



**First Tier Tribunal  
(Immigration and Asylum Chamber)**

Appeal Numbers: AA/09953/2014  
AA/10216/2014  
AA/04846/2015  
PA/00087/2015  
AA/03971/2015  
AA/05737/2015  
AA/02797/2015  
AA/03692/2015

**THE IMMIGRATION ACTS**

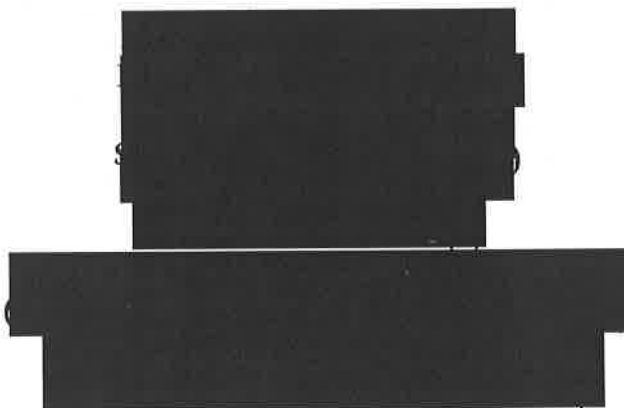
**Heard at Field House  
On 4 August 2015**

**Determination Promulgated**

Before .....

**THE PRESIDENT, MR M A CLEMENTS**

Between



Appellants

And

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellants: Mr Halim, instructed by Duncan Lewis Solicitors  
For the Respondent: Mr Staker, instructed by Government Legal Department

## DECISIONS AND REASONS

1. This matter came before me on 4 August 2015. By way of background the appellants made an application for Judicial Review which sought to set aside the decisions made under the Detained Fast Rules of the First-tier Tribunal (IAC). The detained fast track rules are set out in the schedule to the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014, (hereinafter referred to as the 2014 Procedure Rules).
2. In Judicial Review hearings heard on the morning of 4 August 2015 I am advised that it was proposed that an alternative remedy was identified and that the issues could be properly dealt with under Rule 32 of the 2014 Procedure Rules. The Judicial Review proceedings were adjourned for me to consider this. On my own motion I decided that I should hear from both the appellants' and the respondent's representative as to whether or not I should set aside the decisions of the First-tier Tribunal under Rule 32. I heard submissions from the representatives on Rule 32 in the afternoon of 4 August 2015.
3. Mr Halim maintained that the appeals would need to be reheard and redetermined by the First-tier Tribunal following the decision of the Court of Appeal in The Lord Chancellor v Detention Action [2015] EWCA 840 where the court found that the fast track element of the 2014 Procedure Rules were ultra vires.
4. Mr Staker had concerns as the question of an 'adequate alternative remedy' under Rule 32 had been raised without notice in the morning and he was not in a position to address me on the issues arising under Rule 32. The Secretary of State was considering the Court of Appeal judgement and would be formulating her position as how to react in due course and it was not possible to say whether Rule 32 would be available or appropriate. Mr Staker urged me to accept that the Secretary of State needed more time to consider the matter. I raised with Mr Staker how much more time the Secretary of State might require, but he was unable specifically to help me on this point.
5. Mr Halim responded that we did not need to know how the Secretary of State would deal with the Court of Appeal decision. The appeals needed to be reheard and the 'alternative procedure' under Rule 32 was the ideal vehicle to give effect to what was needed.
6. Whilst I accept that the hearing under Rule 32 was without notice Mr Staker did have some time during the morning period and an hour and a half over the luncheon period to obtain instructions. The Secretary of State has been aware of these difficulties since the decision of Nicol J on 16 June 2015 and more specifically since the decision in the Court of Appeal on 26 June 2015 when the stay granted by Nicol J was lifted. Sullivan LJ at that hearing made it clear in his judgement that there was at least a tranche of appeals (between the decision of Nicol J and the lifting of the stay during which period detained fast track had continued to operate) which would need

to be reheard. Further I was not persuaded by Mr Staker's arguments that the Secretary of State had an alternative procedure, or could devise a procedure which could deal with these appeals fairly or as swiftly as by setting aside under rule 32. The appeals need to be reheard.

