

CO/499/2015, CO/377/2015, CO/624/2015, CO/625/2015
CO/678/2015, CO/747/2015, CO/814/2015

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT



BETWEEN:

THE QUEEN
On the Application of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Claimants

- and -

SECRETARY OF STATE FOR THE HOME DEPARTMENT

First Defendant

- and -

FIRST TIER TRIBUNAL (IMMIGRATION AND ASYLUM CHAMBER)

Second Defendant

ORDER

BEFORE MASTER GIDDEN

UPON HEARING LEADING COUNSEL FOR THE CLAIMANTS AND
COUNSEL FOR THE FIRST DEFENDANT AND FOR THE IMMIGRATION
LAW PRACTITIONERS' ASSOCIATION

BY CONSENT IT IS ORDERED THAT:-

By the Court

1. This Order applies to judicial review claims challenging the legality and fairness of the continued operation of the Detained Fast Track process (hereinafter the 'DFT') in respect of vulnerable detainees whose claims are said to be unsuitable for the DFT and require further clinical investigation into claims of torture and other serious ill-treatment. The vulnerability of these claimants has been confirmed by a referral to and assessment by the Helen Bamber Foundation or Freedom from Torture – the specialist Foundations in identification and treatment of survivors of torture or other serious ill treatment (the Foundations) but the Defendant has refused to release them without an appointment date for a further assessment.
2. Permission to proceed to judicial review has been granted in cases that are listed in Schedule 1 attached here to by Singh J on 3 March 2015.
3. Lead cases have been identified in Schedule 2.
4. Cases stayed by Singh J are identified in Schedule 3.
5. Cases lodged since the order of Singh J are identified in Schedule 4 and whether permission has been granted and the cases linked and/or stayed.
6. The claims of [REDACTED] be known for convenience collectively as "the Helen Bamber claims". The cases of [REDACTED] be known collectively as the "trafficking and equality claims".

Issues in the claims

7. The generic issues identified in all of the lead cases are as follows:

7.1. Whether since 5 January 2015 the DFT has and is being operated lawfully and fairly in identifying and ensuring release of cases unsuitable for fair determination and detention in the DFT process.

- 7.2. This involves the following questions in respect of each Claimant's case:
- i) Whether the screening process was lawful and adequate.
 - ii) Whether the Rule 34/35 of the Detention Centre Rules 2001 and the policy in Chapter 55.8 EIG were lawfully and adequately applied.
 - iii) Whether a lawyer was allocated with sufficient time and in circumstances where he/she could act as a sufficient safeguard

By the Court

to prevent unfair determination of the claim and/or unlawful detention in the DFT.

- iv) The correct interpretation of the Asylum Process Instruction (API) on Medico-Legal Reports from the Helen Bamber Foundation and / or Freedom from Torture (the Foundations) ;
- v) Whether the First Defendant lawfully and/or or fairly refused to release a detainee from the DFT who has been assessed by the specialist Foundations as having a prima facie claim of torture or other serious ill-treatment which required further clinical investigation because they cannot offer an appointment date due to capacity issues arising from the operation of the DFT.

7.3. Whether the First Defendant's decision to maintain the claim within the DFT and to continue to detain the Claimant in the DFT following a substantive decision on the claim and pending an appeal is lawful and in compliance with the decision of the Court of Appeal in *R (Detention Action) v SSHD* [2014] EWCA Civ 1634 and that decisions to detain post refusal are lawful and consistent with general policy criteria contained in Chapter 55 EIG.

8. Permission was not granted in respect of the challenge to the FTT on the basis that it was academic following release from the DFT. This issue is raised in two of the test cases of [REDACTED] and Y (CO/747/2015) and permission has been renewed in both cases but will be stayed pending resolution of the other issues. The question raised by the two cases are:

Whether the operation of rules 12 and / or 14 of the Schedule to the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 - to adjourn or transfer a case out of the DFT - by the Second Defendant was applied and/or construed in a lawful manner and/or as an effective safeguard against continued unlawful and unfair operation of the DFT post decision and pending appeal.

