international protection. If the claim is refused, asylum-seekers have the opportunity to appeal to the First-Tier Tribunal and the Upper Tribunal of the Immigration and Asylum Chamber. The courts are located next to the detention centre.

## Legal representation

Asylum-seekers on the Detained Fast Track have the right to be allocated a legal representative from a duty rota of independent solicitors' firms who have an exclusive legal aid contract for the Detained Fast Track.<sup>4</sup> Some asylum-seekers choose to be represented privately. Asylum-seekers should have the opportunity to meet with their legal representative before their substantive interview, at which the representative should also be present. Throughout the appeal process, the representative must apply the merits test to determine if they can continue to represent their client.<sup>5</sup> Asylum-seekers are often unrepresented following an initial refusal from the UKBA.

## Timescales

According to UKBA procedure,<sup>6</sup> timescales for the Detained Fast Track are fast.

- Day 1:** Arrival at Harmondsworth IRC. Legal representative visit
- Day 2:** Legal representative visit (if not on Day 1) and substantive interview
- Day 3:** Service of initial decision by UKBA. If granted, released from detention
- Day 5:** If refused, final day in which to appeal to First-Tier Tribunal
- Day 9:** Appeal hearing
- Day 11:** Determination from appeal hearing. If granted, UKBA considers whether to appeal. If not, released from detention
- Days 13–21:** If appeal refused, reconsideration and further appeals on a point of law possible at the Upper Tribunal and outside the Immigration and Asylum Chamber
- Day 22:** All appeal rights exhausted

As the timescales are indicative, there is some flexibility within the Detained Fast Track procedures.<sup>7</sup> The asylum claim may also be taken out of the Detained Fast Track and processed under the usual timescales in the community “if it is not possible to consider the claim with the requisite degree of fairness with the fast track timescales ... and consequently the claim is not one which is capable of a quick decision”.<sup>8</sup> In 2008, 150 claims were taken out of the Detained Fast Track in Harmondsworth, and 255 in 2009.<sup>9</sup> Some asylum-seekers decide to withdraw their asylum claims.<sup>10</sup>

## Number of asylum claims heard on the Detained Fast Track

In 2009, 1,615 asylum-seekers were initially routed into the Harmondsworth Detained Fast Track and 495 into the Yarl's Wood Detained Fast Track, 9% of the total 24,485 asylum applications made that year.<sup>11</sup> There is currently capacity for 251 asylum-seekers on the Detained Fast Track in Harmondsworth at any one time.<sup>12</sup> The UKBA set a target of processing 30% of asylum claims through detained, accelerated processes.

## Decisions on the Detained Fast Track

The refusal rate for the Detained Fast Track is very high. In Harmondsworth, the refusal rate at initial decision is 99%.<sup>13</sup> This figure has remained broadly consistent in recent years. The refusal rate at appeal stage was 93% in 2010.<sup>14</sup> Refusal rates for the Detained Fast Track are significantly higher than those of asylum claims heard in the community, showing that how an asylum claim is processed makes a huge difference to the prospects of success. Although there are no separate records of asylum claims heard outside the Detained Fast Track process, the UKBA publishes statistics of overall applications and decisions made.

Year	Asylum claims refused by UKBA on Harmondsworth Detained Fast Track <sup>15</sup>	Overall asylum claims refused by UKBA <sup>16</sup>	Asylum appeals refused on Harmondsworth Detained Fast Track <sup>17</sup>	Overall asylum appeals refused <sup>18</sup>
2008	99%	70%	92%	75%
2009	98%	72%	93%	72%
2010	99%	–	93%	–

## Detained Non-Suspensive Appeals

The Detained Non-Suspensive Appeals (DNSA) is the process for deciding asylum claims which are considered “clearly unfounded” by the UKBA. Asylum-seekers do not have an in-country right of appeal, if the UKBA refuses their asylum claim. If they wish to appeal, they must do so from their country of origin. The UKBA uses a list of countries from which asylum-seekers can be processed under the DNSA process.

The DNSA process has a slightly extended timescale, with the substantive interview taking place on Day 3 and further representations made on Day 4-5. A “second pair of eyes” reviews whether or not the refusal is certified as clearly unfounded on Day 7.<sup>19</sup>

This research focuses largely on the Detained Fast Track, rather than the DNSA. However, many of the same concerns apply to both.

# History of the Detained Fast Track

## Introduction and development of the Detained Fast Track

In 2000, Oakington IRC began to be used to facilitate a fast track asylum process in which asylum-seekers would be detained for the purpose of processing their asylum claim. The Oakington Fast Track was introduced at a time of a sharp increase in asylum applications. Between July and September 1999, the average monthly number of asylum applications was nearly 7,000, 60% higher than the previous year.<sup>20</sup> Lord Phillips concluded that “[a] short period of detention is not an unreasonable price to pay in order to ensure the speedy resolution of the claims of a substantial proportion of this influx.”<sup>21</sup>

Under the Oakington Fast Track, single male asylum-seekers were detained until an initial decision was made on their case. This took place within seven days, after which they



would usually be released having been granted leave to remain or following a refusal with the opportunity to pursue appeals in the community. It was the first time that asylum-seekers had been detained in this way for the administrative convenience of the UK government.<sup>22</sup>

The DNSA process was introduced in 2002, in which asylum-seekers whose claims were considered unfounded were given no in-country right of appeal. Instead, they can appeal from their country of origin, although few do so.

In 2003, a new Detained Fast Track process was introduced, based at Harmondsworth, in which accelerated appeals are heard while the asylum-seeker remains in detention. The Detained Fast Track “Suitability List” of countries where the Home Office considered that there was generally no risk of persecution was expanded in 2005 and again in 2007. By then, applicants of any nationality could be processed under the Detained Fast Track, if the case could be decided quickly. In 2009, the highest proportions of asylum-seekers on the Detained Fast Track came from the following countries:<sup>23</sup>

Country	Percentage
Afghanistan	23%
Pakistan	20%
Nigeria	9%
India	8%
Bangladesh	6%
China (including Taiwan)	5%

In 2005, the UK government announced its “Five year strategy on asylum and immigration.”<sup>24</sup> Despite the fact that the number of asylum applications had reduced from a peak of nearly 9,000 claims a month in October 2002 to consistently under 3,000,<sup>25</sup> the Detained Fast Track continued to be at the heart of government thinking. Its intention to extend the use of the Detained Fast Track was made clear, with a projection that up to 30% of asylum claims would be heard while claimants were in detention on the fast track.<sup>26</sup> In the same year, the Detained Fast Track was introduced for women asylum-seekers detained in Yarl’s Wood, following the same process as that used in Harmondsworth for men.

The number of asylum applications has fallen by 79% since 2002.<sup>27</sup> And yet the UKBA remains committed to expanding the Detained Fast Track, with 251 beds allocated to the Detained Fast Track in Harmondsworth at any one time, a 25% increase since 2005.<sup>28</sup> In 2009, 1,615 asylum-seekers were routed into the Detained Fast Track at Harmondsworth, an increase of 39% from the previous year.<sup>29</sup>

## Legal challenges

### *Saadi v UK*<sup>30</sup>

The most high-profile legal challenge to the Detained Fast Track was *Saadi*, which concerned the early Oakington process. Dr Saadi is an Iraqi who, having applied for asylum on arrival and being granted temporary admission for three days, was subsequently detained at Oakington in 2000. He was released seven days later, after an initial refusal of his claim. Following

**“Detention  
was the wrong  
answer to the  
right question”**

subsequent appeals heard in the community, he was granted asylum in January 2003.

Saadi claimed that his detention was arbitrary under Article 5 of the European Convention of Human Rights. In 2008, the European Court of Human Rights ruled that there was no violation of Article 5.1. Detention was found to be reasonably aimed at preventing unlawful entry and the UK government had acted in good faith in detaining Saadi as his case had been considered suitable for fast track processing, which was necessary to ensure the speedy resolution of the large number of asylum applications at that time. The European Court of Human Rights based its decision in part on the fact that Saadi was detained for seven days only in the “relaxed regime” of Oakington. The Court considered that “given the difficult administrative problems with which the United Kingdom was confronted during the period in question, with an escalating flow of huge numbers of asylum-seekers... it was not incompatible with Article 5 § 1(f) of the Convention to detain the applicant for seven days in suitable conditions to enable his claim to asylum to be processed speedily.”<sup>31</sup>

However, a violation of Article 5.2 was found, as Saadi was not informed sufficiently promptly of the reason for detention. It was not until 76 hours after his detention that Saadi was given such reasons, and only following the efforts of his legal representative.

Six judges dissented from the decision. They described the detention of asylum-seekers as an “increasingly worrying situation” and concluded that “[i]n no circumstances can the end justify the means; no person, no human being may be used as a means towards an end ... mere administrative expediency or convenience will not suffice”.<sup>32</sup> Concerns were raised about both the length and conditions of detention. Alternatives to detention had not been considered and “detention was the wrong answer to the right question” of how to process high numbers of asylum applications.

***RLC v Secretary of State*<sup>33</sup>**

In 2004, the lawfulness of the new Harmondsworth Detained Fast Track process was considered by the High Court and the Court of Appeal. In *Refugee Legal Centre*, it was argued that asylum-seekers did not have a fair chance to put forward their claim because of the timescales of the substantive interview and initial decision. The Detained Fast Track process in operation at the time allowed for legal representatives to take instructions in the morning of the second day of detention, with the substantive interview in the afternoon. In the High Court, Mr Justice Collins found that the current system was not unlawful but agreed that “anything quicker would be impossible to justify”.<sup>34</sup> The Court of Appeal subsequently agreed that the system was not inherently unfair but expressed concern that there was no written flexibility policy clarifying circumstances in which additional time would be granted or the case would be taken out of the Detained Fast Track.<sup>35</sup> As a result, the Operational Instruction on Flexibility was published in April 2005, and has since been updated.