7. Rule 32 provides:

32. – (1) The Tribunal may set aside a decision which disposes of proceedings, or part of such a decision, and re-make the decision, or the relevant part of it, if –
- (a) the Tribunal considers that it is in the interests of justice to do so; and
  - (b) one or more of the conditions in paragraph (2) are satisfied.
- (2) The conditions are –
- (a) a document relating to the proceedings was not provided to, or was not received at an appropriate time by, a party or a party's representative;
  - (b) a document relating to the proceedings was not provided to the Tribunal at an appropriate time;
  - (c) a party, or a party's representative, was not present at a hearing related to the proceedings; or
  - (d) there has been some other procedural irregularity in the proceedings.
- (3) An application for a decision, or part of a decision, to be set aside under paragraph (1) must be made –
- (a) if the appellant is outside the United Kingdom, within 28 days; or
  - (b) in any other case, within 14 days,  
of the date on which the party was sent the notice of decision.

I am satisfied that there was a procedural irregularity in the proceedings under Rule 32(2)(d) as it is common ground between the parties that the fast track procedure rules are ultra vires following the decision of the Court of Appeal in Detention Action. Further it is in the interests of justice for the decisions to be set aside. As I set aside on my own motion, (there being no application by either party under Rule 32), Rule 32(3) time limits do not apply.

8. The effect in each individual case will be that an appeal which began as a pending appeal by the notice of appeal to the First-tier Tribunal remains undetermined by the First-tier Tribunal, the only determination having been set aside and will therefore have to be reheard. As it is a pending appeal awaiting a lawful determination the appellant cannot be removed; he is protected from removal by section 78 of the Nationality, Immigration and Asylum Act 2002.
9. The request to set aside is not limited to the appellant. The Secretary of State may also take advantage of Rule 32.
10. Annexed to this decision is the form of decision which I handed to the parties in draft and which neither representative objected to. Also attached is a draft letter which further appellants and/or their representatives may wish to use.

11. The appellant's representative requested a transcript of the hearing. The First-tier Tribunal is not a court of record but I understand a recording was made. I direct that a transcript should be provided to the appellant's representatives as soon as possible after they apply for it in writing and on their undertaking that they will:
  - a) pay the full costs of providing the transcript and
  - b) provide a copy to the Secretary of State.
12. Neither party quite properly made an application for costs and so no cost order is made.

**Notice of Decision**

**On my own motion I set aside the original decision under Rule 32 of the 2014 Procedure Rules and direct that the appeal is redetermined by judge other than the judge who made the decision being set aside.**

No fee is paid or payable and therefore there can be no fee award.

I make an anonymity order in respect of the eighth appellant, [REDACTED]

**Direction Regarding Anonymity - Rule 13 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014**

Unless and until a tribunal or court directs otherwise, the Appellant is granted anonymity. No report of these proceedings shall directly or indirectly identify him or any member of their family. This direction applies both to the Appellant and to the Respondent. Failure to comply with this direction could lead to contempt of court proceedings.

No anonymity direction made in respect of the other appellants.

Signed



**Michael Clements**  
President of the First-tier Tribunal

Date 4 August 2015

Annex

Form of decision

**IN THE FIRST-TIER TRIBUNAL  
(IMMIGRATION AND ASYLUM CHAMBER)**

**The Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules  
2014**

**NOTICE OF DECISION UNDER RULE 32  
(with reference to rule 1(4) of the Schedule)**

Appeal number:

Name of Appellant:

In the light of the decision of the Court of Appeal in *The Lord Chancellor v Detention Action* [2015] EWCA Civ 840 it appears to me that, in relation to the decision of the First-tier Tribunal in this case:

- (a) there was a procedural irregularity in the proceedings [rule 32(2)(d)]; and
- (b) it is in the interests of justice for the decision to be set aside [rule 32(1)(a)].

I now of my own motion **SET ASIDE** the decision of the First-tier Tribunal and **DIRECT** that the appellant's appeal be redetermined by a judge other than the judge who made the decision being set aside.

MICHAEL CLEMENTS  
President

Note: the effect of this decision is that the appellant's appeal against the immigration decision made in his case has not yet been determined; and the provisions of s 78 of the Nationality, Immigration and Asylum Act 2002 apply.

