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

B E T W E E N:

THE QUEEN
On the Application of

JM
RE
KW
MY

IK
Y
PU

Claimants

- and -

SECRETARY OF STATE FOR THE HOME DEPARTMENT

First Defendant

- and -

FIRST TIER TRIBUNAL (IMMIGRATION AND ASYLUM CHAMBER)

Second Defendant

IMMIGRATION LAW PRACTITIONERS' ASSOCIATION (ILPA)

THE POPPY PROJECT

Interveners

[draft] ORDER

On reading the statement of reasons agreed by the parties and the evidence filed in the application

BY CONSENT:

UPON the Court having made a declaration on 3 July 2015 that the Detained Fast Track ["DFT"] operating as at that date created an unacceptable risk of unfairness to certain categories of vulnerable or potentially vulnerable applicants as identified in the declaration at paragraphs 1- 3 of the Order

relating to the Helen Bamber Foundation ('HBF') representative cases ('the HBF Order').

AND UPON the Court having made the declaration at paragraph 4 of the order in relation to the individual claims in the representative HBF cases.

IT IS DECLARED THAT:

1. Each of the Claimants in these proceedings falls within the categories of vulnerable or potentially vulnerable applicants as identified in the declaration at paragraphs 1-3 of the HBF Order.

2. In the circumstances of each case, the Defendant acted unlawfully, and in breach of her published policies on DFT and trafficking and of Article 4 ECHR in failing:

   i) to identify indicators that the Claimant was a potential victim of trafficking and;

   ii) to recognise that the Claimant's case required further investigation (including referrals to the NRM and/or the police)

   and was therefore unsuitable for quick determination in the DFT; and further

   (iii) to ensure that each Claimant had been informed fully of the NRM process and / or to document adequately how the Claimant had been so informed.

3. In the case of Y, the Defendant further acted unlawfully in routing him into the DFT because his claim based on sexual orientation was one which on its facts required further investigation to obtain corroborative evidence and was therefore unsuitable for a quick determination within the DFT.

4. The DFT as operated at 2 July 2015 was operated without full compliance with section 149 of the Equality Act 2010, to the extent that certain vulnerable groups were at unacceptable risk of unfairness.

5. Having regard to what IK and Y said in their asylum screening interviews, and to the disclosures of PU set out in her rule 35 report, each of the three representative Claimants in these proceedings 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 three Claimants was unlawfully detained contrary to common law and Article 5, ECHR:

   6.1. In the case of Y, from 26 November 2014 having regard to what he said in the asylum screening interview;

   6.2. In the case of IK, from 29 January 2015 having regard to what she said in the asylum screening interview;

   6.3. In the case of PU from 3 February 2015 when a Rule 35 report was received confirming there was independent evidence of torture and that she fell within the exclusion criteria at paragraph 2.3 of the DFT policy and Chapter 55.10 EIG.

7. In PU and Y, the Defendant acted unlawfully in refusing to accept the Rule 35 report as indicating that a quick decision could not properly be made and hence that the claim was not suitable for processing within the DFT.

8. Each of the three Claimants is entitled to substantive damages to be assessed if not agreed.

AND IT IS ORDERED THAT:

1. The Claimants' claims for judicial review are allowed.

2. The decision taken in the case of Y refusing asylum is unlawful and shall be quashed.

3. The Claimant Y is to make any further submissions, if so advised, in respect of his claim for asylum within 8 weeks of the date hereof. The Defendant is to reconsider his claim within 8 weeks of receipt of such further submissions or of confirmation, if provided within 8 weeks of the date hereof, that no such submissions will be made.

4. In respect of IK, she is to make any further representations, if so advised, in respect of her claim for asylum within 28 days of the date hereof. A decision on her asylum claim shall be made within 28 days of receipt of such further submissions or of confirmation, if provided within 28 days of the date hereof, that no such submissions will be made.