# Revisiting the Detained Fast Track today

## Detention setting, excluded asylum-seekers

*Asylum-seekers on the Detained Fast Track are detained not for removal but for the administrative convenience of the UKBA to process their asylum claims quickly. Today, they are held in high security detention centres, in sharp contrast to the lower security environment of the original Oakington Fast Track. Repeatedly transferred without warning between centres, their disorientation and confusion increase the distress of being detained. Their ability to put forward their asylum claim and engage with the process suffers as they struggle to find information and follow complex processes in the stressful and unpredictable environment of detention.*

**T**he nature of detention undermines the ability of asylum-seekers to pursue their cases or engage with the asylum process. Detention is inevitably a stressful environment. It is not surprising that asylum-seekers take time to orientate themselves, as they struggle to come to terms with being detained in a prison-like setting, to cope with isolation from friends, family and local support organisations, and to process a wealth of information about how the detention centre itself operates.<sup>36</sup> In this environment, it is questionable whether many asylum-seekers would be able to properly comprehend the complexities of the asylum system, particularly one that is accelerated, whatever processes were in place to explain it to them. Movements around the detention estate, and delays and failures in providing accessible information can only exacerbate this confusion.



## Claiming asylum in prison conditions

While detention is generally used only as a last resort to facilitate removals of people who have been refused the right to stay in the UK, those who are on the Detained Fast Track are detained throughout the asylum process. The asylum-seekers interviewed for the research spoke repeatedly of the shock and stress of being detained. For many, it was their first experience of being locked up. Others had been imprisoned in their country of origin, and found being detained in the UK where they sought refuge to be traumatic. Some had families or other support structures in the UK, making the isolation and separation hard to bear.

*People being detained are not committing any crime like people who are in prison. Putting people in detention for so long is like a mental torture, my life is shattered. I never hit somebody, I did nothing, so why do they keep me in detention? They are killing people by souls. Here, I am going crazy, I am going cuckoo.*

— Charles, from Nigeria

*I am not a criminal, just because I am from another country and my skin is not white, I am not an animal, I am a human. The system, to my own understanding, is a shambles. They keep moving me around the place. I have never been wanted by the police, or been in trouble with the law, but here I am in prison.*

— Louie, from Gambia

*Detention is really desperate for me, especially that you can't be with your family while your case is being dealt with. It happens not only to me, but my family as well. Everything is breaking the family, they are tearing the family apart. I told them to tag me while my case is being dealt with, they refused.*

— John A, from Nigeria

*It is quite boring really, but I am also finding it difficult mentally, it is so depressing here. I am always down, I miss my family, my friends, my life. I am a bit shy, so I don't want to say too much. I am not the only one in here that feels this way... some of the stronger ones put on a brave face, but they all feel terrible inside. But I feel so lucky because I have my mother and the energy she feeds me. Some people in here are all alone, and I cannot imagine how they feel.*

— Alex, from Ivory Coast

*Stressful. It's really bad. There's nothing I can do, I only have people like you I can talk to. I don't even have a solicitor, and it is hard work to do everything myself. I am tired being here, I miss my kids so much. I cannot take it no more. Maybe that's their plan, so that we can all give up on our life. This is torture now.*

— Mallan, from Malawi

Many clients we interviewed were initially detained elsewhere before being transferred to Harmondsworth for their case to be processed on the Detained Fast Track, increasing their sense of confusion and frustration. Several experienced more than one long journey around the detention estate, with little or no notice or explanation, before they reached Harmondsworth.

*They did not tell me anything. They came on Saturday morning around 6 am and they woke me up. In 15 minutes I had to leave. I had no time to talk to my solicitor, I had no time to have a shower, I had no time to do nothing or pack my stuff. They deprived me of everything.*

— Charles, from Nigeria

*They just locked room and waited for about five hours. Then van came over and they took me to Manchester for two days then they transfer me after that to Scotland for three days then they brought me back Manchester for another three days. Then took me to Harmondsworth, waited about two weeks for the substantive interview. What's the point taking me Manchester and then Scotland and then back to Manchester? The system is really bad because for different stages of the process for transportation, for release, for interviews, different people are involved and the coordination between them is just so poor, they just don't communicate with each other.*

— Mohammed, from Libya

*The immigration officers who took my screening interview did not tell me anything. I was becoming frantic and I honestly thought if they kept me like this then I would die. Despite my visible health problems and actually showing them my medical reports, all they gave me was a painkiller. I was taken to Colnbrook in a prisoner's van. Then they took me to Dover IRC where I stayed for a week. I was told that for my substantive interview, they would transfer me to Harmondsworth. I was shocked when they told me this as I am not well, and they kept moving me. I refused to go the first day. I told them that I cannot make yet another long journey. On the second day, they locked me up in a tiny cell for five minutes. They threatened me, saying "do you want to stay in this cell or are you ready to go to Harmondsworth?" I gave in, I didn't want to be confined again. I was back in Colnbrook for 24 hours lock up, then a month and half in Harmondsworth, then they told me they would move me to Oxford. I was scared they might lock me up in a cell again so I didn't argue. When I went to the healthcare in Oxford, they were baffled that with my upcoming hospital appointments in London, I was still moved to Oxford, so I was sent back to Harmondsworth.*

— Mo, from Bangladesh

While the Detained Fast Track has in the past been justified partly on the grounds of the low security regime in Oakington, today those on the Detained Fast Track are held in conditions identical to a high security prison. In the *Saadi* litigation, the Home Office repeatedly made reference to conditions at Oakington: "[t]he practical operation and facilities at Oakington are... very different from other detention centres. In particular, there is a relaxed regime with minimal physical security, reflecting the fact that the purpose is to consider and decide applications. The site itself is very open with a large area for outdoor recreation and general association or personal space. Applicants and their dependants are free to move around the site." The House of Lords agreed, but noted that "[i]f conditions in the centre were less acceptable than they are taken to be there might be more room for doubt".<sup>37</sup>

Asylum-seekers on the Detained Fast Track are now frequently held in the new high security wings at Harmondsworth IRC, built to Category B prison specifications in accordance with UKBA policy.<sup>38</sup> The new high security wings opened in summer 2010 were billed as designed

## Asylum-seekers are now frequently held in the new high security wings

for “some of the most challenging detainees the UK Border Agency holds, the vast majority of whom are former prisoners who have committed serious offences.”<sup>39</sup> In reality, with the closure of Oakington, most asylum-seekers on the Detained Fast Track are also held in these high security conditions.

The new wings at Harmondsworth are part of a policy of increased securitisation of detention centres. As the new wings were prepared for opening, the Harmondsworth Independent Monitoring Board (IMB) was “concerned about the effect the physical infrastructure will have on the regime ... and finds it shocking that brand new facilities have been built that are ill-suited to their intended purpose and that offer lower standards of decency than the facilities they replace.”<sup>40</sup> The asylum-seekers we interviewed were shocked by the prison-like environment of Harmondsworth:

*When I first came here it was not really good. I had never been in this situation, I had never been locked up, it was like a prison, it is a prison. I said to my cellmate, “this is prison, not detention”. I was very depressed thinking “why am I here, in a prison?”*

— Paul Touray, from Gambia

*Whoever comes in to these detention centres, from the moment they are detained they lose all their rights. It is like we are all in prison. We are locked up. Why? They lock us up three times a day. I haven’t committed any crime, what have I done to be locked up? Just living under these circumstances, I feel I will go crazy just from thinking.*

— Asif, from Pakistan

*There’s a big difference: Dungavel is a detention centre, Harmondsworth, Colnbrook and the rest of them, they are prisons. The way the place are built, the way you can walk around and see people. At night your friends go to their room, from nine o’clock they lock the door.*

— John A, from Nigeria

## Confusion and disorientation

Although asylum-seekers on the Detained Fast Track should have an induction interview with a UKBA officer within 48 hours in Harmondsworth, in which the asylum process is explained,<sup>41</sup> the majority of asylum-seekers we interviewed were confused and disorientated. This might be due to limited or late information, lack of interpreters or translated materials, literacy, the stress of detention, and isolation from the community support structures that usually help asylum-seekers in the community to understand the asylum process. Some asylum-seekers did not remember having the Detained Fast Track explained to them in an induction interview. Some who did not speak English did not seem to have been provided with information in translation and others were illiterate in their own language, relying on friends or NGOs to explain documents to them. This appeared to undermine their ability to prepare their claim or engage meaningfully with the asylum system, putting them at a serious disadvantage.



While some asylum-seekers reported that they quickly understood what was happening, many told us that they were not informed that they were on the Detained Fast Track for several days. Our data analysis shows:

- **45% waited 3 days or more to be told they were on the Detained Fast Track**<sup>42</sup>
- **23% waited one week or more to be told they were on the Detained Fast Track**<sup>43</sup>

The interviewees found out that they were on the Detained Fast Track in a variety of ways. Most were told their cases were being fast-tracked by an immigration officer, but some were informed by their solicitor and some only became aware when they asked at the Detained Fast Track office, on our advice.