9. The additional issues for which the trafficking and equality cases have been identified as requiring resolution are:

9.1. Whether the safeguards are operating effectively - including at screening, assessment of suitability, allocation of lawyers - and whether or not the DFT timetable is workable;

9.2. Whether the First Defendant complied with her published policy on the suitability criteria under the DFT in respect of trafficking and

By the Court

- discrimination claims (where it appears further evidence or enquiries need to be made);
- 9.3. Whether the First Defendant complied with her legal duties and / or published policies in respect of the identification of potential victims of trafficking, referral into the NRM as a First Responder, to protect and of training and cooperation;
 - 9.4. Whether the published policy on trafficking (in particular the 'excluded category' from the DFT and detention criteria) which rely on a positive reasonable grounds determination as a basis for release is incompatible with the EU Trafficking Directive 2001/36/EU, the Council of Europe Convention on Action against the Trafficking in Human Beings (ECAT) and the obligations under Articles 4 of the ECHR
 - 9.5. Whether any of the above in isolation or cumulatively creates an unacceptable risk of/ systemic breaches of Article 4 ECHR on account of (a) the failure to apply published policy and/or the application of an unlawful policy and/or (b) the failure to put in place a comprehensive framework for protection
 - 9.6. Whether the failure to apply published policy and/or the application of an unlawful policy contravenes the requirement on signatories to the ECAT to put in place a comprehensive framework of law and policy designed to specifically protect victims;
 - 9.7. Whether the First Defendant has and is complying with the public sector equality duty under the Equality Act 2010 s.149 in respect of the DFT scheme and its application in individual cases, having regard to its impact on LGBT applicants, women and disabled applicants;
 - 9.8. Whether the DFT violates sections 15 and 21, read with section 29, Equality Act 2010, Articles 4, 5 and Article 14, ECHR and the UN Convention on the Rights of Persons with Disabilities by reason of its discriminatory impact on disabled applicants and the absence of reasonable adjustments;
 - 9.9. Whether the scheme violates section 19, read with section 29, Equality Act 2010, Articles 4, 5 and Article 14, ECHR, the UN Convention on the Elimination of Discrimination Against Women and the UN Convention on the Rights of Persons with Disabilities by reason of its discriminatory impact on LGBT applicants, women (who are more likely to be trafficking victims) and disabled people.
10. All Claimants referred to in these claims shall be granted anonymity and the lead cases known henceforth in these proceedings as JM, RE, MY, KW, IK, Y, and PU.

By the Court

Permission to amend grounds

11. The Claimants shall within 14 days file and serve amended grounds if required in all the lead cases as follows:
 - 11.1. To include the claim (to the extent that permission is required to do so) that there is an unacceptable risk of/ systemic breaches of Article 4 ECHR in the operation of the DFT on account of the absence of a comprehensive framework for the protection of potential victims and / or otherwise.
 - 11.2. To include (where appropriate and if not already pleaded) claims of a breach of s.149 EA 2010 in respect of gender, or sexual orientation and disability.
 - 11.3. To include claims under sections 15, 21, 19 and 29, EA 2010, by reason of the discriminatory impact of the scheme on the claimants as disabled people and applicants generally (in respect of the claimants, medical reports to support these claims have now been obtained or are urgently being sought and could not be obtain within the DFT timescales and before these claims were issued on an extremely urgent basis).
 - 11.4. To include claims under Articles 4, 5 and Article 14, ECHR and the UN Convention on the Rights of Persons with Disabilities by reason of the discriminatory impact of the scheme on disabled applicants and the absence of reasonable adjustments;
 - 11.5. To include claims under sections 19 and 29, EA 2010 (where appropriate and if not already pleaded), by reason of the discriminatory impact of the scheme on those claimants who are women and sexual minorities and on these classes generally.
 - 11.6. To include claims under Articles 4, 5 and Article 14, ECHR, the UN Convention on the Elimination of Discrimination Against Women and the UN Convention on the Rights of Persons with Disabilities by reason of its discriminatory impact on LGBT applicants, women (who are more likely to be trafficking victims) and disabled people.
12. The First Defendant shall, within 14 days of service upon her of the Amended Grounds referred to in paragraph 11 above, notify the Court and Claimants whether she objects to the proposed amendments.
13. If the First Defendant does so object, she shall, when providing notification of objection, file and serve brief grounds setting out the grounds for

By the Court

objection. The Court will then consider whether a hearing is necessary and when this will take place before determining whether to grant permission.

Interim Relief

14. Pending these judicial reviews and determination of the lead cases and the legal issues identified at (7) and (9) above, the DFT shall be suspended in all cases considered by the First Defendant on or after 19 March 2015, at any stage of the process before any appeal is heard by the First-Tier Tribunal (Immigration and Asylum Chamber), where the First Defendant is provided with written notification that the Helen Bamber Foundation or Freedom from Torture have confirmed that the case has been referred to them and assessed as requiring further clinical investigation into the claims of torture and other serious ill-treatment. For the avoidance of doubt, such consideration by the First Defendant will include consideration of written notification produced by an appellant at any time before his or her appeal is heard.
15. The First Defendant will inform the First-Tier Tribunal of any suspensions made in accordance with paragraph 15 above.

