Despite the judgment in Detention Action *Detention Action v First-Tier Tribunal (Immigration and Asylum Chamber) & Ors* [2015] EWHC 1689 declaring that the fast track rules governing asylum appeals were *ultra vires* on 12 June 2015 (the stay on which was lifted by Sullivan LJ on 26 June 2015) which has now been upheld by the Master of the Rolls in *Lord Chancellor v Detention Action* [2015] EWCA Civ 840, the Secretary of State continues to seek to remove persons who have had their appeals heard within the DFT. That is so despite the clear effect of these rulings and Sullivan LJ's dicta when lifting the stay that all appeals heard within the DFT require to be reheard.

The Applicants in eight linked judicial reviews were forced to seek an injunction to prevent their removal by charter flight on 30 June 2015, 16 days after Nicol J's judgment and four days after Sullivan's ruling. In addition to a stay on removal and a quashing of the decisions of the Tribunal in their individual cases in order to give effect to the judgment in *Detention Action*, the Applicants sought generic relief, that is to say a ruling that would benefit anyone who has had an appeal heard within the DFT (and was vulnerable to removal now), so that they might have their appeals heard afresh and be protected from removal. An expedited hearing in these applications was sought and convened by the President and Vice of President of the Upper Tribunal last week.

The device proposed to achieve this end was to deploy rule 32 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 to set aside a decision which disposes of proceedings (32(1)) where it is in the interests of justice to do so (32(1)(a)) where there has been a procedural irregularity in the proceedings (32(2)(d)). That approach has the imprimatur of the President of the Upper Tribunal McCloskey J, the Vice President Mr C M G Ockelton, and now the President of the First Tier Tribunal Mr Clements who convened a hearing to set aside the decisions of the First Tier and Upper Tribunals in each of the linked cases, but has done so on a generic basis. This decision can and should be used by anyone who has had an appeal previously heard in the DFT. This approach/the President's decision has three substantial benefits:

i) It does away with any anterior determinations or decisions of the First Tier and Upper Tribunal cleanly;

ii) Reasons are provided for setting aside which will assist avoiding controversy in any future appeal;

iii) It reinstates the robust protection of section 78 of the 2002 Act with immediate effect.

Helpfully, the President of the First Tier Tribunal has also agreed to provide:

i) A draft letter which persons may use (referred to in the determination) to set aside previous DFT appeal determinations. It has been drafted to make it as easy as possible for those without the benefit of legal representation to seek such relief; and

ii) A 'form of decision' setting out what a decision to set aside will look like.

RAZA HALIM
Garden Court Chambers
10th August 2015