CO/499/377/624/625/2015

Neutral Citation Number: [2015] EWHC 2331 (Admin)
IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT

Royal Courts of Justice
Strand
London WC2A 2LL

Friday, 3 July 2015

B e f o r e:

MR JUSTICE BLAKE

Between:
RE
JM
KW
MY

Claimants

v

SECRETARY OF STATE FOR THE HOME DEPARTMENT
FIRST-TIER TRIBUNAL (IMMIGRATION AND ASYLUM CHAMBER

Defendants

IMMIGRATION LAW PRACTITIONERS' ASSOCIATION

Intervener

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(Official Shorthand Writers to the Court)

Ms S Harrison QC, **Ms SS Liu, Mr R Halim and Ms L Hirst** (instructed by Duncan Lewis) appeared on behalf of the **Claimants**
Ms C McGahey and Mr M Gullick (instructed by the Government Legal Department) appeared on behalf of the **Defendants**

Mr S Knafler QC and Mr A Vaughan (instructed by Bindmans) appeared on behalf of the **Intervener**

J U D G M E N T
(Approved)

1. MR JUSTICE BLAKE: There are before the court four applications for judicial review by claimants who at various times were placed in the Detained Fast Track system for assessing their asylum claims. They sought earlier this year judicial review and relief stopping the processing of their asylum claims in the Detained Fast Track because properly applying the policy that was in place at the time, either they should not have been placed in that Fast Track at all or they should have been taken out of it by reason of subsequent information.
2. The four claims formed part of a larger group of judicial review claims where permission was granted, and pursuant to a case management hearing conducted by Master Gidden earlier this year the cases were divided into two group , one called the Helen Bamber cases and the other the equality and trafficking cases. These four claims were identified as lead cases for the Helen Bamber group. The court has been informed that there are 21 other cases within that group whose claims have been stayed pending resolution of the lead group.
3. The position of the Defendant has changed between the summary grounds of defence and the detailed grounds of defence that were served pursuant to a timetable set by these case management directions. No skeleton argument had been served in accordance with these directions and a substantive four day hearing had been set for 30 June with 29 June a reading day for the trial judge. An application to break fixture having been rejected on Thursday 25 June, neither the claimants not the court were aware of the defendant's position until shortly before the hearing of these case, at 5.00pm on 29 June, the court

was informed of the defendant's proposals for a settlement. It was accepted that the processing of each of the claimants' cases in the Detained Fast Track had been flawed; that each of the claimants had been unlawfully detained for a period before they were eventually released. The proposed settlement was not acceptable to the claimants, but it was indicated when the matter did come before the court on 30 June that they provided a sensible basis for discussions between the parties that could result in agreed orders and a statement of reasons explaining those orders, and the parties asked the court for further time to progress their discussions.

4. At 4.00 pm on 30 June, it was apparent that more time was to be needed but it was anticipated that the court would be in a position to have draft orders for approval by some point on Thursday 2 July. The court was also informed that it was anticipated that there would be a ministerial statement to the House, although the timing of that statement would depend upon the House's own allocation of business and no date certain could be predicted. In fact, a statement was made in the House of Commons on 2 July by the Minister of State for Immigration. I have been provided with a copy of that statement which indicates that the Detained Fast Track process is suspended whilst examination will be given to a better means to ensure fairness for vulnerable people in that system.
5. This morning, shortly before the court resumed, I was provided with a draft consent order agreed by the parties and an agreed statement in support of the consent order. This demonstrates a further significant shift in the defendant's thinking as it was now accepted that each of the claimants should never have been placed in the DFT in the first place and that their detention was accordingly unlawful throughout the time that they were detained there,

6. As these cases were the lead in a group of cases to explore this issue, I considered that it was particularly important for the orders and the reasons for them to be clear and publicly available. and as the question of legality of detention is I raised a few issues of concern with respect to the draft declaration that the court was being invited. I have heard short argument in which Ms Harrison QC for the claimants and Ms Macagahy for the defendant are at one in resisting and it is submitted that as the matter has been very carefully considered at a high level and that would undo the negotiations and would require further adjournment.
7. I entirely acknowledge that the heart of the problem in this case was the application of too rigid an approach to policy following previous consideration of the legitimacy of the DFT in a judgment of Ouseley J known as Detention Action 1 given on 9 July 2014 with neutral citation [2014] EWHC 2245 (Admin).
8. This morning I have also been provided with the order that was made after further arguments in this case in which it was declared as follows:
9. "It is declared that as at 9th July 2014 the manner in which the DFT [that is Detention Fast Track] was being operated, as set out in the judgment, created an unacceptable risk of unfair determinations for those vulnerable or potentially vulnerable applicants, referred to in paragraphs 114, 198 and 221 of the judgment, who did not have access to lawyers sufficiently soon after induction to enable instructions to be taken and advice to be given before the substantive interview and was to that extent being operated unlawfully."

