

# “Refusal Factory”

Women’s experiences of the Detained Fast Track asylum process at Yarl’s Wood Immigration Removal Centre

September 2007



## Refusal factory:

# Women's experiences of the Detained Fast Track asylum process at Yarl's Wood Immigration Removal Centre

By Sarah Cutler

With a foreword by Helen Bamber OBE

September 2007

“In general, I don't see why detention centres should exist. **We're not criminals, we're running from persecution.** For me, if I had a choice, I would not be in this country. But you don't dictate to the people helping you [to escape] – **you get what they give you.**”

“Fast track is a blind game to show the public that the government are doing something quickly.”

D, detained for a month



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“Fast track is just a system to refuse people. There is no time to listen to you. Even the judge didn't listen. When they put you in fast track there is [only] a very small chance to get out. I never heard [of] one person who won a fast track case in one year. How can everyone be lying?”

N, detained for eleven months

## Acknowledgements

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“You tell them your life and what you've been through...and after 24 hours they tell you that you are lying... it is very stressful.”

“If someone is tortured and raped, it's really not easy. It's very difficult to be put on fast track because you are more stressed and have been through a lot...You can't sleep, you are worried, you are scared, you know nothing, you have no help, you know no one, you don't know UK rights.”

M, detained for five months

## Foreword

This report by BID is a very welcome piece of research giving testimony to the experiences of many hundreds of women who are subject to the Home Office Super Fast Tracking procedure. Many of these women's voices would otherwise go unheard, silenced in this country as they have often been in their own countries. The UK has committed to a "fair, fast and firm" asylum policy, however the detention and fast tracking of women has serious implications for the equity of the asylum process. As shown in the report many women are denied access to quality legal representation from within detention centres. Women are frequently denied access to appropriate health care. Medical and psychological consequences of grave human rights violations often remain undetected and many women fear to disclose histories of sexual assault and rape from within detention.

All of the above impact upon the judiciousness of the asylum process. As such the quality of initial decision making will inevitably be influenced, as indeed will the ability of decision makers to make a judicious decision in the absence of a full and carefully prepared account of events. Amnesty International has already identified serious problems with the quality of initial decision making (Amnesty International, 2004) and there is a wealth of research pointing towards delayed disclosures in the aftermath of sexual violence (Henry, N.M. 2005 *Disclosure, sexual violence and international jurisprudence*. University of Melbourne).

The dangers of the DFT system highlighted in this report are in line with The Helen Bamber Foundation's own experience of working with women who have been through the DFT. Many of the women with whom we are currently working, following arduous legal wrangles to release them from the DFT process, are survivors of horrific human rights violations, including rape, torture, sex trafficking, gender specific violence, genocide and war related violence. Their experiences of the DFT have often been experienced as a continuation of abuses already endured in the form of a denial of respect for their humanity. In our experience, disclosure is inhibited by the detention environment, access to essential healthcare services is patchy and women's health complaints frequently go undiagnosed. In particular, symptoms of post traumatic stress disorder often remain undetected and women's mental health frequently deteriorates in the detention environment. Women seeking asylum have endured multiple bereavements and separations. Within detention any relationships established are likely to be severed, either by deportation or release. As such, women who remain for long periods in detention find it very difficult to form and maintain relationships for fear that any sense of camaraderie will abruptly come to an end.

Furthermore the deprivation of liberty of innocent people runs against the fundamental principle of our rule of law. The UK has a responsibility to protect survivors of torture and we call upon the government to take this responsibility seriously. Effective border control should not detract from this responsibility. This report should make essential reading for government policy makers, Home Office decision makers, members of the judiciary and the voting public.

**Dr Helen Bamber OBE**

## Letter received by BiD from women at Yarl's Wood, July 2006

"We are detainees at Yarl's Wood detention centre, and would like to bring to your kind attention the problems we are facing at the moment. We are all Pakistani women and need your immediate attention. We are asylum seekers and have been put on fast track, which is not understandable and entirely confused system for us which is not enabling us to get any support and approach to solicitors. We are feeling like our hands are cut off, and we are terribly in the desperate situation and we can't do anything helpful, supportive in regard to our cases because we have not provided any solicitors and without solicitors we are unable to deal with our cases. We are very helpless here. We are all suffering lots of tension, stress and are becoming mentally and physically sick day by day and are entirely exhausted because we are not getting any opportunity to do anything productive for our cases due to this shortage of time of this fast track system. We have come here after suffered a lot of pain, stress and lots of difficulties and need your help and support to get shelter here ...