Prospective Claims raising the same generic common issues

16. Duncan Lewis Solicitors of Spencer House 29 Grove Hill Road Harrow-On-The-Hill HA1 3BN shall be the Lead Representatives in the claims raising the generic issues identified in (7) above.
17. There shall be a Group Register established on which the details of the Claimants and prospective Claimants shall be entered pursuant to Practice Direction 19B, paragraph 6.1.
 - 17.1. The Register will be maintained by and kept at the court.
 - 17.2. The lead representative for the Claimant shall liaise with the allocated Court Lawyer, Janet Gray, to ensure the effective maintenance of this Register.
18. The Lead Representatives will notify the allocated Court Lawyer, Janet Gray in writing of any further prospective Claimants, whether represented by the Lead Representatives or by another firm, and the Lead Representatives will also notify the Treasury Solicitors; notification shall include:

By the Court

- 18.1. The full name, location and if in the community the address of each new Claimant;
 - 18.2. The Claimant's Home Office and / or Port references number, the dates of the detention and the date that a HBF and/or FTT acceptance letter was issued and provided to the First Defendant;
 - 18.3. The date of birth of the Claimant;
 - 18.4. The claim number of the Claimant's case, if issued and the date of issue;
 - 18.5. The names and addresses of the solicitors on record;
19. In respect of any Claimant who has not issued a claim but has notified the First Defendant in accordance with paragraph 17 above, the limitation period for any claim for judicial review relating to the operation of the DFT in the individual case shall be extended until 3 months after judgment is given.
20. Unless the Court orders otherwise all Claimants entered on the Group Register and / or all further prospective Claimant's notified to the First Defendant shall be bound by any judgments or orders made in respect of the generic issues set out in (7) above.

Intervention

21. The Immigration Law Practitioners' Association shall be permitted to intervene in the Helen Bamber cases to make written and oral submissions such oral submissions to be limited to one and a half hours.
22. No order for costs shall be sought by or from the Immigration Law Practitioners' Association.

Disclosure in the Helen Bamber cases

23. In compliance with her duty of candour the First Defendant shall as soon as practicable or in any event within 28 days of this order provide disclosure of the following categories of documents to the extent that such documents (a) exist, (b) are relevant to the issues identified and (c) not subject to privilege or any other applicable exemption from disclosure:-
- 23.1. All documentation cases relating to decisions to detain, process in the fast-track and to maintain the decision to process in DFT;
 - 23.2. Material regarding any monitoring or sampling exercise relating to the impact of the changes in the screening interview form, following the judgment of *Detention Action*;

By the Court

- 23.3. All documentation relating to the operation of First Defendant's policy or practice in relation to rule 35 reports, detention and / or fast-tracking claims following the hearing of the *Detention Action* case end December 2013.
- 23.4. All training materials, guidance on rule 35(3) reports and assessing the impact of detention / fitness for detention provided to: (a) healthcare staff at IRCs; and (b) casework staff at the Home Office
- 23.5. All materials and guidance on training of detention centre staff and medical practitioners, employed or subcontracted, to carry out medical examinations within the immigration removal centre(s) on identifying victims of torture and / or serious ill-treatment.
- 23.6. All training materials and guidance on identifying victims of torture and / or serious ill-treatment provided to casework staff at the Home Office;
- 23.7. All documentation including all internal documents relating to the API on Medico-Legal Reports and in respect of the interpretation and application of this policy since September 2014.
- 23.8. All documentation, including guidance or training notes to case workers and / or Home Office Presenting Officers on the meaning and implementation of the two *Detention Action* judgments in the High Court and the two *Detention Action* judgments in the Court of Appeal, including but not limited to materials distributed and / or available from "open forums in DFT offices to explain the remedial actions taken following the *Detention Action* Judgments.
- 23.9. To provide the information requested in a letter dated 13 March 2015 and attached as Schedule 5 hereto.

Disclosure in the trafficking and equality cases

24. In accordance with her duty of candour, the First Defendant shall by 4pm on 8 May 2015 provide disclosure in the trafficking and equality cases, such disclosure to include (to the extent that the documents (a) exist (b) are relevant to the issues and (c) are not privileged or otherwise exempt from disclosure):
 - 24.1. All training materials and guidance to all Home Office staff (be they enforcement officials, frontline staff and casework staff) at the Home Office on their role as (a) the point of first contact with victims (to be alert to signs of trafficking; (b) the duty to act as First Responder to the National Referral Mechanism; (c) and / or in relation to the identification, detention, protection, and investigation of trafficking

By the Court

generally. This is to include but not be limited to all e-training undertaken by First Responders (as referred to in the First Defendant's published policy on Victims of Trafficking for Frontline Staff);