10. It is apparent that the parties have used the terms vulnerable or potentially vulnerable in this draft order reflecting the terms of that judgment. The second paragraph of the draft declaration which I have been invited to make by consent reads as follows:

11. "In paragraph 1 above 'vulnerable' or 'potentially vulnerable' individuals include

but are not limited to asylum seekers who may be victims or torture, significant ill-treatment, human trafficking, or may be suffering from mental disorder or other physical or mental impairment which may affect their ability to present their claims in the DFT."

12. My concern with that wording is that the concept of potentially vulnerable individuals who may be the victims of torture or other ill treatment gives very little objective information as to how such people could be identified. I accept that the basis of the DFT policy is confined to those whose cases can be decided quickly, and where detailed further investigation is needed, claimants would be unsuitable for the DFT process. My first thought was some threshold such as or reason to believe or suspect that a person may be the victim of such ill treatment was appropriate, whilst making it clear that was a process of summary adjudication but reflection of the information obtained in the screening process.

13. Ms Harrison submitted that such words ran the risk of importing a premature objective assessment. If amendment were necessary she would have "that there were indicators that a person may be a victim of torture" as this was sufficient to give some explanation as to how they fell within that category but short of anything requiring a decision when the whole point of the Detention Fast Track is to keep out of it people whose cases may be more complex and cannot be quickly before a fair assessment of their claims could be made.

14. Despite my concerns as to the wording of paragraph 2, I am assured that that has been very carefully considered by both parties and it would be unfortunate for the court's

concerns at this stage to disrupt the process of negotiation and consensus and approval which has been reached at a high level. Ms Magahey indicated that even insertion of the term 'indicators' would require the proposed order to be re submitted for client consent. In the end the resolution of this issue might be delayed without significant substantive benefit in the terms of the declaration. I have been persuaded that the draft declaration read as whole makes it plain that it was by reason of what each claimant said at screening interview that made the decision to place them in the DFT flawed. The statement of reasons accompanying this order is of importance as indicating the factual basis on which these legal consequences are based.

15. The parties, having spent the last 3 days looking at the matter in greater detail, did reach a statement of reasons in support of this relief that I attach as an appendix to this judgment. I am satisfied that the facts set out in the statement of reasons fairly reflects the evidence files in the case and that for the reasons I have indicated above the orders agreed are appropriate in all the circumstances.

16. I congratulate the parties on reaching a settlement despite earlier concerns as to whether they would. It would obviously have been more helpful to the court if this process had started earlier but I recognise the importance of the issues under consideration.

17. I will hear submissions on the consequences of this order for other cases in due course.

18.

APPENDIX TO JUDGMENT

19. STATEMENT OF REASONS

20. INTRODUCTION

1. These applications for judicial review concern the lawfulness of the operation of the Detained Fast Track (DFT) process.

2. By an agreed Order made by Master Gidden on 19 March 2015 these 4 Claimants were selected as representative lead cases in which to decide the following issues:

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.

2. This involves the following questions in respect of each Claimant's case:

i) Whether the screening process was lawful and adequate;

ii) Whether Rules 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 to prevent unfair determination of the claim and/or unlawful detention in the DFT;

iv) The correct interpretation on the Asylum Process Instruction (API) on Medico-Legal Reports from the HBF and/or FfT (the Foundations);

v) Whether the First Defendant lawfully and/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.

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 Secretary of State Home Department [2014] EWCA Civ 1634 ('Detention Action 2') and that decisions post refusal are lawful and consistent with general policy criteria contained in chapter 55 EIG.

4. Three other lead cases were selected to address separate issues relating to the compatibility of the DFT with the law relating to human trafficking, the Equality Act 2010 and Article 5 read with Article 14 ECHR.

5. 21 other cases raising the same or similar issues were stayed pending resolution of the lead cases. The equivalent of a Group Litigation Order was made in the proceedings.

6. In December 2013, at the hearing of the Detention Action case, Ouseley J heard evidence of the immense strain placed on the Helen Bamber Foundation ('HBF') and the Freedom from Torture ('FfT') as a

result of increasing numbers of referrals to the Foundations from the DFT. In judgment handed down on 9 July 2014, Ouseley J observed at [136] that the concession that a detainee is released from the DFT, if he or she has obtained an appointment with either Foundation operated "*as a seemingly more effective safeguard*" than the other DFT safeguards, including screening and Rule 35 even though it ought to be in a "*back-up" rather than "making up for the inadequacies of Rule 35 reports in relation to torture*".

