

Working against the clock : **inadequacy and injustice in the fast track system**

Based on research by Bail for Immigration Detainees at
Harmondsworth Immigration Removal Centre in March 2006

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'Working against the clock' by BID is the first piece of research to present a focused analysis of the fast track system for processing asylum claims at Harmondsworth Immigration Removal Centre (IRC), based on court monitoring, interviews with detainees and legal representatives, and a review of current policy and statistics.

The report presents evidence from 22 fast track appeals heard in one week in March 2006, interviews with 16 fast track detainees and with seven of their legal representatives.

Background

Since April 2003 a fast track system has operated at Harmondsworth which detains single male asylum seekers as soon as they claim asylum in the UK. They are held throughout the asylum application process and any appeals they make, until they are removed from the UK or given refugee status, humanitarian protection or discretionary leave.

There are around 500 beds at the centre, making this the largest IRC in the UK, and around 200 of these beds are allocated to fast track cases. The process operates a very quick timescale for deciding asylum claims and the vast majority (99%) are initially refused. Most go on to appeal, but the majority of these are refused – of the 290 appeals heard in the first three months of 2006, only seven were allowed. Official figures disclosed to BID show that in January and February 2006, of 132 appeals, 72 (55%) were made by detainees without legal representation. The average length of detention has been disclosed to BID as 69 days for those removed, and nearly 40 days for the 19% of cases initially fast tracked, but later released.

Ministers argue that the fast track allows for a greater number of removals of failed asylum applicants and that only suitable and straightforward cases are fast tracked. On 31 January 2006, 18% of those held in immigration removal centres were held for fast tracking and an expansion of fast track is planned to help to speed up the asylum determination process and quickly remove those whose claims are unsuccessful.

Purpose of BID's research

There is a dearth of information about the fast track and the official evaluation of the Harmondsworth pilot was never fully disclosed. Many detainees have complained to BID that the system is set up to refuse them as they don't have enough time to prepare their case; they do not have legal representation at their appeal and, when they are refused, cannot exercise their right to apply for bail although they are locked up for long periods. In response, BID tracked a small sample of cases using volunteer researchers to find out more about the operation of fast track.

The evidence

The evidence gathered shows that the fast track is too fast to give asylum seekers a fair chance of winning their case, that the Home Office's own detention policy is violated, and that current rules governing public funded representation leave many detainees without representation at appeals and unable to apply for bail. There is a clear crisis in representation at appeal stage with detainees forced to stand before a judge with no legal representation, whilst the Home Office is always represented. This leads to inequality of arms. The research also uncovered examples of unethical practices by some publicly funded legal representatives that are in breach of Legal Services Commission and Law Society guidance.

In 14 of the cases the appeal was refused, in two of the cases the appeal was adjourned, three cases were removed from the fast track and therefore released from detention, in two of the cases the applicant chose to withdraw his claim for asylum and in one case the refusal of asylum by the Home Office was successfully appealed.

Key findings

Lack of time to prepare the asylum claim and appeal

- All seven of the legal representatives interviewed said they didn't have time to prepare the appeal properly.
- Detainees said they felt confused by the process, and legal representatives said they didn't have time to explain things properly to their clients. Detainees and legal representatives complained about restricted communication.
- The vast majority of detainees interviewed (11 of 16) and every legal representative interviewed felt that they did not have enough time to gather evidence to present their appeal.

Claims of torture are made but not investigated due to time constraints, risking a breach of detention policy

- In four of the 22 cases, allegations were made that the applicant had been a victim of torture. Detention policy states that people with independent evidence of torture should not normally be detained. Because of the lack of time, detainees are not able to prove their torture claim, so there is a risk that unsuitable cases are being fast-tracked.

Detainees not represented at their appeal and not told about their rights

- The merits test for public funding represents a significant obstacle to fast track detainees' ability to access legal representation. 13 detainees (60% of the sample) were not represented at their appeal hearing.
- In four cases, Immigration Judges stated in court to unrepresented appellants that their lack of legal representation would not prejudice the outcome of the appeal.
- Over half of the detainees who were refused public funding for their appeal told BID they were not aware of their right to apply to for a review of this decision, their right to do so was not fully explained to them, or they had no time to find alternative representation.

Failure to make applications to have cases taken out of fast track

- In 18 of the 22 cases (approximately 80%), no application to take the case out of the fast track procedure or to adjourn it were made.
- This was the case even though every legal representative felt they had inadequate preparation time at the appeal stage and frequently (four out of seven) disagreed with the fast-tracking of their client's case.

Lack of access to bail

- Although all detainees are entitled to apply for bail, an application for bail was made at the appeal hearing in only one of the 22 cases. Three of seven legal representatives interviewed stated that they were unable to prepare a bail application alongside preparation for an appeal within the time constraints.

Long periods of detention and delays in removal

- The detainees spent long periods in detention, and most were not quickly removed despite being refused. 60 days after the appeal hearing, six detainees (almost one third) were still detained and had not been removed from the UK.

Recommendations for action

The Government argues that safeguards are built into the fast track. The findings of this research demonstrate that these safeguards do not exist in practice or are systematically failing.

In BID's view, the Government's desire to speed up the asylum determination process does not justify depriving people of their liberty for the administrative convenience of the State. BID urges IND to end the use of detained fast track processes.

While detained fast track processes are in use, BID calls for:**The Immigration and Nationality Directorate of the Home Office to:**

- establish a maximum period for detention for those detained for fast track processes.
- provide for an automatic independent review of detention of those in the fast track.

The Department for Constitutional Affairs and the Legal Services Commission to:

- ensure equality of arms at appeal hearings by scrapping the merits testing for public funding for fast track asylum appeals or alternatively by amending the merits test so that only those cases that are considered “bound to fail” are refused funding.
- remove fast track appeals from the 40% success rate at appeal target to be applied to publicly funded legal representation.
- require publicly funded representatives to automatically present a bail application on behalf of their fast track clients.

Immigration Judges to:

- refuse to preside over fast track cases where a legal representative is not present. The ability of unrepresented fast track detainees to adequately put forth their claim for asylum is highly questionable.

Legal representatives to:

- make bail applications for all fast track clients.
- make applications for all fast track cases to be removed from the fast track procedure.
- properly apply the merits test: do not refuse to grant CLR unless you are certain that the prospects of success are poor. Given the nature of the fast track, and the guidance from the LSC, you should grant CLR where the prospects of success are unclear or borderline.
- inform your client when you have refused CLR of their right to review and provide them with a CW4 Form. You can assist your client in completing the Form under Legal Help.

For the public and for detainees to:

- put your concerns about the fast track procedure in writing. Send a letter to your local MP to register your complaints about the detention of asylum seekers under the Asylum and Immigration Tribunal (Fast Track Procedure) Rules 2005. BID would like to see any responses received (fax to 0207 247 3550).

Press queries, further information – contact Sarah Cutler sarah@biduk.org