5. Each of the claims for damages shall be transferred to the Central London County Court for assessment in the event that the parties have not informed the Administrative Court Office that they have agreed quantum of damages within 3 months of today, save that:

   6.1 In the case of Y, the assessment of damages shall be stayed pending the resolution of on-going judicial review proceedings in respect of Y's age (CO/1318/2015). Y's solicitors shall inform the Central London County Court and the Defendant as to the conclusion of those proceedings and shall seek to agree with the Defendant case management directions for the assessment of damages in that case, absent which the matter shall be listed for a case management hearing in the Central London County Court.

6. 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 18 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.

7. There shall be a detailed assessment of the Claimants' publicly funded costs in accordance with the Civil Legal Aid (Costs) regulations 2013.

AND THE COURT FURTHER NOTES THAT:

On 2 July 2015 the Minister for Immigration in a written statement to Parliament [HCWS83] announced the suspension of the DFT.

DATED this 9th **day of** JULY **2015**

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STATEMENT OF REASONS

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 3 Claimants were selected as representative lead cases ("the Trafficking and Equality cases") in which to decide the following issues:

   2.1 Whether the safeguards are operating effectively including at screening, assessment of suitability, allocation of lawyers, and whether the DFT timetable is workable;

   2.2 Whether the First Defendant has complied with her published policy on the suitability criteria under the DFT in respect of trafficking and discrimination claims (where it appears further evidence or enquiries need to be made);

   2.3 Whether the First Defendant complied with her legal duties and / or published policies in respect of identification of potential victims of trafficking, referral into the NRM as a First Responder, and to protect, and of training and co-operation;

   2.4 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;

   2.5 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 unlawful policy and or (b) the failure to in place a comprehensive framework for protection.

2.6 Whether the failure to apply published policy and / or the application of an unlawful policy contravenes the requirement on signatories to ECAT to put in place a comprehensive framework of law and policy designed specifically to protect victims;

2.7 Whether the First Defendant has complied and is complying with the public sector equality duty under the Equality Act 2010 s149 in respect of the DFT scheme and its application to individual cases, having regard to its impact on LGBT applicants, women and disabled applicants;

2.8 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;

2.9 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.

3. Background

3.1 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 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 he 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 a *"back-up"* rather than *"making up for the inadequacies of rule 35 reports in relation to torture"*.

3.2 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.

3.3 In all three cases the Claimants made disclosures whilst detained on the DFT which were indicators that they were potential victims of trafficking.

3.4 In two Claimants' (IK and PU) cases, HBF accepted that they met its referral criteria and required further clinical investigation but the Defendant refused to release them from the DFT.

3.5 Interim relief was granted in each of the three cases by the High Court suspending the DFT in the individual claims.

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

3.7 The cases were heard before Master Gidden on 19 March 2015 for case management.

4. **Defendant's policies on Trafficking**

4.1 "Trafficking in human beings" is defined under Article 4(a), ECAT and Article 2, EU Directive as involving three key elements:

(i) Action - *"the recruitment, transportation, transfer, harbouring or receipt of persons";*

(ii) Means – *"by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse*

of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person";

(iii) Purpose – *"for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs".*

4.2 At Article 2(2), in relation to 'means', the Directive defines *'a position of vulnerability' to mean 'a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved.'* The abuse referred to under the element of 'means' can be physical, psychological, emotional, family-related, social or economic.

4.3 Adults cannot consent to exploitation where the means by which the 'purpose' of exploitation is achieved are present: Article 2(4) of the directive; Article 4(b), Convention against Trafficking.

4.4 The UK established the National Referral Mechanism ('NRM') on 1 April 2009, the purpose of which is to identify victims of trafficking. The Defendant is a designated Competent Authority decision-maker. She operates a series of policies to address how she will treat victims of trafficking in the immigration process. The published policies state that victims of trafficking will not be detained other than in exceptional circumstances: Chapter 9 of the Enforcement Instructions and Guidance.

4.5 To determine whether a person is a victim of trafficking, designated First Responders have the obligation to refer potential victims via the NRM for a trafficking assessment. Frontline immigration officers, including those based in Border Force, local immigration teams, asylum screening unit, asylum processing and

the DFT are all designated First Responders. Organisations such as the Salvation Army and Barnardo's are also designated First Responders.