7. The Foundations safeguard referred to by Ouseley J is set out at paragraph 2.11 of the API [Asylum Policy Instruction] on Medico-Legal Reports which states:

> *2.11 Detained Fast Track processes*
>
> *21. Applicants routed into the Detained Fast Track (DFT) can be referred to the Foundations by legal representatives in the same way as other applicants who are not detained. If either Foundation agrees to accept an applicant for pre-assessment before a substantive decision is made, the applicant will be taken out of the DFT process providing confirmation of the appointment is received. The referral is usually accepted within 24 hours. It is Home Office policy to remove from DFT processes any applicant who is accepted by the Foundations for a pre-assessment appointment. In such cases, unless there are other reasons for the applicant to remain detained he or she should usually be released and the case transferred to the Asylum Casework Directorate (ACD) who will take responsibility for the case management and decision making process.*

8. Due to the significant increases, HBF had to close community referrals at the end of 2013. The increase in the number of referrals

from the DFT continued throughout 2014. It significantly increased following the *Detention Action* judgment which gave lawyers more time prior to interview to identify potentially vulnerable applicants whose claims required further clinical investigation and seek the release of unsuitable cases. By a letter of 10 December 2014, HBF informed the Defendant that due to these capacity issues, starting on 5 January 2015, it would no longer be able to offer an appointment date for an initial assessment where it had accepted a referral from the DFT. It informed the Defendant that it would continue to consider referrals from the DFT, and if the person met the referral criteria, it would issue a letter confirming this and confirming that his case was one which required further clinical investigation and should be removed from the DFT.

9. The Defendant considered that this was contrary to the API which required a specified appointment date to be given. The Defendant continued to apply the express provisions of the API.

10. In each of these Claimants' cases the HBF and/or FfT accepted the case as meeting their referral criteria and required further clinical investigation but the Defendant refused to release them from the DFT.

11. Interim relief was granted in each case by the High Court

suspending the DFT in the individual claims.

12. On 3 March 2015, Singh J granted permission in each of 11 linked cases then before the Court.

22. Interim Relief

13. At a case management hearing on 19 March 2015 an interim order was agreed between the Claimants and the Defendant stating the following:

23. *Pending these judicial reviews and determination of the lead cases..., 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 investigations in to the claims of torture and other serious ill-treatment. For the avoidance of doubt, such considerations by the First Defendant will include consideration of written notification produced by an appellant at any time before his or her appeal is heard.*

24. On 1 June 2015 the Defendant conceded in the detailed grounds of evidence that the DFT had operated unlawfully between 5 January 2015 and 19 March 2015 on the basis that the refusal to release on receipt of a HBF/FfT acceptance letter was contrary to the purpose (if not the strict wording) of the Foundations API, in respect of acceptance letters received before an asylum decision was made.

25. Individual Facts

26. JM

27. JM arrived in the United Kingdom on 23 December 2014. He claimed asylum on arrival and was granted temporary admission and directed to present at the Asylum Screening Unit in Croydon on 30 December 2014.

28. At a screening interview conducted on 30 December 2014, JM gave details of his claim which was based upon perceived sexuality and/or support for the rights of homosexuals and lesbians in Cameroon. He gave a history of past persecution and torture and he disclosed that he "*has had depression from 2002 on and off"* and *"have nightmares and anxiety*". When asked why his claim might not be suitable for quick determination he made express reference to both his mental health problems and his experience of torture.

29. JM was released on temporary admission after screening, but detained in the DFT when he reported on 14 January 2015 as required.

30. At his reception medical screen, JM was noted to be taking antidepressant medication, to have a history of anxiety and depression, to have previously self-harmed, and to have back problems due to torture in Cameroon. He was recorded on the disability questionnaire as having mobility problems due to his back and to having mental health issues. He was referred for a Rule 35 assessment. A mental health referral on 16 January 2015 referred to his experience of torture and to mental health problems including depression, nightmares and poor sleep and low mood.

31. On 16 January 2015, a General Practitioner issued a Rule 35 report in respect of JM giving a detailed account of his torture and described symptoms of depression, anxiety and nightmares. The doctor commented that his account sounded *"plausible*" and that the doctor was going to refer JM to a psychiatric team for assessment for post-traumatic stress disorder. On the accompanying body map the report writer had written "*multiple well-healed scars*".

32. The Defendant rejected that report on 19 January 2015 and the detention in the DFT was maintained.

33. A referral of JM's case was made and accepted by the Helen Bamber Foundation on 22 January 2015 as giving rise to a prima facie case of torture or other CIDT [Cruel, Inhuman or Degrading Treatment] that required further clinical investigation but the Defendant refused to remove the case from the DFT because no appointment date was provided.

34. On 26 January 2015, Carr J directed the suspension of the DFT in JM's case. JM was released from detention on 27 January 2015. He had been detained in the DFT for 14 days.

35. <u>KW</u>

36. KW is a Sri Lankan national. She arrived in the UK on a Tier 4 student visa in 2009. She subsequently extended her leave on two occasions. Her application to extend leave

was rejected in November 2014. She was apprehended during the course of immigration enforcement and detained on 21 December 2014 with a view to removing her from the UK. She claimed asylum on 7 January 2015. Removal directions were cancelled.