*My lawyer in Nottingham told me I was on the fast track, not UKBA. He said they were not corresponding. My lawyer was arguing about why they put me on fast track but the Home Office refused to take me off. My lawyer said we don't do fast track. The UKBA never explained anything about what fast track was. My fellow detainee told me that fast track meant things were "quick, always quick". I never received any information in paper. I never knew about the fast track office, I only found out about it now.*

— Paul Touray, from Gambia

*I found out I was on fast track four or five days after I was taken to Dover [having already been detained elsewhere for three days]. I was told by one of the immigration officers that my case will be assessed in the fast track process. But the officer only told me as my private solicitor at that moment was pressurising immigration to find out what they were going to do with me. At that point I had no idea what fast track meant. It was while my case was being processed step by step and in that quick manner that it slowly started to dawn on me what fast track really meant.*

— Mo, from Bangladesh

*I was told by a Punjabi-speaking officer that I was on fast track but other than telling me I was on fast track he did not give any further explanation. Okay fine, put us in fast track, but then we don't even know what fast track is. At least explain it to us. Give us some information. Is that not our right to understand the process in which our claims will be assessed? It's not our claims that they are playing with, it is our lives.*

—Umair, from Pakistan

We met a group of Urdu-speakers with limited English. Some had been given a one-page document in English with basic information about the Detained Fast Track. They did not realise their cases were being fast-tracked and they did not seem to have been given any information in translation.

We spoke to an Afghani detainee on the Detained Fast Track, who spoke no English. He told us he was very depressed and his hands would not stop shaking. He had been held for 40 hours in police custody before being taken to Manchester for 2–3 days and then to Harmondsworth. When we spoke to him, he had been in Harmondsworth for 32 days. He told us that he was illiterate and that he had never been in this kind of situation, so he could not understand any of the information he was given by the Home Office. A friend had read his papers and tried to explain it to him. He first met his solicitor after over three weeks in detention.

We found that there is in fact written information available in English and in translation. One asylum-seeker showed us a comprehensive document in English with an explanation of the process and their rights, including a helpful flowchart with relevant timescales. Another had been given the same material in Bengali. But not everyone seemed to have been given this written information.

The UKBA's new onsite Detained Fast Track office was also useful for some asylum-seekers in giving procedural information, and has the potential to significantly improve communication with asylum-seekers, although no case owners are based there. However, some interviewees were unaware of it.

## ***Asylum-seekers can wait for weeks before they understand that they are on Detained Fast Track, and how the process works***

Concerns have been expressed in the past about the way in which information is provided to asylum-seekers on the Detained Fast Track. Her Majesty's Chief Inspector of Prisons (HMIP) observed that the asylum process was not always adequately explained during the Detained Fast Track induction interview and that important events and timescales were not highlighted.<sup>44</sup> Telephone interpreters were used but the sound quality of the speaker phone was poor. HMIP recommended that asylum-seekers' understanding of the Detained Fast Track process should be checked at the end of the interview.

While the legal representative should also explain the Detained Fast Track in the first visit prior to the substantive interview, delays in the allocation of a representative mean that asylum-seekers can wait for weeks before they understand they are on the Detained Fast Track and how the process works. Legal representatives from a number of firms have reported receiving desperate faxes from asylum-seekers without access to legal advice during this period. As the first legal visit is often a short meeting immediately prior to the substantive interview, there is little time for clarification or questions, before the details of the asylum claim must be discussed.

Some asylum-seekers told us they were not informed in advance of the date and time of the substantive interview, despite the presence of onsite UKBA staff and the fact that the interview rooms, interpreters and legal representatives must be arranged in advance. Asylum-seekers, often the last to know when their substantive interview will take place, are expected to be ready with little or no notice.

*I was never told I was going to have an interview, I complained to the interviewer that there wasn't any notification that the interview was that day. I felt I needed the opportunity to be prepared. I told her I didn't expect them to call me because there wasn't a letter. I told them that I was not ready for the interview yet.*

— Akeen, from South Africa

*I didn't know I would have an interview until the morning. When I found out, I was panicking at first because I didn't know what they were going to ask me.*

— Kyeyune, from Uganda

*I was in Colnbrook, then I went to Campsfield, the next day they brought me to Harmondsworth and I said why? And somebody said you're on fast track. But then I*

*don't know the meaning of fast track. Immigration did not explain it to me either. When I called a legal aid solicitors, they said they can't take my case because I'm on fast track. I said then, still I don't know the meaning of fast track. After my interview when I met with a new private solicitor, the second one, he then said to me you're on fast track. Fast track means they deal with your case quick and they remove you.*

— Emeka, from Nigeria

## Irrational delays and speed

*Our analysis shows that the allocation of time on the Detained Fast Track is irrational and unaccountable, and operates to the maximum disadvantage of asylum-seekers. Time spent on considering their asylum claim is minimised in order to reduce the problematic detention of people with pending asylum cases. Yet this is completely undermined by delays of weeks at the start of the process, when the asylum-seeker is detained but can do nothing to prepare their case or seek legal advice. While asylum-seekers have only minutes with their solicitor before their interview, and only two days to make an appeal, the UKBA routinely misses its own deadlines by days or weeks. As a result, asylum-seekers have inadequate time when they need it, yet are detained for long periods in limbo.*

## Unexplained waits in detention

Detention Action's research has revealed an alarming picture of a dysfunctional “stop-start-stop” system. The system moves extremely fast precisely when time is needed by the asylum-seeker to prepare their case or for their claim to be considered. In contrast, asylum-seekers are kept in detention unnecessarily, waiting for the Detained Fast Track process to start, at a time when the UKBA is not processing their case. After refusal, asylum-seekers continue to be detained for substantial periods.

The Home Office emphasised in *Saadi* the need for detention to enable “the speed and effectiveness of the process which are its very objective... in order to achieve the purpose of ensuring that applicants remain at Oakington, it is necessary to take steps to prevent them from leaving ... If applicants absented themselves, even temporarily, this would present substantial difficulties for the processing of cases. It would affect the absent applicants' own cases. It would stand also to have a detrimental knock-on effect on the efficient operation of the decision making process for others.”<sup>45</sup> The unnecessary detention at the start of the process fundamentally undermines the rationale for the existence of the Detained Fast Track.

**A  
dysfunctional  
“stop-start-  
stop” system**

*Your time is worth nothing in here.*

— Louie, from Gambia



We found that 86% of those we interviewed had to wait for longer than a week at the beginning of the Detained Fast Track process before a legal representative was allocated and the substantive interview had taken place.<sup>46</sup> This is in stark contrast to the UKBA timeframe which suggests that the substantive interview should take place by the end of the second day of detention in Harmondsworth. Moreover, our research suggests that over half of asylum-seekers wait for two weeks or more and one quarter wait three weeks or more.<sup>47</sup> Not one asylum-seeker we spoke with had their interview within the timeframe set out by the UKBA. As a result, asylum-seekers are left in limbo, usually without access to legal advice, for weeks at the start of the process. The reasons for these delays are unclear.

Period waiting before substantive interview	Number of asylum-seekers <sup>48</sup>	Percentage of total
2 days or more	44	100%
1 week or more	38	86%
2 weeks or more	24	55%
3 weeks or more	11	25%
4 weeks or more	8	18%
5 weeks or more	2	5%

D was detained for 43 days before his substantive interview. He had been told he was on the Detained Fast Track at the time of his detention, but was given no written information about it. The officer spoke to him in English, which he understood a little bit, enough to realise that the Detained Fast Track would be fast. D had met a solicitor in another detention centre before being moved to Harmondsworth, but they weren't able to tell him if they could represent him while he was on the Detained Fast Track. He wasn't informed that he would be allocated a solicitor and he had no further contact with any legal advisor until the day of his substantive interview, after 43 days in detention. He was woken up on the morning of his interview, having been given no notice that it would take place that day. He had 15 minutes with his solicitor to prepare his case.

*It was really really painful, because I was waiting. Finally [after 28 days], when I went for the interview, after talking to the guy that interviewed me, I was sure that OK he will give you a reply the next day. Really hope that they had accepted my case. And for them to turn around and say to me "we refuse everything you've told us". And they gave me two days to appeal.*

— Emeka, from Nigeria

*It was hell man, it was just hell. I didn't know what to do, what to be afraid of, what it would be like.*

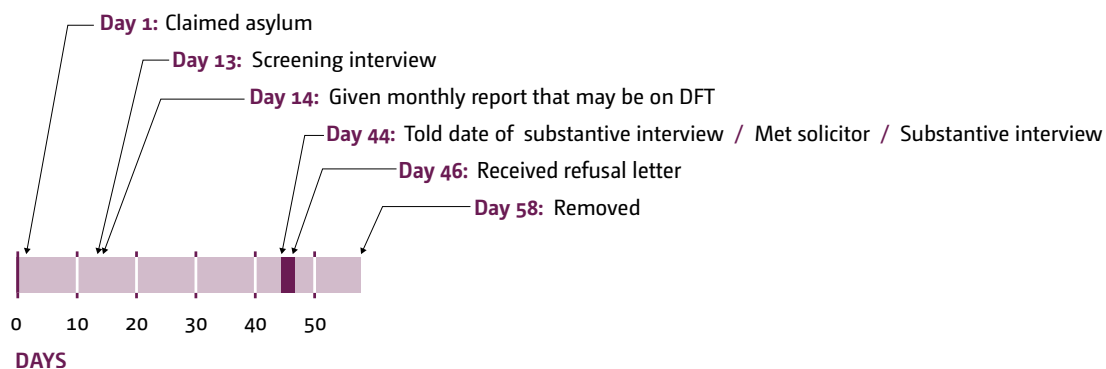
— Mallan, from Malawi

This unnecessary detention while waiting for the UKBA to start the process adds to the overall length of detention that asylum-seekers experience while their claims are processed, undermining the UKBA's justifications that asylum-seekers on the Detained Fast Track are detained for minimal periods only.