4.6 The *Victims of human trafficking: guidance for frontline staff* and the *Victims of human trafficking: guidance for Competent Authorities* both recognise that potential victims of trafficking may not self-identify as a victim of trafficking for a variety reasons, including not knowing what trafficking is, fearing removal and / or being treated as an immigration offender, and / or perceiving themselves as migrants who happen to be in a difficult situation among other reasons. Thus identification of potential victims must not rely solely on a person self-identifying. The NRM referral form contains standard indicators of trafficking for adults and additional indicators for children. The presence of one or more of these indicators should trigger a referral to the NRM. There is no minimum number of indicators required to trigger an NRM referral.

Individual Facts

IK (CO/678/2015)

5. IK is a 22-year old woman from Albania. It is her claim that she was forced by her father into an arranged marriage with a man she did not know who physically and sexually abused her and who she learnt intended to take her to Italy for the purposes of subjecting her to sexual exploitation and prostitution. Her account of her forced arranged marriage and the sexual and physical violence suffered at the hands of her 'fiancé' discloses indicators of trafficking which have yet to be fully investigated.

6. She arrived in the UK into Gatwick Airport from Italy on 6 January 2015 and claimed asylum on arrival. She initially gave a false name and date of birth which made her a child. She was referred to Worthing social services and placed in a shared house. She left after a few days but

returned to Worthing and was apprehended by the Defendant on 29 January 2015.

7. On 29 January 2015, during an initial interview she maintained her false name and age but also claimed to have been forced into an arranged marriage with a man she did not know and that she was ill-treated by her 'fiancé'. She stated that she was fearful that she would be forced into prostitution by him. At the asylum screening interview which followed soon afterwards, she provided another name and date of birth which she said were her real ones. She repeated the claim of ill-treatment and forced sexual exploitation by her "fiancé". She was asked whether she wanted to participate in the "trafficking processes" but it is her case that it was not explained what this was or what this entailed. The Defendant's GCID records noted that IK's account showed indicators of trafficking but no referral was made to the NRM. There is no record in the Defendant's disclosure to indicate whether or how the Defendant explained the "trafficking processes" to the Claimant. There is no mention of explanation specifically of the NRM. The Defendant relied upon the fact that, although IK had stated that she feared trafficking, she also stated that she had not been trafficked as she had not yet been forced into prostitution in Italy by her "fiancé". The Defendant detained IK following screening and placed her in the DFT.

8. On 4 February 2015, Lawrence Lupin Solicitors were allocated the case as her immigration solicitors. On 5 February 2015, Lawrence Lupin made an urgent referral to the HBF. HBF accepted the referral on 9 February 2015.

9. On 9 February 2015, the Defendant refused to release the Claimant from the DFT/NSA despite the HBF acceptance of the referral. The Defendant stated that a substantive interview would take place the next day and would deal with any issues arising from her circumstances.

10. On 10 February 2015, Lawrence Lupin wrote further to challenge the refusal of the Defendant to remove IK's case from the DFT/NSA process,

stating that HBF had confirmed that her claim of sexual violence required further investigation. No response was received from the Defendant. Instead, on the same day, IK was subjected to a substantive asylum interview. IK again disclosed forced marriage, rape by her "fiancé" and fears of being trafficked for sex exploitation. She stated to the interviewing officer that she was fearful of returning to Albania *"because of the fear of being trafficked. ... [Her fiancé] was making plans to traffick me and I fear he would have trafficked me because I heard him speaking on the phone to traffick me."* At the end of the interview, Lawrence Lupin repeated concerns that IK was unsuitable for the DFT /NSA given disclosures made by IK and the HBF's acceptance of IK for assessment. The Defendant refused again to remove IK from the DFT.

11. On 11 February 2011 the Salvation Army agreed to make a referral on IK's behalf via the NRM to the Competent Authority so that a trafficking assessment could be undertaken to investigate her trafficking circumstances. The Defendant was informed of this but this did not result in IK's removal from the DFT / NSA.