37. On 19 January 2015, KW had an asylum screening interview in which she disclosed past experiences of torture in Sri Lanka including interrogation and rape by police officers. She also referred to documents from the Sri Lankan police which she wished to rely on to support her claim. When asked why her claim might not be suitable for the DFT she referred to her health (being in pain and stressed.

38. On 2 February 2015, a GP issued a Rule 35 report detailing a history of rape by police officers and being burned with a hot stick, and gave symptoms of sleeplessness and feeling worthless. The report noted visible scars from self-harm on her arm and stated that KW would be referred to the mental health team. The attached body map also noted self-harm scars to KW's arms and a burn from a stick to her leg.

39. On 3 February 2015, a request was made to put KW on an ACDT [Assessment Care in Detention and Teamwork), a form detention suicide watch.

40. On the same day, the Defendant rejected the Rule 35 report (inter alia) on the basis of her immigration history and her delayed disclosure of torture.

41. KW was referred to and accepted by HBF on 5 February 2015. The Defendant rejected

the request for release on 6 February.

42. On 10 February Sweeney J ordered that the DFT procedure be suspended in relation to KW but the Defendant did not release and suspend the DFT until 19 February 2015. She was held in the DFT for 32 days.

43. MY

44. MY is a national of Cameroon who arrived in the UK on 13 July 2013 as a student. She contacted the Home Office on 18 December 2014 to indicate her wish to claim asylum. This was before her 6-month student visa expired. She was asked to attend on 19 December 2014 for a screening interview.

45. At MY's screening interview on 20 December 2014 she explained that her claim for asylum was based on her sexuality. She disclosed a history of depression and stress and that she was HIV positive status.

46. MY was granted temporary admission following screening but was subsequently detained in the DFT on 16 January 105 when she returned to report as required. She was placed in the DFT on that day.

47. MY had a substantive asylum interview on 26 January during which she disclosed a detailed account of her sexual relationships in Cameroon and the UK, and disclosed her experience of torture.

48. On 20 January 2014, a GP made a Rule 35 report, detailed MY's history of being beaten, and being burnt with a cigarette. The report noted that MY was tearful and not sleeping well, had flashbacks and low mood. The attached body map noted discoloured skin on her shoulder, a cigarette burn on her arm, and scarring to her leg and groin.

49. The Defendant rejected the Rule 35 report on 23 January 2015, relying on MY's immigration history.

50. On 28 January 2015, the Defendant refused MY's asylum claim.

51. On 9 February 2015, judicial review proceedings were issued and by an order of Supperstone J dated 11 February 2015, the DFT process was suspended in respect of MY. She was released on 16 February 2015. She was held in the DFT for 32 days.

52. <u>RE</u>

53. RE is an Egyptian national who arrived in the UK and claimed asylum on 11 November 2014. He was granted temporary admission and later screened on 8 December 2014.

54. At his screening interview, RE explained that his case was based on persecution because of his membership of the Muslim Brotherhood. He disclosed a history of repeated detention and provided documents that required translation related to his detentions. He was advised to submit documents with English translation to his case owner "*ASAP*". When asked why his claim should not be processed within the DFT, he answered that it would remind him of being detained by the Egyptian authorities from whom he is fleeing.

55. RE was again given temporary admission but on 29 December 2014 the Defendant detained him in the DFT. RE was allocated a lawyer from Thompson Solicitors who did not meet him until the day of the substantive asylum interview on 5 January 2015. The Defendant agreed that the documents he had required translations but made a decision to refuse RE's claim on 6 January 2015 without translated documents.

56. The Defendant refused his claim for asylum on 6 January 2015 and Thompson & Co withdrew from representation of RE. RE was unrepresented. With the help of another detainee he lodged an appeal against the asylum refusal.

57. On 15 January 2015, RE instructed Duncan Lewis as his solicitors for his appeal.

58. On 20 January 2015, RE made a request for a Rule 35 report but did not obtain an appointment for the assessment until 2 February 2015 when a GP issued a Rule 35 report. That report set out the forms of torture which it was said RE had experienced, including having two toes broken by prison officers. The report noted that he had a deformity of the toes of the right foot, which was indicated on the body map attached to the report.

59. By order of Carr J dated 2 February 2015, a stay and suspension of RE's appeal was granted.

60. The Defendant rejected the Rule 35 report on 4 February (inter alia) relying on the adverse credibility findings in the refusal letter.

61. The Defendant did not remove RE from detention until 5 February 2015. He was held in the DFT for 38 days.

62. A 20-week study carried out by HBF of referrals received from the DFT between 5 January and 31 May 2015 revealed that in 200 of 304 referrals received, significant issues of vulnerabilities were apparent in the screening interview; of these 69 had a Rule 35 report that did not result in release. Out of 104 of the cases which did not identify vulnerabilities at screening, 25 had a Rule 35 report that did not result in release. Of 79 cases which did not have any indicators of vulnerabilities at screening or a Rule 35 report, 54 identified a history of torture or ill-treatment or other related indicators of vulnerability in the substantive asylum interview. In total of 304 referrals, 279 individuals revealed indicators of torture, ill-treatment or other related vulnerability in the DFT process.