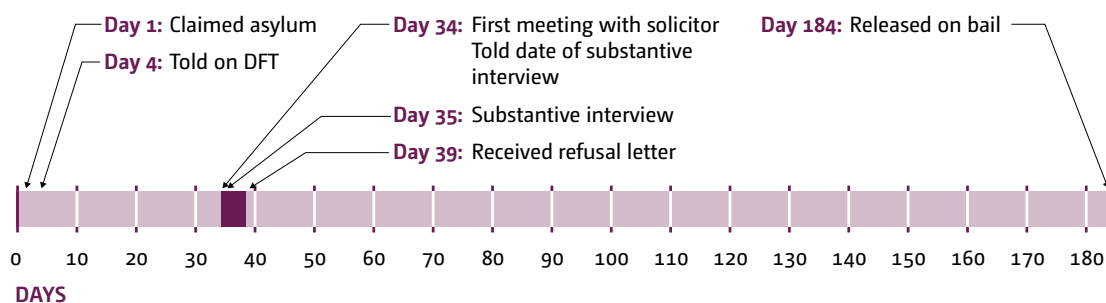
Period waiting before initial decision	Number of asylum-seekers <sup>49</sup>	Percentage of total
1 week or more	42	100%
2 weeks or more	30	71%
3 weeks or more	18	43%
4 weeks or more	9	21%
5 weeks or more	3	7%
6 weeks or more	1	2%

Although today's Detained Fast Track is not directly comparable to Oakington, our research shows that what was considered borderline acceptable in *Saadi* is very far removed from today's situation. In *Saadi*, a period of seven days' detention prior to an initial decision and usual release was considered by the courts to be reasonable only in the specific circumstances. Detention was justified in *Saadi* as "[c]areful thought has been given and is given on an ongoing basis, as to how to make the detention as short as possible while achieving the objectives of substantive decision-making within 7-10 days".<sup>50</sup> In fact, dissenting judges in the European Court of Human Rights voiced their concerns that "if a seven-day period of detention is not considered excessive, where and how do we draw the line for what is unacceptable?".<sup>51</sup> Asylum-seekers today are routinely waiting in detention for far longer than this for an initial decision.

### Irrational timing 1: the experience of 'D'



### Irrational timing 2: the experience of 'John B'



## An expensive waiting room

High security wings in Harmondsworth are a very expensive waiting room for those waiting for the Detained Fast Track to start. Detention is known to be a costly option, with one month in a high security detention centre costing over £5,500 per person.<sup>52</sup> The asylum-seekers we spoke with waited an average of 16 days in detention before the Detained Fast Track process began. 1,159 asylum-seekers received an initial decision on the Detained Fast Track in Harmondsworth in 2010.<sup>53</sup> Detention Action's findings suggest that asylum-seekers in 2010 may have spent 18,544 days unnecessarily detained, waiting for the Detained Fast Track process to start.

Detention costs around £130 per person per day.<sup>54</sup> The costs of supporting an asylum-seeker in the community have been estimated at £150 per week, i.e. £21 per day.<sup>55</sup> This suggests that it costs around £109 extra per day to keep someone in detention, rather than in the community.

Our data suggests that the cost to the taxpayer in 2010 of the periods of unnecessary detention at the start of the Detained Fast Track process may have been over £2,020,000.

## Detained Fast Track turning into long-term detention

While 22 days are allocated for the process to be completed,<sup>56</sup> in reality, asylum-seekers on the Detained Fast Track usually spend substantially longer in detention. For those who are going through the Detained Fast Track today, detention is inevitably longer than it was under Oakington Detained Fast Track because appeals are now heard in detention and they are usually detained until the conclusion of their case, instead of being released into the community. Although many asylum-seekers are removed quickly once their case has been finally refused, this is by no means always the case. In 2009-2010 in Harmondsworth, the average time period between decision and actual removal of those who were unsuccessful was 58 days for Detained Fast Track cases and 54 days for DNSA cases.<sup>57</sup>

HMIP has observed that "some detainees, fast tracked and refused, were still at Harmondsworth weeks or months later, awaiting removal. At this stage both the assigned caseworker and the assigned duty rep seemed to have disengaged from the case."<sup>58</sup>

Those we interviewed experienced their situation as detention without end, with no idea how long they would spend in detention.

***"It is better to go to prison and know the time you are serving"***

*Up to now I don't know what it means, how it works, I don't know. After I spent seven days there, they told me I was on fast track. I will be in fast track for fourteen days, then they will get a decision for me. After one month I went to them and I say "fourteen days is over, what is fast track, explain to me what is fast track?" And they explain to me that fast track is a procedure whereby it will be quickly dealt with. So now I think next week Tuesday I will be five months in detention, so what is fast track?*

— John A, from Nigeria

*Detention is prison and the worst thing is you get up every day not knowing are you going home today, what is going to happen today. You end up spending every day you worry "when am I going, when am I going?" Because I have sickle cell, I'm in a lot of pain and I've had depression and in my eyes, and the stress and everything has really affected*



*me. I didn't expect that they could keep somebody here. They say it's fast track, I've been in detention since June, today it's February."*

—John B, from Nigeria

*It is better to go to prison and know the time you are serving, rather than being here forever. I was told initially that my decision will be between 15 days and 28 days, but I have been here for over two months now. It's just a matter of living day in day out. It is up to the individual, if you do not have the strength, you can even take your own life.*

—Louie, from Gambia

*When they detained me, they told me that I am going to stay for 10/15 days. But now it is over 70 days and my life has stopped. What I do is eating and sitting...that's it. I thought at least it will be fast, that I could leave after 15 days either way. They lied to me, so now I feel like there are no rules anyway.*

— Anbar, from Egypt

## Asylum process at breakneck speed

Asylum-seekers on the Detained Fast Track face a fast process for deciding their claims, designed to take no more than 22 days.<sup>59</sup> Since its inception, the need to decide asylum claims quickly has been central to justifications of the Detained Fast Track, whether as a response to the increase in asylum applications in the late 1990s, in the context of the lengthy backlog of legacy cases in the pre-NAM days, or a key and ongoing part of government priorities on asylum. It has also been argued that “[i]t is in everyone’s interest that both genuine and unfounded asylum-seekers are quickly identified.”<sup>60</sup> Not only was Oakington designed to send a “strong signal to others thinking of trying to exploit our asylum system”, but also to make sure that “[g]enuine asylum-seekers can be given the support they need to integrate into society”. The government rightly suggested that “[p]eople who come to the UK may be fleeing terrible persecution and it is important that their claims are dealt with swiftly. So that rather than being stuck in an administrative limbo they are able to get on with rebuilding their lives.”<sup>61</sup> However, dissenting judges in *Saadi* at the European Court of Human Rights found the idea that the detention of asylum-seekers was in their “own best interests” to be “exceedingly dangerous.”<sup>62</sup>

From the 1998 White Paper “Fairer, Faster and Firmer” to the launch of the Asylum Improvement Project in 2010, the government has acknowledged the obligation to balance speedy resolution of cases with the need for a fair process. However, the fairness of the process has repeatedly been questioned. Human Rights Watch has described the Detained Fast Track as a “fast-moving treadmill with structural features inhibiting or even preventing them from making their cases effectively.”<sup>63</sup>

While flexibility in timescales has been built into the Detained Fast Track since the *RLC* case, many asylum-seekers and their representatives still struggle to gather necessary evidence such as translations or witness statements.<sup>64</sup> Difficulties have also been reported in getting independent expert reports. The UNHCR has welcomed some timescales being proactively extended by UKBA case owners, but also reported requests for extensions being refused for reasons which did not seem to be justified, including where there were delays in getting vital

evidence.<sup>65</sup> The UNHCR was concerned that asylum-seekers who are representing themselves may not be aware of the option of requesting an extension.<sup>66</sup> Similarly, although applications can be made to take cases out of the Detained Fast Track, legal representatives have noted that there can be insufficient time to attempt this because they are “battling even to present [the] case”.<sup>67</sup>

Our research also looked at when those on the Detained Fast Track established contact with their legal representative. 85% (29 of 34 interviewees who answered this question) did not meet with their representative in person until the day of the interview. This shows that those on the Detained Fast Track have minimal time with their legal representative to prepare their case.

Legal representatives are usually allocated the day before the substantive interview. It is the responsibility of the representative to make contact as asylum-seekers are not usually

given the name or contact details of their representative by the UKBA. Legal representatives we interviewed described difficulties in contacting their clients quickly because not all asylum-seekers in Harmondsworth have telephones and reception is sometimes poor. Representatives are concerned that there is usually insufficient time to arrange a legal visit on the day of allocation as interview rooms are often booked out by UKBA. As the substantive interview takes place the following morning, the legal representative is usually forced to take instructions

in a short meeting with the asylum-seeker immediately before the interview.

These time limitations, which are introduced to speed up the process, can have a serious impact on the relationship between asylum-seekers and their representatives, the quality of the case preparation and the legal advice that can be provided before the substantive interview. In their legal challenge to the Detained Fast Track, the Refugee Legal Centre argued that “legal representatives are often unable to take full instructions in the time available and feel that the applicant is placed under too great pressure in having to face an asylum interview the same day as he may be meeting his legal representative for the first time”.<sup>68</sup> There is little time to explain the Detained Fast Track process and the purpose of the interview or even to take instructions on the substance of the asylum claim. While some asylum-seekers we interviewed were impressed with the efforts of their representatives despite the inevitable difficulties, it was clearly very difficult for many to trust someone that they met for such a short time. In such circumstances, the Joint Committee on Human Rights (JCHR) considered it to be “self-evident” that an asylum-seeker who has had traumatic experiences will find it difficult to fully disclose what has happened to them to a UKBA case owner.<sup>69</sup>

Our interviewees described severely restricted interaction with their legal representatives:

*The rules had changed, so I could not use my own legal aid solicitor from outside. The guards woke me up and said “you have a legal visit”. A solicitor introduced himself to me and I asked him “who are you? I don’t even know you!”*

— Louie, from Gambia

*I don’t know if my solicitor understood what I was telling him. He did not tell me what to expect or what will happen. I did not know anything. How can I explain my case to the solicitor when I only met him five minutes before my interview? Do you think that is enough time?*