12. By an order of Elisabeth Laing J dated 12 February 2015, the DFT was suspended in respect of IK. She was released subsequently on temporary admission on 13 February 2015. IK was held in the DFT / NSA for 16 days.

13. IK was subsequently issued with a positive reasonable grounds decision indicating that she may be a victim of trafficking.

PU (CO/814/2015)

14. PU is a 49-year old woman (born 23 January 1966) and a national of Nigeria. She first came to the UK on a valid visitor's visa in 2000. She subsequently returned on a student visa with her husband. That visa was valid until around 2009. PU's case is that her husband was abusive to her physically and sexually whilst they were in Nigeria and that the abuse PU suffered at the hands of her husband became worse in the UK. Her case is that her husband forced her to have sex with his friends and

that, if she refused, he beat her and threatened her with violence. She states that her husband has since returned to Nigeria and has continued to threaten to kill her if she returns to Nigeria. She made an application for indefinite leave to remain in or around 2011, having escaped from her husband. On voluntarily presenting to the Defendant, she was asked to report weekly and she complied with that request. In August 2014, PU's application for leave to remain was refused and she was issued with an appealable decision to remove her from the United Kingdom, under s.10 of the Immigration and Asylum Act 1999. She did not appeal against that decision.

15. On 27 January 2015, following a reporting event, PU was detained by the Defendant and moved to Yarl's Wood Immigration Removal Centre. On 30 January 2015, directions were given for PU's removal to Nigeria, by air, to take place on 6 February 2015. On 3 February 2015, less than 48 hours after PU was detained, she was seen by a medical practitioner who immediately made a rule 35 report, recording PU's disclosure of sexual and physical violence and exploitation at the hands of her husband. She disclosed that she was forced by her husband to sleep with his friends. If she refused she was beaten. She disclosed that her husband told her that *"she owed him for bringing her to UK."* The report also recorded her disclosure of threats to her life if she returned to Nigeria. The body map noted scars on her body which were consistent with her account of rough handling and beating as well as being burnt with a frying pan. The rule 35 report concluded, based on the account given by the Claimant and her physical presentation, that she *"may have been a victim of torture."*

16. On 5 February, the Defendant considered the rule 35 report but maintained detention on the basis that the report did not constitute independent evidence of torture. The Defendant's response did not address concerns raised in the rule 35 report that PU's account disclosed clear indicators of trafficking. The Defendant did however accept that PU had made an asylum claim. The planned removal due to take place on 6

February was cancelled and the asylum screening process commenced. On 10 February 2015, the Defendant placed PU in the DFT.

17. On the same day, PU self-referred to the HBF. She indicated that she did not have legal representation. On or around 18 February 2015, PU was assisted to secure legal representation from Bhatt Murphy Solicitors in respect of the detention and the Defendant's decision to process her claim in the DFT. That same day, HBF wrote to Bhatt Murphy accepting PU's referral for assessment.

18. A request by pre-action correspondence for PU to be removed from the DFT was sent on 18 February 2015 on the basis of concerns raised about the HBF referral and trafficking indicators. No response was received. By an order of Lang J dated 19 February 2015, the DFT was suspended in PU's case. PU was subsequently released on temporary admission on 19 February 2015. She was held for 17 days in detention.

19. PU was subsequently referred by the Salvation Army to the NRM and has been issued a positive reasonable grounds decision indicating that she may be a victim of trafficking.

Y (CO/747/2015)

20. Y is from Benin City in Nigeria and an age-disputed minor; he claims to be 15. Y's case is that he is a victim of torture and sexual abuse both in Nigeria and in the UK. Y claims to be an orphaned child, and a victim of grooming and rape, false imprisonment and beating by an older male who was supposed to care for Y after his mother's death. Y claims to have been trafficked with several other boys under a sportsperson visa obtained through involvement in a John Fashanu Foundation project.

21. Y claims to have been trafficked twice to the UK, first on 6 September 2013 and then again in October 2013, and to have been sexually abused and exploited in the UK. On 26 November 2014 Y voluntarily attended St Leonard's Police Station in Edinburgh. He was screened and during his

interview raised a claim of persecution on account of sexual orientation and trafficking indicators.