63. <u>REASONS FOR THE AGREED ORDER</u>

64. The Defendant accepts that the DFT was operated unlawfully as at 2 July 2015 because of an unacceptable risk of unfairness in respect of those vulnerable or potentially vulnerable whose claims were not suitable for a quick decision in the DFT.

65. The safeguards in the DFT including screening and Rule 35 of the Detention Centre Rules 2001 did not operate sufficiently effectively to prevent an unacceptable risk of

vulnerable or potentially vulnerable individuals, whose claims required further investigation, being processed in the DFT.

66. The Defendant accepts that applicants whose cases require further investigation into their claims of torture, or ill-treatment or other vulnerability which cannot be obtained in detention are not suitable for quick determination in the DFT.

67. The Minister has announced a suspension and review of the operation of the DFT from 2 July 2015.

68. The Defendant accepts that each of the lead Claimants was vulnerable; but the DFT system operated by the Defendant failed to identify them as such and/or as consequently unsuitable for a fair and quick determination in the DFT in accordance with the DFT policy.

69. In each of the Claimants' cases, it is accepted that the Claimant's case could not have been fairly determined in the DFT because each required further clinical investigation into their claims of torture, ill-treatment or other vulnerability which could not be obtained in the DFT process.

70. The Defendant accepts that in each of these Claimants' cases this should have been apparent at screening. The Defendant also accepts that in each of these Claimants' cases, the Rule 35 report should have resulted in release from the DFT because it was clear that

a quick decision could not be taken fairly and the Claimants required an opportunity for further investigations into their claims for torture, ill-treatment or other vulnerability.

71. Each claim was, therefore, wrongly processed in the DFT. In RE and MY the refusals of asylum under the DFT will be withdrawn and reconsidered. The Defendant will reconsider the case of KW, if requested within 28 days to do so.

72. It is accepted that all four Claimants are entitled to substantive damages for unlawful detention from the dates on which they entered the DFT.

73. CONSENT ORDERS

74. IT IS DECLARED THAT:

1. The Detained Fast Track (DFT) as operated at 2 July 2015 created an unacceptable risk of unfairness to vulnerable or potentially vulnerable individuals within the meaning of 2. below. There was an unacceptable risk of failure:
    a. to identify such individuals; and
    b. even when such individuals were identified, to recognise those cases that required further investigation (including, in some cases, clinical investigation).

75. This created an unacceptable risk of failure to identify those whose claims were unsuitable for a quick decision within the DFT.

3. In paragraph 1 above "vulnerable" or "potentially vulnerable" individuals include but are not limited to asylum seekers who may be victims of torture, significant ill-treatment, human trafficking, or may be suffering from mental disorder or other physical or mental impairment which may affect their ability to present their claims in the DFT.

4. It also includes but is not limited to individuals identified in R (Detention Action) v Secretary of State for the Home Department [2014] EWHC 2245 (Admin) at paragraphs 114, 198 and 221 of the judgment.

5. By reason of what they said in their screening interviews each of the four representative Claimants should have been but was not identified as having a claim that was unsuitable for a quick decision and was, therefore, unlawfully subject to the DFT process from entry into it.

6. Each of the four representative Claimants was unlawfully detained from entry into DFT, contrary to common law and Article 5 ECHR, from the following dates:

76. In the case of JM, from 14 January 2015
77. In the case of KW, from 19 January 2015
78. In the case of MY, from 16 January 2015
79. In the case of RE, from 29 December 2014.

80. The Defendant also acted unlawfully between 5 January 2015 and 19 March 2015 and in breach of the purpose of the Asylum Process Instruction (API) Medico-Legal Report

Service paragraph 2.11 in refusing to remove from the DFT individuals whose asylum claims had not yet been determined, following receipt of written notification that the Helen Bamber Foundation or Freedom from Torture had confirmed that the case had been referred to them and assessed as requiring further investigation.

81. In each Claimant's case, the Defendant acted unlawfully in refusing to accept the Rule 35 report as indicating that the claim was unsuitable for a quick decision within the DFT.

82. Each of the four Claimants is entitled to substantive damages to be assessed if not agreed.

83. AND IT IS ORDERED THAT:

84. The Claimants' claim for judicial review is granted.

85. The decisions refusing asylum taken in the cases of RE and MY shall be quashed.

86. The Defendant will reconsider the asylum claim of KW if, within 28 days of the date hereof, the Defendant is requested to do so.

87. The claims for damages are to be transferred to the CentraL London County Court if no agreement on quantum is communicated within 3 months of the date of this order.

88. The Claimants RE, MY and KW are to make any further submissions, if so advised, in respect of their claims for asylum within 28 days of the date hereof. The Defendant is to consider and determine their claims within 28 days of receipt of such further submissions or, in the case of RE and MY of confirmation, if provided within 28 days of the date hereof, that no such submissions will be made.