— Asif, from Pakistan

## **Minimal time with their legal representatives**

*How can someone who is supposed to help you only give you 20 minutes before your interview to get all of the details, when the interview itself lasted eight hours? We do not get proper legal advice, which the government promises us we will have.*

— Mallan, from Malawi

*I spoke with my solicitor, but the system is madness, because they give you half an hour to tell them your whole case.*

— Louie, from Gambia

It is impossible to establish whether the tight timescales and limited availability of evidence in the Detained Fast Track affect the decisions that are made, since cases considered on Detained Fast Track and in the community are not strictly comparable. However, the Quality Integration Project of the UNHCR has raised concerns about the quality of initial decision-making by UKBA case owners. In their last report in 2010, the UNHCR noted some improvements,<sup>70</sup> but the great majority of the concerns identified in 2007-08 were still prevalent.<sup>71</sup> The UNHCR observed “excessive and inappropriate emphasis” on factors which are not relevant to the assessment of credibility.<sup>72</sup> It criticised the “inappropriately heavy burden onto Detained Fast Track applicants to prove their claim” and the “unreasonable expectations of evidence provision” which were particularly concerning given asylum-seekers on the Detained Fast Track have to present their case in detention to fast timescales.<sup>73</sup> The UNHCR criticised poor consideration and problematic reasoning on whether a claim engaged the Refugee Convention, especially in relation to claims involving gender or membership of a particular social group.<sup>74</sup> It found “insufficient engagement with individual characteristics and circumstances of the applicant”.<sup>75</sup>

Some of those we interviewed indicated that they might have been able to engage with the asylum process more meaningfully had there been more time or opportunity to access evidence to support their claims:

*When you are arrested you're not allowed to bring any of the details, no evidence, nothing, so the only evidence for me is what you say with your mouth, and they will blame you if you don't give them evidence.*

— John B, from Nigeria

*“Delays in being allocated a legal rep and having the substantive interview are a really common problem. I meet asylum-seekers at the legal surgeries who I know will be on fast-track, but I can't take on their case because they will get a duty representative. They don't know what is going on. We could do so much in the time that is wasted, gathering witness statements and making referrals. It is much easier to do this pre-decision.*

*“UKBA usually rings us by midday the day before the interview. In Harmondsworth, interview rooms are really booked up so we generally can't get in to see the client the same day. UKBA presumes that a half an hour meeting before the interview is acceptable. You can sometimes get more time if you request it, but it's at the discretion of UKBA.”*

— A legal representative with experience of the Detained Fast Track

*Perhaps with all the evidence and the right amount of time, they would not refuse our claims so quickly. We are honest men, yet we have been called liars over and over in such a short space of time. They don't know us, how can they reduce us all to liars?*

— Umair, from Pakistan

*When they refused me I had no evidence, it was in Libya, and my family they were scared to send me the evidence, so none of them they can gamble with their life and send me the evidence. I got a flight. Finally, my friend got me that evidence, so I made fresh claim, and now I'm waiting.*

— Mohammed, from Libya

***the majority of  
asylum-seekers have to  
negotiate the process  
unrepresented***

After the initial decision, the majority of asylum-seekers on the Detained Fast Track have to negotiate the process unrepresented, often in a language they do not speak. Legal aid representatives must apply the merits test and assess whether there is a 50% likelihood of success in order to represent for the appeal. In a system in which 93% of appeals are dismissed, many representatives assess the merits as insufficient, leaving asylum-seekers unrepresented at their appeals. 63% of asylum-seekers on the Detained Fast Track were unrepresented at appeal in 2010.<sup>76</sup> In contrast, the Home Office is always represented. ILPA has argued that this imbalance is “on the borderline of human rights compliant ... [as] international human rights laws require that any tribunal must ensure respect for the principle of procedural equality and there should be a reasonable opportunity to present one’s case under conditions that do not place the individual concerned



Zaro Wiggins:  
*Illegal Aliens*



at a substantial disadvantage vis a vis his opponent and to be represented by counsel for that purpose".<sup>77</sup> The importance of legal representation is underlined by the fact that 14% of appeals were allowed where the asylum-seeker was represented, as opposed to 2% where they were unrepresented.<sup>78</sup> ILPA has argued that, if the Detained Fast Track is to continue, there should not be a merits test for Detained Fast Track cases, but that there should be "lawyers assisting those people throughout the process".<sup>79</sup>

The interviewees also stressed the sense of helplessness they experienced as a result of not having legal representatives throughout the Detained Fast Track process:

*I'm not experienced and I had no solicitor, that's why I done the wrong step.*

— Mohammed, from Libya

*I've been doing the case myself after the solicitor abandoned me. I've been trying to help myself and the immigration took advantage of that to do all sorts of rubbish.*

— John A, from Nigeria

*Even the criminals when they go to court, they get them legal representation. Here if you have a lawyer or don't have a lawyer, they race ahead and continue.*

— Matthew, from Ghana

The asylum-seekers we interviewed had little trust in a system that they felt marginalised and dehumanised them:

*I didn't understand fast track before, and I still don't understand it now. It is a way for them to save money and send people home, because there is no truth on fast track. My solicitor asked immigration to remove me from fast track as my case is not suitable for it. She also asked them to let me out on bail or TA to gather evidence. But they refused, because they have no interest in me preparing a good case with evidence, as this will make it hard for them to get rid of me.*

— Mallan, from Malawi

*Nobody knows how they take that decision. If you are able to look at my refusal, you will know that it is not a human being that is refusing that letter, I think it is a machine because a human being we've all got hearts, we've all got human sympathy.*

— John A, from Nigeria

*Fast Track is a mockery. Their minds are already made up. Home Office should look at each case individually with time. They do not even try to find out if we are speaking the truth and there is absolutely nothing we can do. We have no power and no say in our own cases.*

— Yasir, from Pakistan

## A straightforward case?

*The Detained Fast Track is designed to process straightforward asylum claims quickly. However, the UKBA does not have enough information to determine in advance which cases are suitable for a swift decision, meaning that vulnerable individuals and those with complex cases wrongly have their claims processed in detention.*

## The screening process

If the fairness of the Detained Fast Track is questionable, is it at least only used for straightforward asylum cases which would be refused under any system? The screening processes that decide whether an asylum-seeker's claim is processed on the Detained Fast Track inspire no confidence that this is the case. They are entirely inadequate to assessing the complexity or otherwise of an asylum claim, because the relevant information is not available at the screening stage. As a result, the decision to route an asylum-seeker onto the Detained Fast Track is based on rules of thumb and guesswork.

The decision to place an asylum-seeker on the Detained Fast Track is made on the basis of a screening interview. According to UKBA policy "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 *quick decision* may be made".<sup>80</sup> The UKBA instructs its staff that "[t]here is a general presumption that the majority of asylum applications are ones on which a quick decision may be made, unless there is evidence to suggest otherwise."<sup>81</sup> The screening interview typically lasts a few minutes, and usually takes place in a non-confidential environment. The asylum-seeker is asked their country of origin, route of arrival in the UK, length of time in the UK, and very broadly the reasons for claiming asylum. Questions are not asked about the details of the asylum claim, such as whether the asylum-seeker is a survivor of torture or sexual violence. The JCHR has expressed concerns that "the decision to detain an asylum-seeker may be arbitrary because it is based on assumptions about the safety or otherwise of the country from which the asylum-seeker has come".<sup>82</sup> Indeed, 16% of cases routed onto the Detained Fast Track are subsequently taken out, when it becomes clear that they are unsuitable.<sup>83</sup>

Certain categories of people are not eligible for the Detained Fast Track, including women over 24 months pregnant, families, disabled people and victims of trafficking. Survivors of torture who have independent evidence are also ineligible, although few will have access to independent evidence before they have begun to prepare their asylum case. For all who do not fall into these categories, a decision on suitability for the Detained Fast Track must be made based on vaguely worded guidance.<sup>84</sup> The UNHCR has expressed concerns that "safeguards do not always operate effectively enough to identify complex claims and vulnerable applicants not suitable for a detained accelerated decision-making procedure".<sup>85</sup> As ILPA noted, "it is a mystery of the fast track process how the straightforwardness of claims can be accurately assessed when the screening interview elicits no or virtually no information about the substance of the claim".<sup>86</sup> And yet, given the 99% refusal rate on the Detained Fast Track, this rudimentary assessment has a huge impact on an individual's chances of being granted protection.

## Vulnerable individuals and complex cases

In practice, vulnerable individuals and people with complex cases are often routed onto the Detained Fast Track, following their screening interview. Their asylum claim is heard and refused in detention. Detention Action has spoken to asylum-seekers on the Detained Fast Track from countries where conflict and human rights violations are well-documented. These include Iraq, Iran, Libya, Yemen, Ivory Coast, Sri Lanka, and the Democratic Republic of Congo. In 2009, the highest proportion (23%) of asylum-seekers on the Detained Fast Track came from Afghanistan.<sup>87</sup> We have also spoken to survivors of torture or homophobic persecution, age-disputed children, and other vulnerable individuals.

In 2009, 16% of cases were taken out of the Detained Fast Track because they were found to be more complex than originally thought at screening.<sup>88</sup> While it is positive that cases are taken out of the Detained Fast Track, these figures underline the inadequacy of initial procedures to adequately assess complexity. Moreover, time pressures mean that legal representatives often do not request cases to be taken off the Detained Fast Track.<sup>89</sup> Where they do, they do not have time to make detailed legal arguments. Such requests are often refused. According to the Medical Foundation for the Care of the Victims of Torture, “in practice significant numbers of torture survivors ... are winding up in [the Detained Fast Track]. We know this because our doctors play a key role in documenting evidence of their abuse.”<sup>90</sup> Although under the current policy anyone accepted by the Medical Foundation for assessment is released from the Detained Fast Track and from detention, this policy is currently under review by the UKBA.