22. The Screening Officer did not pursue questions or a line of enquiry into an immigration history which amongst others involved: having a visa to Thailand; being brought to the UK on a multi-entry sport visa through the John Fashanu football association, with other young males; not being in possession of his own travel documents and having had his flights paid for by "Sam" (all of which were capable of being general indicators of trafficking). Further indicators of potential trafficking included the fact that he claimed to be a child, and to be orphaned and, living with his mum's boss "Sam" with whom he had been caught having sex, his high level of anxiety, rectal bleeding, and also the fact he gave a Salvation Army address in the UK.

23. On 28 November 2014, Y's case was deemed suitable for determination within the DFT. On 30 November 2014 Y was transferred to an Immigration Removal Centre (IRC) in Manchester, before being moved to the DFT at Colnbrook. His Scottish solicitors came off the record as they were without jurisdiction. Y was not allocated a duty representative within the DFT as his church had instructed private solicitors; these solicitors never attended at the IRC to take instructions from Y nor did they attend the substantive asylum interview. Again the interviewing officer did not seek further information despite trafficking indicators.

24. On 19 December 2014, over 3 weeks after being detained, Y had a substantive asylum interview. Y was unrepresented and had no appropriate adult even though his age was disputed. Y again disclosed his fear based on his sexual orientation and said that he suffered from health problems including that he passed blood when he went to the toilet. He explained that his passport was procured by another and the birthdate recorded was not his. He provided more detail of this abuse including further indicators of trafficking such as grooming and abuse.

25. On 30 December 2014, the Defendant refused Y's asylum claim. The Defendant made no reference to trafficking and did not accept Y's claim to be at risk of persecution based on his sexuality. He did not appeal to the First Tier Tribunal (Immigration and Asylum Chamber) ('FTT') within the prescribed time limit and on 7 January 2015, requested more time to get legal aid lawyers and indicated he needed obtain evidence which he could not get whilst in detention

26. On 13 January 2015 the Defendant reviewed Y's detention in light of the Court of Appeal's judgment in *R (Detention Action) v Secretary of State for the Home Department* [2014] EWCA Civ 1634 and maintained his detention. On 14 January 2015 Y requested temporary admission and release on the basis of being a child, *"mentally disturbed"* and needing to obtain evidence to support his claim. On the same day, the Defendant refused to release him.

27. On 15 January 2015, Y repeated his request to the FTT for an adjournment on the basis that he was due to see a solicitor on 23 January 2015 and wanted the opportunity to instruct a solicitor. The hearing of the appeal was adjourned to 3 February 2015.

28. On 22 January 2015, a rule 35(3) report was prepared, recording Y's disclosure of rape and physical abuse as a child. The report noted numerous scars and concluded Y may have been a victim of torture; and that Y had fled because *"homosexuality is illegal and severely punished in Benin"*.

29. On 22 January 2015 Y instructed Wilson Solicitors LLP. On 30 January 2015 Wilson Solicitors LLP wrote to the Defendant and the FTT to request that Y's case be removed from the DFT on account of indicators of trafficking and his being a victim of torture per the rule 35 report. The letter enclosed confirmation from Barnardo's trafficking service, a designated First Responder to the NRM, that they would undertake a

trafficking assessment (needing several sessions) and an email from Dr Juliet Cohen agreeing to conduct a medical assessment of Y.

30. On 2 February 2015 the FTT refused to adjourn/take Y's case out of the DFT. Wilsons requested reconsideration. On 3 February 2015 a renewed rule 14 application was refused at an oral hearing before the FTT. Though recognising a *'prima facie'* case that Y was a victim of trafficking the Immigration Judge issued directions giving the Defendant time to make enquiries into age and trafficking. On 3 February 2015 the Defendant refused to release Y. Further pre-action correspondence was sent on 9 February 2015. On 11 February 2015 the FTT again refused to adjourn the hearing, based partly on Y having told the Defendant he was a national of Nigeria whilst telling the doctor he had fled Benin (in Nigeria). Further pre-action correspondence sent on 12 February 2015 did not result in the case being taken out of the DFT by either the Defendant or the FTT. By an order of Lang J dated 16 February 2015 the DFT was suspended in respect of Y's case. The appeal listed for 17 February 2015 was adjourned to 3 March 2015 (and written confirmation was awaited that the case was instead being taken out). Y was not released from detention until 18 March 2015. In total, Y was detained for 113 days.