89. There shall be a case management hearing, in the 21 stayed cases, if such directions cannot be agreed between the parties by 4pm on Friday 10 July 2015. If there is no

agreement the hearing shall be listed as soon as is convenient thereafter.

90. The Defendant is to pay the Claimants' costs of the claim to date, to be subject to a detailed assessment, if not agreed, on the standard basis up until 5 May 2015 and on the indemnity basis thereafter, a reasonable sum to be paid on account of costs within 28 days of the date of this order.

91. The Claimants' publicly funded costs shall be subject to a detailed assessment.

92. I should congratulate the parties on their ability to have reached the agreement on the statement of reasons and the terms of the agreement and that the process of suspension of the hearing for that purpose to conclude has been effective. I am afraid at one stage I had doubts.

93. MS HARRISON: Your Lordship was not alone in that. Can I just make this one observation because clearly your Lordship's judgment both records the gravity of the individual cases and also the importance up until now that the Helen Bamber Foundation and the Freedom from Torture have played in ensuring that there was some effective safeguard for these highly vulnerable individuals because one sees that if you do not get out of the Fast Track without a letter from them, if that is not a means, for all of these individuals there was no other way out and what we know about the operation of the Fast Track appeals process is that it rejects 99 per cent of cases and so clearly we focused on the question of fairness but at the root of this is the UK's obligations under the Refugee Convention and the ECHR. Ouseley J commented in 2014 that the significance of those two organisations, in particular the Helen Bamber Foundation, and ironically it was also observed by Davis J in a case in 2006, as long ago as that, that those two charities were effectively shouldering the enormous burden in ensuring that there has not been greater breaches of those important international obligations. Obviously, they are not a party to

the proceedings and I do not hold a brief for either of them but one cannot walk away from the facts of these cases without recognising the very important and significant contribution they have made to ensuring that very many more people have not been removed contrary to those obligations and we owe them collectively a debt of gratitude, as do the clients that are before the court. My Lord, there is nothing more that I need to say. I think there are consequential issues to do with the other cases but before then Mr Knafler wishes to make some submissions to your Lordship about the terms of the order beyond that which has been agreed by the parties.

94. MR KNAFLER: That may no longer be entirely necessary, my Lord. I do not know if my Lord has actually seen a letter from Rudlings(?) on behalf of ILPA that was sent to my Lord.

95. MR JUSTICE BLAKE: Quite a lot of things have been placed before me.

96. MR KNAFLER: Of course. Before my Lord says anything, can I just indicate that literally a few moments ago I received a note from my learned friend Ms McGahey on behalf of the Secretary of State indicating that certain steps may be being taken in relation to those persons who fall within paragraph 1 of the order and have been through the system and may no longer be represented and what is in that note may actually address ILPA's concerns to a significant extent but I just need a bit of time to reflect on that with ILPA and possibly discuss one or two aspects with my learned friend, in which case there may be no need to trouble my Lord at all.

97. MR JUSTICE BLAKE: I am completely conscious, and that is partly why we have taken some care to articulate the basis upon which these orders were made, that it has implications for others. I also conscious of the fact that another judgment in this court has implications for those who are within the process, which I do not address at all but it seems that so wide ranging are the issues that are likely to have a result that I do not think I am in a position to say anything other this morning than to recognise that there are problems which exist and someone is going to have to apply their minds to them. I do

not at the moment propose to make any other amendments to this order, which has been carefully discussed, but I recognise that something needs to be done and I am sure this court, and I imagine the First-tier Tribunal and the Upper Tribunal, would be particularly grateful for clarity on what is to be done for cases that may be affected by this order that are in some way still current, in brackets.

98. MR KNAFLER: My Lord, absolutely. I do not want to make any submissions on this matter if they are unnecessary but what I do ask my Lord to consider is to give ILPA and the Secretary of State a few minutes to see if some agreement can be reached and, if not, if I could then possibly address some brief submissions to my Lord about what my Lord might feel able to consider by way of an addendum to the order that has been reached thus far.

99. MR JUSTICE BLAKE: I have given you a steer, Mr Knafler, that I am unlikely to do anything far reaching without a lot of reflection, having got the draft order before me. There are perils. But certainly you can have some time to discuss it. Can I just see where we are going. Ms Monaghan, I had a consent order or a draft consent order in the case of Y, I was not clear whether Wilsons will have seen that and agreed that.

100. MS MONAGHAN: No, my Lord, certainly I have not. I should not say Wilsons have not, I have not.

101. MR JUSTICE BLAKE: If your solicitors have, that might be your own personal difficulty.

102. MS MONAGHAN: It could be my difficulty. I read rather a lot of material this morning. My Lord, it does seem to me, however, that I too would benefit from a short period of time with Ms McGahey to discuss the way forward in relation to the equality

and trafficking claims. Obviously the order your Lordship has made will have an impact on how these claims might progress and it is proper, in my submission, that we have some time to discuss how they might be managed most expediently and expeditiously.