Mahdi Hassan:  
*Untitled*

*Two days ago they removed 35 people to Afghanistan. So where are the human rights? We mess up their country and then remove their rights here as well. Even David Cameron knows that there are real issues in Afghanistan, so how can he send people back?*

— Mallan, from Malawi

*I've had mental health problems since I was a child. Sometimes I get really scared in here, my blood pressure becomes high. I cannot breathe properly. I don't understand anything in here, I don't know what to expect or do. In Pakistan when I was admitted, they used to give me electric shocks but at least my mother used to visit me. My mother is dead and I do not want shocks anymore. Over here in detention, it feels worse than the mental hospital. Keep me somewhere else but not here, not like this. Being locked up like this is making me worse. Send me to a mental hospital but not here, I do not deserve to be here.*

— Yasir, from Pakistan

*I've got a death sentence in Libya, I've got two arresting orders. I've told the immigration "if you aren't happy with me to stay in your country, that's your country, and you've got the right. You just send me where ever you want, but you can't send me back to Libya, that's grave danger." Everyone knows what happens, what's gonna happen in Libya. We been living in dictatorship for 42 years now, people suffer, we try to change things.*

— Mohammed, from Libya

While this report focuses on the Detained Fast Track as it operates for men in Harmondsworth, NGOs and monitoring bodies have expressed concerns about the processing of gender-based claims on the Detained Fast Track. These claims are rarely straightforward, because of the high prevalence of rape and sexual violence<sup>91</sup> and also because of complexities in understanding the nature of their case, when non-state actors are often the perpetrators of human rights abuses and questions of adequate state protection are highly relevant.<sup>92</sup> It has been argued that the gender Asylum Policy Instructions, which aim to ensure that women's claims are treated in an individual and impartial manner, are undermined by the use of the Detained Fast Track for women<sup>93</sup> and that more rigorous procedures are needed to prevent complex cases going into the Detained Fast Track.<sup>94</sup> The assessment of suitability for the Detained Fast Track has been found to be "overly simplistic, flawed and ineffective in identifying gender-related cases".<sup>95</sup>

Failure to claim asylum at the earliest opportunity counts against the asylum-seeker, with the UKBA being quick to consider such claims as "late or opportunistic" and suitable for the Detained Fast Track.<sup>96</sup> While some people claim asylum at the point of arrival in the UK, others spend months or even years here before making an asylum claim. Some take proactive steps to regularise their status whereas others may only claim asylum once they are picked up by the UKBA. However, there is no basis for assuming that all late asylum claims are unfounded. Torture victims and vulnerable individuals frequently claim asylum late, often due to lack of awareness of the right to asylum, or fear that they will automatically be sent back to their country of origin. The difficulties of effective screening mean that it is not in practice possible to distinguish straightforward claims and the lateness of a claim is no reliable indicator that it will be unfounded.

Those who have spent several years in the UK may also have families here, adding a further dimension of complexity to their case whatever the nature of their asylum claim.

*Everybody that come from Nigeria they put them on fast track and that is not fair. Look at their cases, don't just push them on fast track. There is no way you can judge a case that is genuine when you are trying to push that person out in under two weeks. Eleven years in this country, I have got a wife and a daughter and you are not acknowledging it at all. If you acknowledge those things you cannot deal with my case in fourteen days.*

— John A, from Nigeria

*Nope, I still to this day don't understand it. There will be people on fast track, and people not on fast track, but there seems to be no system and I am baffled. There seems to be no fixed rules for deciding who is on it, I was categorised and didn't understand why. I tried to compare my case with similar cases of people who were not on fast track, but I still do not understand how they decide who to put on it.*

— Alex, from Ivory Coast



## An unnecessary use of detention

*The Detained Fast Track has become even less necessary than when first introduced, as the UKBA is able to process asylum claims almost as quickly in the community. The UK and other governments are increasingly finding that systems which allow asylum-seekers to actively engage with decision-makers are cheaper and more effective than an exclusive reliance on detention and enforcement. The Detained Fast Track is not a necessary part of the asylum system but distorts the UKBA's existing policy on detention. New asylum-seekers can be detained when they meet none of the normal criteria for detention.*

### Asylum processes in the community

The Detained Fast Track was introduced to enable some asylum claims to be processed quickly, at a time of extensive delays and epic backlogs. The European Court of Human Rights accepted that, “given the difficult administrative problems with which the United Kingdom was confronted during the period in question, with an escalating flow of huge numbers of asylum-seekers... it was not incompatible with Article 5 § 1(f) of the Convention to detain the applicant for seven days in suitable conditions to enable his claim to asylum to be processed speedily.”<sup>97</sup> Yet the argument that speedy processing of asylum claims is only possible through the use of detention is becoming increasingly untenable.

The New Asylum Model (NAM), introduced in 2007, has dramatically reduced the time it takes for the UKBA to make initial decisions and for cases to be resolved. NAM involves the allocation of every new asylum case to a designated case owner within the UKBA, who in theory is responsible for all decisions and communication until the applicant is granted leave to remain or removed. The Immigration Minister Damian Green has described “progress towards an asylum system with swifter case conclusions and no backlogs, delivered at significantly lower cost to the taxpayer.”<sup>98</sup> Under NAM, 53% of all cases have been concluded within six months since May 2010.<sup>99</sup> In one pilot project in Yorkshire and Humberside, asylum-seekers are interviewed five days after their arrival in the region, in contrast to asylum-seekers on the Detained Fast Track who are interviewed on average two weeks after their detention.<sup>100</sup> While such speed is problematic in terms of access to legal advice, it demonstrates that detention is not a precondition of fast processing.

Such is the progress of the NAM in reducing delays, that speed is no longer the government's overwhelm-



Badhaga Bgonga: *Waiting in Vain*

Qui Yang Li:  
*Watch Me  
Drown*



ing priority for further improvements. The Minister has recognised the need for the Asylum Improvement Project, announced in July 2010, to speed up the processing of applications while improving the quality of decision-making.<sup>101</sup> While the Minister expected that the vast majority of cases would be concluded well within six months, the 90% target introduced by the previous government has been scrapped. Refugee organisations have welcomed the removal of the target and emphasised that much still needs to be done to improve the quality of decisions on NAM.<sup>102</sup>

The UKBA has developed two important initiatives that improve the quality of the asylum process by enabling asylum-seekers to engage better with it. The Early Legal Advice Project (ELAP) was launched in November 2010 in the Midlands and East region for 16% of new asylum claims. The project aims to “test whether the provision of legal advice to asylum-seekers at an earlier stage in the process gets more cases right first time. It also aims to identify those who are in need of protection earlier, manage public funds effectively, and increase confidence in the asylum system.”<sup>103</sup> An asylum-seeker on ELAP sees their legal representative two or three days after the asylum application is lodged. The substantive interview takes place after 14 days, during which time the asylum-seeker is likely to meet their legal representative at least three times. Legal advisors discuss the claim with the decision-maker before an initial decision is taken, to ensure that all material facts and evidence are available.

The initial pilot of the ELAP in Solihull in 2007-08 generated significant evidence of improved decision-making, with a 73% higher initial grant rate of refugee status and a 50% lower successful appeal rate.<sup>104</sup> The independent evaluation found that fewer asylum-seekers absconded due to closer contact management.<sup>105</sup> 58% of cases were concluded within six months.<sup>106</sup> Both UKBA case owners and legal representatives involved in ELAP also reported that “applicants felt more engaged with their claim and that they seemed to have a better understanding of what was happening at each stage”.<sup>107</sup> This contributed to a significantly higher removal rate, as “there was a greater understanding and acceptance by the applicant of the reasons for a negative decision [and] that they had been able to put their case fully”.<sup>108</sup> The independent evaluation estimated costs savings of £47,205.50 for every 100 cases, and

recommended that the pilot should “become the normal procedure ... with a steady and phased introduction of this procedure to the other regions”.<sup>109</sup>

The UKBA is also working closely with Refugee Action’s Key Worker Pilot in Liverpool. The pilot involves asylum-seekers receiving support from a voluntary sector Key Worker throughout the asylum process in the community. It aims to ensure that their support needs are met and that they fully understand and participate in each stage of the asylum process. It is hoped that this support will enable asylum-seekers to “make better decisions about their futures, whether that involves better integration, or eventual return, and reduce the emotional and physical stress associated with being in the asylum process.”<sup>110</sup>

The UKBA has also accepted the need to move away from a detention-based system of returns for families. The new family returns process recognises the need for improved dialogue with families facing removal, encouraging them to engage with the system and make decisions about the future. While the UKBA has not accepted that a similar process is needed for adults, the principles behind these developments should be equally applicable to adults.

These initiatives are part of a growing international trend away from the automatic use of detention as a tool of migration control, towards systems that allow asylum-seekers to live in the community and give them the time and resources to participate actively in the process. The International Detention Coalition has identified a range of mechanisms currently being used by governments around the world, which focus on “assessing each case and ensuring that the community setting contains the necessary structures and conditions that will best enable the individual to work towards a resolution of their migration status with authorities.”<sup>111</sup> The most successful programmes, from both government and welfare perspectives, have been those that support migrants throughout the immigration process “with information and advice to explore all options to remain in the country legally and, if needed, to consider all avenues to depart the country.”<sup>112</sup>

For example, Australia has developed intensive case management programmes to support migrants through the process and towards resolution of their cases. Between March 2006 and January 2009, the compliance rate for these programmes was 93%. In addition, “60% of those not granted a visa to remain in the country departed independently.”<sup>113</sup> The programme costs less than a third of the cost of detention.