31. Y was subsequently referred into the NRM by Barnado's and has been issued a positive reasonable grounds decision by the Competent Authority indicating that he may be a victim of trafficking. His judicial review application challenging the dispute over his age has also been granted permission to proceed to a fact-finding trial.

REASONS FOR THE AGREED ORDER

32. The Defendant accepts that the DFT was operated as at 2 July 2015 unlawfully because of an unacceptable risk of unfairness in respect of vulnerable and potentially vulnerable individuals. These categories of individuals include potential victims of trafficking whose claims require

further investigation (including referrals to the NRM and / or the police) and thus were not suitable for a quick decision in the DFT.

33. The Defendant also accepts that the DFT as operated as at 2 July 2015 was operated without full compliance with section 149 of the Equality Act 2010, to the extent that certain vulnerable groups were at unacceptable risk of unfairness. The Defendant accepts that there was not full compliance with s. 149 in the Claimants' cases.

34. On 2 July 2015, the Minister announced a suspension and review of the operation of the DFT / NSA processes and the Minister's statement accepted that there were risks surrounding the safeguards within the system for particularly vulnerable applicants.

35. The Minister announced that the Defendant would urgently review all the evidence about unfairness in the DFT and would address any shortcomings identified.

36. The Defendant, in any review, will comply with her public sector equality duties and specifically will have due regard to the matters set out under section 149(1) Equality Act 2010. She will publish, in accordance with her own Equality and Diversity policy, how she has done so.

37. The Defendant accepts that each of the three lead Claimants fell within the categories of those vulnerable or potentially vulnerable individuals identified at paragraphs 1-3 of Blake J's order of 3 July 2015; and the DFT systems operated by the Defendant failed to identify them as such and/or as consequentially unsuitable for a fair and quick determination in the DFT in accordance with the DFT Policy.

38. In each case, the Defendant acted unlawfully in failing to inform the Claimants of the NRM process and/or failing adequately to document that she had done so and in failing, despite there being indicators of trafficking requiring further investigation, to identify the Claimants as potential victims of trafficking and in failing to recognise that their cases

therefore required further investigation (including by way of referrals to the NRM and / or to the police) and so were unsuitable for a quick determination of their claims in the DFT. The Defendant accepts that these failures were in breach of Article 4, ECHR.

39. In each of the Claimants' case, it is accepted that the Claimant's case could not have been fairly determined in the DFT because each disclosed the existence of indicators of trafficking/or other claims of torture, ill-treatment or other vulnerability which required further investigation which could not be carried out in the DFT process under the DFT timescales.

40. The Defendant accepts that in each of these Claimants' cases it was clear at screening that their cases were unsuitable for the DFT and therefore should not have been allocated to the DFT or detained upon screening. The Defendant accepts that in the case of PU, the Rule 35 report constituted independent evidence of torture and she should not have been routed into the DFT. The Defendant accepts that in the case of Y, the further disclosures at his asylum interview should have resulted in release from the DFT because it was clear that a quick decision could not be taken fairly and the Claimant required an opportunity for further investigations into his claims for torture, ill-treatment or other vulnerability. The Defendant further accepts that the submission of the Rule 35 report after Y's asylum claim had been refused should have led to the decision being reconsidered.

41. Each claim was, therefore, wrongly processed in the DFT and each Claimant was unlawfully detained in the manner specified in the order. In the cases of IK and Y, the illegality arose upon screening; in PU, the illegality arose upon receipt of the rule 35 report on 3 February 2015. In Y the refusal of his asylum claim which was determined pursuant to a flawed DFT process will be withdrawn and reconsidered.

42. The quantum of damages in each of the three claims falls to be assessed.