103. MR JUSTICE BLAKE: It is those words "some time".

104. MS MONAGHAN: I think a short time in the first place to discuss how we might manage moving forward. I was not party to the discussions that resulted in the order your Lordship made this morning and indeed I did not see the draft order and reasons until abut 8.30 am I think or thereabouts and of course I have heard this morning your Lordship's observations in relation to the fine tuning and it is proper that, in my submission, we have an opportunity to consider that.

105. MR JUSTICE BLAKE: I have just got to see where we are going for the rest of this morning. It sounds like it probably is sensible for me to rise for a short while. We have dealt I think in the order with the 21 Helen Bamber cases using Master Gidden's terminology, we have got to know what is happening in Y, where there is a separate issues about the pending proceedings for age assessment disputes, and we have got to see what is going to happen with respect to the equality cases, in particular we need to know whether 17 July remains an effective date and whether, if it is to be an effective date, whether we are going to need a 3-day hearing. Three days is quite a valuable amount of time in this court. We will take it in turns. I will rise. Would half an hour be sufficient to have the discussions?

106. MS MONAGHAN: Yes, my Lord.

107. MR JUSTICE BLAKE: I think there is not anything I can usefully do then other than to wait. I have got various applications.

108. (A short adjournment)

109. MS MONAGHAN: My Lord, thank you for the time. I am happy to say we have made some progress, I do not know if it is sufficient progress for your satisfaction, I hope so. What is proposed is that we meet this afternoon so as to determine whether or not we might be able to reach agreement, of course ideally reach agreement, but given the need to take instructions, that may not realistically be possible, but to notify you by 4.00 pm this afternoon whether progress is being made sufficient to justify us continuing negotiations and I think both of us, well indeed all of us, will take a sensible view about that, obviously there is a lot to build on already, notify you by 4.00 pm as to whether progress is being made and then by no later than the 8th, so next Wednesday, whether or not the hearing date can be vacated.

110. MR JUSTICE BLAKE: To some extent, we are not about to come back at 4.30 pm this evening to continue the argument, so I do not think 4.00 pm has any particular relevance to me but thank you for the offer to update me. It is a little bit different from the position we were in at the beginning of the week when we had potentially four hearing days which were ticking away and we were going to lose them unless minds were being focused. So I think have your discussions and see where you get to. I think it would be important, however, to keep to your second date of 8 July to see whether a hearing is going to be needed at all and, if so, how long because otherwise it is 3 days. Although I have not begun to read into any of these cases, I have got some background material and a flavour of the issues and I have seen some of the details.

111. MS MONAGHAN: As you are perhaps suggesting, my Lord, it may well be that 3 days is not required now in any event but we shall certainly agree to let you know by

Wednesday whether or not it is effective and, if so, how long it is likely to take.

112. MR JUSTICE BLAKE: Myself and the court office, who are going to be responsible for allocation.

113. MS MONAGHAN: And what the issues are, as Ms Harrison has just reminded me, so they can be narrowed and focused having regard to what has already been agreed.

114. MR JUSTICE BLAKE: Is that going to deal with Y as well?

115. MS MONAGHAN: That will deal with Y. There is of course an extant application in relation to Y and there is an unless order but at the moment both parties suggest that they be parked so as not to distract from the primary task.

116. MR JUSTICE BLAKE: You are seeking an unless order, it has not yet been made.

117. MS MONAGHAN: Sorry, did I say we have an unless order?

118. MR JUSTICE BLAKE: Yes.

119. MS MONAGHAN: That is how confident I am, my Lord, that it will be granted.

120. MR JUSTICE BLAKE: Sometimes confidence, even when you have got an agreed order, it does not always happen.

121. MS MONAGHAN: My Lord, I am grateful.

122. MR JUSTICE BLAKE: Mr Knafler?

123. MR KNAFLER: My Lord, very briefly, my learned friend is content for me to place on the record what the Secretary of State is doing in response to the consent order. Removals are being restarted but everyone in detention who has had a DFT asylum decision or appeal is being informed of the effects of the Detention Action judgment and this litigation and given 4 days to take legal advice and decide whether to make any

further representations. Now, my Lord, it is ILPA's firm view --

124. MR JUSTICE BLAKE: Just to interrupt you, Detention Action meaning the Nicol J judgment?

125. MR KNAFLER: Yes. Just two very short points, my Lord. It is ILPA's very firm view that 4 days will definitely not be sufficient because of the lack of capacity in the advice surgeries in the detained system to deal with the likely demand that the Secretary of State's information provision will trigger. Nonetheless, taking my Lord's steer, ILPA is not intending in the light of this to further press the application it was intending to make at this stage or in the context of this litigation.

126. MR JUSTICE BLAKE: Thank you. I anticipate that what has been happening in court today will be generated through to judges in this division at some point and they may be on stand by.