***A growing international trend away from the automatic use of detention***

## **A distortion of detention policy**

If the UKBA insists that detention is necessary to enforce immigration control, it does not follow that the Detained Fast Track is an essential component of this approach. On the contrary, the Detained Fast Track is an exception to the rationale behind overall detention policy and distorts decision-making on which migrants should be detained. The abolition of the Detained Fast Track would not undermine the UKBA’s ability to use detention where it judges it necessary.

The UKBA’s Enforcement Instructions and Guidance set out current policy on detention. It quotes the 1998 White Paper “Fairer, Faster and Firmer – A Modern Approach to Immigration and Asylum” as confirming “a presumption in favour of temporary admission or release and that, wherever possible, we would use alternatives to detention.”<sup>114</sup> The Guidance sets out three criteria for the use of detention:



1. There is a presumption in favour of temporary admission or temporary release – 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.
2. All reasonable alternatives to detention must be considered before detention is authorised.
3. Each case must be considered on its individual merits.<sup>115</sup>

These criteria do not apply to asylum-seekers detained on the Detained Fast Track. It is likely that few such cases would meet them. The decision to place an asylum-seeker on the Detained Fast Track requires no belief that the person may abscond: indeed, there is much evidence that asylum-seekers with pending claims rarely fail to comply.<sup>116</sup> The UKBA does

## *The presumption of liberty is sacrificed to the administrative convenience of the government*

not need to believe that considering the case in the community would be unreasonable as the Detained Fast Track exists for administrative convenience. Finally, the inadequate information available to the UKBA during the screening process severely limits the individual consideration that is possible as to whether the person should be detained.

The abolition of the Detained Fast Track would not prevent the UKBA from considering some asylum claims in detention, where these criteria are met and where the UKBA insists detention is absolutely necessary. Indeed, the UKBA already considers some asylum claims in detention outside the Detained Fast Track, usually where the asylum-seeker has finished a prison sentence but their claim is not considered suitable for the Detained Fast Track. Given the speed of decision-making in the NAM, these claims can be processed quickly outside the Detained Fast Track.

While the UKBA allocates 251 detention spaces to Detained Fast Track in Harmondsworth, there will be financial and administrative pressure to fill them. As a result, many asylum-seekers are detained when it is entirely unnecessary. The Detained Fast Track means that the presumption of liberty is sacrificed to the administrative convenience of the government.

Mahdi Hassan:  
*Destiny*





## Conclusion

**W**hen the Detained Fast Track was launched in 2000, and extended to Harmondsworth in 2003, it represented a gesture of desperation by the government. Asylum numbers were at historically high levels. Huge backlogs of claims from the previous decade were still waiting to be processed. Asylum-seekers could wait years for a decision. The Detained Fast Track guaranteed that at least a proportion of asylum claims would be resolved quickly.

The price of this quick processing was that people would be detained purely for having claimed asylum. The detention of migrants in order to remove them is inherently problematic. The detention of new asylum-seekers in order to process their claim, for pure administrative convenience, is of another order of seriousness. The Detained Fast Track is supposed to be for straightforward claims only, and yet paradoxically the decision on whether to fast-track an asylum case is made before proper information is available about the substance of the claim. In practice, the screening process seems to rely on guesswork and the hope that unsuitable cases will be identified and taken off the process at a later stage. 16% of cases are removed from the Detained Fast Track, vulnerable individuals who have been detained unnecessarily.

The conditions in which asylum-seekers on the Detained Fast Track are held have deteriorated dramatically since it was launched. In contrast to the lower security environment of Oakington, considered suitable for asylum-seekers whose claims are pending, male asylum-seekers on the Detained Fast Track are now held in Harmondsworth, often in new wings equivalent to a high security prison that were designed for the most challenging detainees and ex-offenders. In order to reach Harmondsworth, many asylum-seekers face one or more long journeys between detention centres around the UK, which only increase their confusion and distress.

***A dinosaur that  
lumbers on through  
successive reforms of  
the asylum system***

Most importantly, the basic rationale for the Detained Fast Track is undermined by the selectiveness of its speed, which at every stage operates to the detriment of asylum-seekers and prevents them from engaging effectively with the asylum system. It is a “stop-start-stop” process, which is too fast whenever asylum-seekers need time to present their case, and far too slow whenever there is nothing that they can do. They spend weeks in detention waiting for the UKBA to start the process, without legal advice, confused and ill-informed about the process and what will happen next. They are then suddenly swept up in a high-speed succession of interviews, decisions and appeals, often forced to negotiate a complex legal system without representation and in a language they may not understand, all in a matter of a few days. Finally, their asylum claims having been refused, they can spend weeks or months more in detention awaiting removal. The Detained Fast Track is supposed to be fast in order to minimise the unnecessary detention of new asylum-seekers. These periods of waiting, where detention is used as an expensive waiting room, prolong detention, while the deadlines faced by asylum-seekers cast doubt on whether they can adequately present their cases. Those asylum-seekers on the Detained Fast Track inevitably do not trust a system which appears confusing, irrational and hostile.

Eleven years on, can the Detained Fast Track still be seen as necessary? On the contrary, the external circumstances used to justify its introduction have largely disappeared. The numbers of new asylum claims were 79% lower in 2010 than in 2002. The great majority of the backlog of outstanding claims have been resolved. This has been achieved through the introduction of the New Asylum Model in speeding up asylum decisions, so that most asylum-seekers in the community no longer face long waits for decisions.

Alongside the trend towards faster asylum decision-making in the community, the UKBA is increasingly seeing the value of allowing asylum-seekers to engage more actively in their cases. The pilot of the Early Legal Advice Project in Solihull produced higher quality decisions, fewer successful appeals, increased voluntary return and financial savings. The Key Workers Pilot in Liverpool is based on similar principles of encouraging asylum-seekers to participate actively, with welfare support and access to information. Larger projects in Australia and Sweden have led to high rates of voluntary return, with consequent cost savings.

In this context, the Detained Fast Track is an anomaly which runs counter to current thinking on how to process asylum claims with better results for all concerned. It is a dinosaur that lumbers on through successive reforms of the asylum system, based on the flawed assumption that detention is necessary for fast decisions and that an accelerated process in detention can be fair.

The abolition of the Detained Fast Track would cause few difficulties for the UKBA, saving money and improving the efficiency of the use of detention. All that is required is the application of the same criteria for detention to new asylum-seekers as are already used for refused asylum-seekers and other migrants facing removal. Like other migrants, new asylum-seekers should not be detained except as a last resort, based on individual circumstances, for the shortest possible time. If detention must be used, the UKBA should at least follow its own argument that “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”.<sup>117</sup>

The Detained Fast Track is an inefficient and irrational system, inevitably unfair and dysfunctional, and yet entirely unnecessary. It is time for it to be abolished.





# Recommendations

- 1** The Detained Fast Track should be abolished, as it is unnecessary, unfair and dysfunctional.

If it continues to be used, improvements should be made to the current process.

- 2** A thorough review of the screening process should be carried out. Reform should include access to legal advice before the decision to process a case on the Detained Fast Track, in order to minimise the routing in of vulnerable individuals and complex cases.
- 3** The UKBA should ensure that clear, accessible and prompt information about the Detained Fast Track is provided to asylum-seekers both in writing and orally, in a language that they understand.
- 4** Asylum-seekers on the Detained Fast Track should be provided with a legal representative on their second day in detention at the latest. If there is no capacity to meet these timescales, asylum-seekers should not be routed onto the Detained Fast Track.
- 5** Sufficient time should be built in routinely, to ensure that asylum-seekers and their legal representatives have the opportunity to properly prepare their case, including gathering evidence, at each stage of the process.
- 6** The UKBA should consider credibility and the availability of evidence in the light of the challenges of making an asylum claim in a detained and accelerated procedure.
- 7** The Legal Services Commission should abolish the merits test for the Detained Fast Track, so that asylum-seekers on the Detained Fast Track are represented throughout the appeals process.

Steps should be taken to enable oversight and review of the Detained Fast Track.

- 8** The Chief Inspector of the UKBA should address the irrational and inefficient delays and decision-making within a review the Detained Fast Track.
- 9** Ministers should include a review of the Detained Fast Track within a second phase of the Asylum Improvement Project.
- 10** Legal practitioners and NGOs should work together on advocacy strategies and if necessary litigation to challenge the Detained Fast Track.
- 11** Dialogue between the UKBA and NGOs should be further developed to address the problems of the Detained Fast Track and to find alternatives.



# Notes

- 1 *Saadi v UK* (Application No 13229/03)
- 2 DFT & DNSA – Intake Selection (AIU Instruction). <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/detention/guidance/dftanddnsaintakeselection?view=Binary>, accessed 12/04/11
- 3 *ibid*
- 4 Currently, there are six legal aid firms with contracts for the Detained Fast Track in Harmondsworth
- 5 Legal aid under Controlled Legal Representation “will not be provided unless the appeal for which legal representation is sought is likely to be successful. This simply means better than a 50-50 chance of success. However, if the prospects of success are borderline or unclear, and the matter is of particular importance (such as an asylum appeal), CLR may be provided.” ILPA, *Information Sheet on Legal Aid 1 – General*, 2007. <http://www.ilpa.org.uk/info-service/Info%20sheet%20Legal%20Aid1.pdf>, accessed 11/04/11
- 6 Detained Fast Track and Detained NSA, 09 September 2009, UKBA. Outline of process circulated to stakeholders. Timings for access to legal representation are provided in “Detained Fast Track Process Overview”, <http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/detention/guidance/detained-fast-track-processmap?view=Binary>, accessed 11/04/11. The UKBA document provided to asylum-seekers on the Detained Fast Track, “Asylum Procedures Under the Fast Track Process”, states that asylum-seekers will have the “opportunity to discuss your case with a legal representative” on Day 1, depending on time of arrival in the centre. The document for asylum-seekers only goes up to Day 9, after which it states that the solicitor will advise on the process and that reconsideration may be possible
- 7 Home Office, “Detained Fast Track Processes, Operational Instruction on Flexibility”, April 2005. [http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/detention/guidance/Detained\\_fast\\_track\\_process1.pdf?view=Binary](http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/detention/guidance/Detained_fast_track_process1.pdf?view=Binary), accessed 11/04/11. Circumstances in which the UKBA may agree to timescales being extended include illness, non- or late-attendance of representative, inadequate interpretation, non-cooperation, if the applicant or representative asks for more time to prepare for the interview, filing material relevant to the claim post-interview
- 8 *ibid*. The UKBA gives the example of case where the applicant is “obtaining supporting evidence that fairness requires that it be taken into account when making the initial decision”
- 9 Home Office, *Control of Immigration: United Kingdom Statistics 2009: Supplementary Tables*, Table 2r, August 2010. <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/hosb1510/?view=Standard&pubID=864717>, accessed 12/04/11
- 10 *ibid*. 205 applications were withdrawn at initial decision stage and 25 at appeal stage
- 11 Home Office, *Control of Immigration: United Kingdom Statistics 2009: Supplementary Tables*, Tables 2r and 2t, August 2010. <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/hosb1510/?view=Standard&pubID=864717>, accessed 12/04/11
- 12 According to Harmondsworth IRC, March 2011