24.2. All training materials and guidance to casework staff at the Home Office on equality duties.

Directions for the Helen Bamber cases

25. This matter is fit for expedition.
26. The Court considers that the cases are fit to be heard by a single judge
27. The First Defendant is to file and serve Detailed Grounds of Defence and disclose all relevant materials and evidence she wishes to rely upon by 4pm on 17 April 2015.
28. The Claimants are to file and serve any Reply to the Detailed Grounds and evidence as appropriate by 4pm on 8 May 2015.
29. The Immigration Law Practitioners' Association as Intervener is to file and serve any submissions and/or evidence on which it wishes to rely by 4pm on 15 May 2015.
30. Both the Claimants and the First Defendant have permission to file and serve submissions and/or evidence in reply to the Intervener by 4pm on 22 May 2015.
31. The Claimants are to file and serve a joint skeleton argument and agreed trial bundle 21 calendar days before the substantive hearing.
32. The First Defendant is to file and serve a skeleton argument 14 calendar days before the substantive hearing.
33. ILPA as the Intervener, is to file and serve a skeleton argument 7 calendar days before the substantive hearing.
34. The Helen Bamber cases shall be listed for hearing with a time estimate of 4 days, to be heard as soon as reasonably practicable on or after 18 June 2015, and in any event by no later than the end of the Trinity court term ending 21

By the Court

July 2015, to be listed insofar as is possible in accordance with the availability of counsel.

Directions for the trafficking and equality cases

35. This matter is fit for expedition.
36. The Court considers that the cases are fit to be heard by a single judge.
37. The First Defendant is to file and serve Detailed Grounds of Defence and disclose all relevant materials and evidence she wishes to rely upon by 4pm on 8 May 2015.
38. The Claimants are to file and serve any Reply to the Detailed Grounds and evidence as appropriate by 4pm on 29 May 2015.
39. Both the Claimants and the First Defendant have permission to file and serve submissions and/or evidence in reply to the Intervener by 4pm on 12 June 2015.
40. The Claimants are to file and serve a joint skeleton argument and agreed trial bundle 21 calendar days before the substantive hearing.
41. The First Defendant is to file and serve a skeleton argument 14 calendar days before the substantive hearing.
42. The trafficking and equality cases shall be listed for hearing with a time estimate of 3 days, to be heard on or as soon as practicable after 13 July 2015 and in any event by no later than the end of the Trinity court term ending 21 July 2015, to be listed insofar as is possible in accordance with the availability of counsel.
43. All claims on quantum (in respect of damages for unlawful detention, Equality Act 2010 and any human rights breaches), whether in the Helen Bamber or Trafficking and Equality cases are to be transferred on application by the parties to the Queen's Bench Division for assessment following the determination of liability, and/or the final determination of the claims for asylum, whichever is the later.

Costs

By the Court

44. Pursuant to CPR r.46.6, 'individual costs' are costs and disbursements incurred for and / or in respect of any individual Claimant in relation to matters which are personal to each such Claimant, excluding costs and disbursements incurred for and / or in respect of any claims which may hereafter be selected as lead cases.

45. 'Common costs' means:

- (i) costs incurred in relation to the generic issues identified in (7);
- (ii) individual costs incurred in a claim while it is proceeding as a test claim, commencing from the date of this Order; and
- (iii) costs incurred by the lead legal representative in administering the group litigation; and

'group litigant' means a claimant whose claim is entered on the group register.

46. Save as otherwise ordered cost in respect of the generic issues referred to in (7):

46.1. The liability of each party for and each party's entitlement to recover costs shall be several and not joint.

46.2. The common costs incurred in any month by the Claimants and the Defendant are to be divided by the number of Claimants pursuing their claims on the first day of the month.

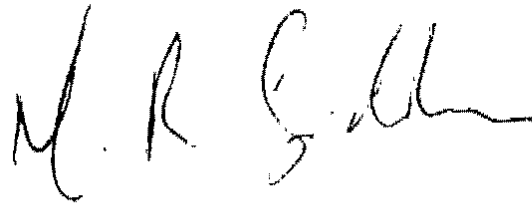
46.3. If in any month a Claimant compromises his / her claim with the Defendant(s) on terms which provide for the Defendant(s) to pay the Claimant his / her costs then that Claimant shall be entitled to recover his / her individual costs and his / her several share of the common costs incurred by the Claimants up to the last day of that quarter.

46.4. If in any month a Claimant discontinues his / her claim against the Defendant (s) or it is dismissed by an Order of the Court whereby that Claimant is ordered to pay the Defendant's costs, then s/he will be liable for his / her individual costs incurred by the Defendant(s) up to the last day of that quarter, liability for common costs and disbursements to be determined following the trial of common issues, with permission to apply if such trial does not take place.

46.5. Each of the Claimants shall for the purposes of this Order be treated as if s/he had been a Claimant in the generic action as from the date of this Order.

By the Court

47. Liberty to all parties and the Interveners to apply.



Signed

26 March 2015

Sent to the parties' solicitors on:

By the Court