127. MR KNAFLER: I am very grateful, my Lord, thank you.

128. MS HARRISON: My Lord, I should just say that in respect of that matter there was a charter flight booked to go to Pakistan with a number of individuals who had been processed, we would respectfully submit now unlawfully, through the DFT and only through the endeavours of my instructing solicitor, Duncan Lewis & Co, that was stopped but clearly the Secretary of State's intention to pursue removals is of concern, it is not anything, as my learned friend Mr Knafler indicates, that your Lordship can deal with but certainly it is not a matter that is going to go away and one of the difficulties of the DFT, as we found out from the information obtained through the first set of proceedings brought by Detention Action, was that on appeal 40 per cent are unrepresented and so there is a very big pool, and that is even while there is an appeal ongoing, obviously

when you have been refused and you are facing removal there is an even bigger group of individuals who have no lawyer, and their ability to obtain one and to obtain advice and to take remedial action to prevent the Secretary of State from removal within that time is not going to be anything like an adequate safeguard. We can only make those observations because we have at least the ear of some of those who advise the Secretary of State and we would respectfully observe, from the way that we have been able to agree this order, have some influence to try to ensure that those in need of protection from unlawful removal achieve it, so we hope that perhaps that can continue.

129. My Lord, there is a more prosaic request that I have, which is we would like to ask your Lordship for an expedited transcript of the judgment, so that if and insofar as it seems likely this matter is going to come before the court perhaps imminently, your Lordship's judgment and observations on the order and endorsement of it is available for other judges.

130. MR JUSTICE BLAKE: I imagine that should not be too difficult. I will direct expedition of the transcript.

131. MS HARRISON: Can I just say for the purposes of the transcript writer, there were two acronyms that your Lordship used. One was FTT and it should have been FfT, Freedom from Torture, and then there was this ACDT, Assessment Care Detention and Teamwork, it is the suicide watch but it has got this peculiar name.

132. MR JUSTICE BLAKE: I will correct it when I receive it. I knew what it amounted to because I have read about the evidence.

133. MS HARRISON: That is what that means, it is Assessment Care Detention and Teamwork. It does not really reflect what it is about.

134. MS MCGAHEY: It is actually Assessment Care in Detention and Teamwork.

135. MS HARRISON: Perhaps it is the "in". It is always those words that make the difference.

136. MR JUSTICE BLAKE: I will review the transcript before it is approved.

137. MS HARRISON: I think the only other observation that I am asked to make by Mr Halim, who is involved in the application to seek to suspend the removals of those returning to Pakistan, was, so that it is clear this may be something your Lordship cannot deal with today as an administrative reason, but there may have been some delay brought about by whether or not these applications should be in Upper Tribunal or in the Administrative Court and certainly in terms of speed the Administrative Court is able with its long experience to deal more promptly and effectively with those kinds of very short notice applications. Again, I only make this really as a sounding board, I am being told by my junior that that was a difficulty.

138. MR JUSTICE BLAKE: You know what the arrangements are, the Upper Tribunal has, I understand, got urgent cases which are lodged before 4.15 pm, essentially it is to process those, as the Administrative Court does, there is no capacity in the Upper Tribunal to process cases which are logged after 4.15 pm, and in those cases the duty judge here decides them and all of those are factored into the Upper Tribunal judges by a direction of the Senior President of Tribunals and the Lord Chief Justice, so there should be no particular problems in knowing which hat to be worn because both are available. Again, I thought there had been some discussion as to when it is a detention case and when it is a substantive case.

139. MS HARRISON: It may just be that that might have caused some difficulty but

since it is something that one can anticipate, given what appear to be inadequate proposals by the Secretary of State to remedy is long term what we would say are systemic failures, the court could expect that they will be troubled with numbers of applications if something different does not occur quite promptly.

140. MR JUSTICE BLAKE: I have no idea because I am not on immediates this week, I was not, the week has gone now, but there is nothing on Monday, is there, or over the weekend, do we know?

141. MS HARRISON: I do not know if we have any knowledge of that. No. My Lord, I think the only point in the order that your Lordship did not expressly approve, but I assume it is approved, is the costs order.

142. MR JUSTICE BLAKE: Yes, I approve the costs order.

143. MS HARRISON: I am grateful, and detailed assessment of the Claimant's costs.

144. MR JUSTICE BLAKE: I did not read it all out because of time and I was also having difficulties knowing which of the four versions I was reading out from but I think I got it in the end. The amendments which I made which we did not excite in discussion about the preamble to paragraph 4, the transfer of the damages and the date for the case management hearing, if someone --

145. MS HARRISON: Ms Luh has already done that and it has already been sent to the Secretary of State for approval. So we should be able to get that to you very promptly.

146. MR JUSTICE BLAKE: I should be here for the rest of the afternoon. Of course I agree the costs order. Does that sort matters out for today?

147. MS HARRISON: Yes, thank you.