- 13 Figures released by the UKBA in response to a request under the Freedom of Information Act, on 03/02/11. 1,159 initial decisions were made in 2010, of which 1,150 were refusals (99%)
- 14 Figures provided for January-September 2010 by the Ministry of Justice in response to a request under the Freedom of Information Act, on 01/03/11. Figures for Yarl's Wood are comparable, with 96% claims refused and 91% appeals dismissed in 2008. Human Rights Watch, *Fast-Tracked Unfairness: Detention and Denial of Women Asylum Seekers in the UK*, 2010, p1
- 15 Figures for 2008 and 2009 from Home Office, *Control of Immigration: United Kingdom Statistics 2009: Supplementary Tables*, Table 2r, August 2010. <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/hosb1510/?view=Standard&pubID=864717>, accessed 12/04/11. Figures for 2010 released by the UKBA in response to a request under the Freedom of Information Act, on 03/02/11
- 16 Home Office, *Control of Immigration: United Kingdom Statistics 2009*, August 2010, p26. <http://webarchive.nationalarchives.gov.uk/20110218135832/rds.homeoffice.gov.uk/rds/pdfs10/hosb1510.pdf>, accessed 12/04/11. Grants include refugee status, humanitarian protection and discretionary leave. No asylum seekers on the Detained Fast Track were granted humanitarian protection or discretionary leave. No figures currently available for 2010
- 17 Percentages are of decisions made, excluding appeals withdrawn. Figures for 2008 and 2009 from Home Office, *Control of Immigration: United Kingdom Statistics 2009: Supplementary Tables*, Table 2r, August 2010. <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/hosb1510/?view=Standard&pubID=864717>, accessed 12/04/11. Figures for January-September 2010 provided by the Ministry of Justice in response to a request under the Freedom of Information Act, on 01/03/11
- 18 *Home Office Statistical Bulletin*, "Control of Immigration Statistics 2009", Table 5.2. <http://webarchive.nationalarchives.gov.uk/20110218135832/rds.homeoffice.gov.uk/rds/pdfs10/hosb1510.pdf>, accessed 12/04/11. No figures currently available for 2010
- 19 UKBA, "Detained Fast Track and Detained NSA", 09 September 2009. Outline of process circulated to stakeholders
- 20 Saadi [2001] EWCA Civ 1512
- 21 *ibid*
- 22 Immigration Law Practitioners' Association, *The Detained Fast Track Process, A best practice guide*, 2008, p2
- 23 Home Office, *Control of Immigration: United Kingdom Statistics 2009: Supplementary Tables*, Table 2s, August 2010. <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/hosb1510/?view=Standard&pubID=864717>, accessed 12/04/11
- 24 Home Office, *Controlling our borders: Making migration work for Britain. Five year strategy for asylum and immigration*, 2005
- 25 *ibid*, p35
- 26 *ibid*, p36
- 27 Home Office, *Control of Immigration: Quarterly Statistical Summary*, Quarter 4 2010, p1. Available at <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/control-immigration-q4-2010/control-immigration-q4-2010?view=Binary>, accessed 14/04/11
- 28 According to figures provided to BID in response to a request under the Freedom of Information Act in October 2005. BID, *Working against the clock: inadequacy and injustice in the fast track system*, 2006, p10

- 29 Home Office, *Control of Immigration: United Kingdom Statistics 2009*: Supplementary Tables, Table 2r, August 2010. <http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/hosb1510/?view=Standard&pubID=864717>, accessed 12/04/11
- 30 *Saadi v UK* (Application No 13229/03)
- 31 *ibid*
- 32 *ibid*
- 33 *Refugee Legal Centre v SSHD* [2004] EWCA Civ 1481
- 34 *R (Refugee Legal Centre) v Secretary of State for the Home Department*, EWHC 684 (Admin) 2004 WL 960806, Case no CO/5532/2003
- 35 *Refugee Legal Centre v SSHD* [2004] EWCA Civ 1481
- 36 For example, in the first few days in a detention centre, an asylum-seeker has an appointment with a nurse and induction into the centre, as well as meeting their roommate and getting used to arrangements for eating, washing facilities and activities in the new regime
- 37 *Saadi* [2002] UKHL 41. Evidence on the “relaxed regime” in Oakington provided in a statement by Ian Martin, Oakington Project Manager and Immigration and Nationality Directorate Inspector. That notwithstanding, when judgment was given by the European Court of Human Rights, a strong dissenting opinion considered Oakington to be a “prison-like atmosphere” and found the detention of asylum-seekers to be an “increasingly worrying situation”
- 38 While the vast majority of male asylum-seekers are held in Harmondsworth, some are held in Colnbrook, a high security detention centre where the regime is strict and where they have little ability to interact with other asylum-seekers going through the Detained Fast Track and no access to the Detained Fast Track office. Some are also held in older, lower security wings in Harmondsworth
- 39 <http://nds.coi.gov.uk/content/detail.aspx?NewsAreaId=2&ReleaseID=414810&SubjectId=2>, accessed 04/04/11
- 40 IMB for Harmondsworth Immigration Removal Centre, *2009 Annual Report*, 2010, p6-p9
- 41 HMIP, *Report on an announced inspection of Harmondsworth Immigration Removal Centre*, 2010, p31
- 42 18 of 40 interviewees who answered this question
- 43 9 of 40 interviewees who answered this question
- 44 HMIP, *Report on an announced inspection of Harmondsworth Immigration Removal Centre*, 2010
- 45 Statement from Ian Martin, Oakington Project Manager and Immigration and Nationality Directorate Inspector, quoted in *Saadi* [2001] EWCA Civ 1512
- 46 We have calculated periods of time on the Detained Fast Track starting from the date of asylum claim or the date of detention, whichever is the later. We have included time spent detained in other centres after having claimed asylum and before transfer to Harmondsworth for the asylum process to begin. UKBA statistics, released in response to a request under the Freedom of Information Act on 28/02/11, give the average time period between detention and allocation of an immigration representative as 36 days in 2009-2010, significantly longer than our figures. We understand that this is because the UKBA figures are calculated from the date of detention, regardless of the date of asylum claim. The UKBA figures do not necessarily correspond to the period of detention for the asylum claim to be considered, as they include periods where an irregular migrant is detained pending removal before a late asylum claim
- 47 55% (24 of 44 interviewees who answered this question) waited two weeks or more for the substantive interview and 25% (11 of 44 interviewees) waited three weeks or more
- 48 Two interviewees who answered this question told us their cases were being considered through the DNSA process. They waited seven and twelve days for their substantive interview. DNSA timescales are slightly longer than the Detained Fast Track, with the substantive interview due to take place on Day 3

- 49 42 interviewees answered this question
- 50 Statement by Mr Martin, quoted in *Saadi* [2001] EWCA Civ 1512
- 51 *Saadi v UK* (Application No 13229/03)
- 52 In 2005-06, the annual cost of detaining one person in Colnbrook, built on similar security lines as the new wings at Harmondsworth, was over £68,000. Home Office, response to a request under the Freedom of Information Act, January 2007, quoted by Information Centre about Asylum Seekers and Refugees, *Detention of Asylum Seekers in the UK*, 2007, p6
- 53 Figures released by UKBA in response to a request under the Freedom of Information Act, 03/02/11
- 54 Home Affairs Committee, November 2009
- 55 Jane Aspden, *Evaluation of the Solihull Pilot for the UKBA and LSC*, 2008, p65
- 56 UKBA, "Detained Fast Track and Detained NSA, 09 September 2009". Outline of process circulated to stakeholders
- 57 Figures released by UKBA in response to a request under the Freedom of Information Act, 28/02/11. Even those who were successful in their asylum claims waited seven days before release
- 58 HMIP, *Report on an unannounced inspection of Harmondsworth Immigration Removal Centre*, 2005, p33
- 59 Detained Fast Track and Detained NSA, 09 September 2009, UKBA. Outline of process circulated to stakeholders
- 60 Immigration Minister Barbara Roche, News Release 059/00, 1999, quoted in *Saadi* [2002] UKHL 41
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- 64 BID, *Working against the clock: inadequacy and injustice in the fast track system*, 2006, p27-28
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- 69 JCHR, *The Treatment of Asylum Seekers, Tenth Report of Session 2006-07*, Volume 1, p74
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- 73 *ibid*
- 74 *ibid*, p3



- 75 *ibid*
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Abulgassem Ibrahim:  
*No Freedom, Nowhere*



Zaro Wiggins: *Bloody Desolate Detention*



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