

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

CO/499/2015, CO/377/2015,
CO/624/2015, CO/625/2015

BEFORE- THE HON MT JUSTICE BLAKE

B E T W E E N:

THE QUEEN *on the application of*

JM
RE
KW
MY

Claimants

- and -

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

Defendants

IMMIGRATION LAW PRACTITIONERS' ASSOCIATION (ILPA)

Intervener

[DRAFT] CONSENT ORDER

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

BY CONSENT:

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).

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

2. 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 DFT.
3. 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.
4. Having regard to what each claimant said in their asylum 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.
5. 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:
 - a. In the case of JM, from 14 January 2015
 - b. In the case of KW, from 19 January 2015
 - c. In the case of MY, from 16 January 2015
 - d. In the case of RE, from 29 December 2014.
6. 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.

7. 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.
8. Each of the four Claimants is entitled to substantive damages to be assessed if not agreed.

AND IT IS ORDERED THAT:

1. The Claimants' claim for judicial review is granted.
2. The decisions refusing asylum taken in the cases of RE and MY shall be quashed.
3. The Defendant will reconsider the asylum claim of KW if, within 28 days of the date hereof, the Defendant is requested to do so.
4. 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.
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
6. In the absence of agreed directions relating to the 21 stayed cases in the Helen Bamber group being lodged with the Administrative Court Office by 4.00pm on Friday 10 July 2015 there shall be a case management hearing before Master Gidden as soon as practicable.

7. 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.
8. The Claimants' publicly funded costs shall be subject to a detailed assessment.

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 DFT