In detention centre we are being treated like we are criminal we have been brought here and our minds have been lock and our hands cut off because we can't express anything fully about our cases. We do not have any approach to emails. We can't discuss anything with anybody as we are detained and telephone are much expensive which we can't afford. We are all going to be refused and there is no choice whether you have evidence or not because they are saying these documents are fake and not genuine. The vital facts of our lives are considered very rudely as though they are fabricated stories. This also shows lack of interest and just they are fulfilling their formalities. And they are trying to remove us on the completion of their formalities. But they do not understand how much we are suffering and we have reached here after facing lots of difficulties, but they are not believing us and not listening to us. They are giving us refusals only...Please get rid of this fast track and release us from this detention centre because we are not criminals – we are just asylum seekers who need your help"

## 1 About this report

BID exists to provide free legal assistance to immigration detainees, and to use evidence from its casework to press for an end to arbitrary detention. There is no automatic entitlement to legal representation for detainees<sup>1</sup>, no time limit on detention and no requirement for detention to be sanctioned by a court. As a result, people can be locked up for long periods, even when they are unsuitable for detention according to the Home Office's own criteria. BID runs a telephone helpline, distributes a self-help book on the right to bail and how to apply for bail, and delivers workshops on bail in four Immigration Removal Centres (IRCs). BID also represents some detainees unable to represent themselves.

As a result of this work, BID has been contacted by women asylum seekers detained at Yarl's Wood IRC where their asylum claims are being fast tracked. Women have told BID that they do not have time to prepare their asylum case, that they do not understand the legal process, do not have enough time with their lawyers, are often without legal representation at their asylum appeal, and then are detained for long periods once their case has been refused. Many women have told BID that they were raped and tortured in their countries of origin and claimed asylum as soon as they got to the United Kingdom. When they find themselves in detention, they feel that the decision-making system is set up to refuse their case. They are in despair at being locked up and terrified of being forced to return home.

The use of immigration detention in the UK has increased significantly over the last decade, and ten IRCs now operate around the country. There has been a dramatic increase in the use of administrative detention for asylum seekers since 2001; thousands of people every year are detained, simply because they have claimed asylum, despite the reduction in the overall numbers seeking asylum in the UK.<sup>2</sup>

The government has focused on speeding up the asylum process, in an effort to reduce the amount of time spent waiting for an initial decision and a final determination of the claim. There is a consensus among those seeking asylum, refugee support groups and the government that the process for determining a claim for asylum should not be subject to excessive delay. However, there is growing concern that the government's emphasis on speed is overriding fairness and women's ability to prepare and present their asylum claim, and that the administrative convenience of the state is overriding the basic human right to liberty.

Since the detained fast track (DFT) began at Yarl's Wood in May 2005, only a small number of women have won their cases in detention; around one per cent at initial decision and three to six per cent at appeal.<sup>3</sup> The government believes that this high refusal rate is reflective of the number of unfounded claims. However, BID's research argues that instead these figures demonstrate the deterministic nature of the DFT process, where asylum applicants are set up to fail.

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1 With the exception of representation at asylum interviews for those in the detained fast track (DFT).

2 According to the United Nations High Commissioner for Refugees (UNHCR) "the number of people claiming asylum in the UK has dropped 61 per cent over the last two years, back to the levels not seen since the early 1990s", UK must share, not shift asylum burden, UNHCR, 8 April 2005

3 See official asylum statistics for 2005 and 2006 published at <http://www.homeoffice.gov.uk/rds/pdfs06/hosb1406.pdf> and <http://www.homeoffice.gov.uk/rds/pdfs07/hosb1407.pdf>

BID wrote this report because the injustice of the DFT at Yarl's Wood is largely hidden from view; women who need protection are forcibly removed from the UK out of the public gaze, and women who are refused asylum can spend months locked up before being released or removed. Those women who are released often struggle to find legal representation to help resolve their immigration or asylum cases.

This report presents evidence from BID's casework, interviews with women who have been detained, from court observations of asylum appeals at Yarl's Wood Asylum and Immigration Tribunal (AIT), and information from legal representatives and detainee support organisations. It concludes that DFT undermines the right to seek asylum by stacking the odds against women survivors of persecution. The report also examines the circular arguments used by the government to justify the DFT, and puts the use of detention for deciding asylum claims in the context of the 'New Asylum Model'.

This report follows BID's July 2006 report on the DFT for male asylum seekers at Harmondsworth IRC.<sup>4</sup>

## 2 The New Asylum Model and detained fast track (DFT)

The government began using detained fast track processes for deciding asylum claims at Oakington Reception Centre in 2000, determining claims within seven days.<sup>5</sup> In the Oakington fast track process, if the asylum claim is refused but the person has a right of appeal in the UK, they are usually released to pursue appeals from outside detention. On April 10th 2003, a system sometimes referred to as 'super fast track' was set up for men at Harmondsworth IRC and subsequently for women at Yarl's Wood IRC on May 11th 2005. It is envisaged that people will remain in detention throughout the asylum application process and any appeal they make, until they are removed from the UK, given refugee status, humanitarian protection or discretionary leave.<sup>6</sup>

In February 2005, the government published its five-year strategy and new procedures for asylum, which included plans for up to 30 per cent of new claimants to be processed in detention.<sup>7</sup> Fast track processes were set out as a key part of the government's New Asylum Model (NAM), which aimed to provide "tighter case management, shortened processes and faster removals".<sup>8</sup> Statistics from 2005 show that of 25,710 asylum applicants, as many as 24 per cent had initial decisions made in detention, at Oakington (4890), Harmondsworth (1225) and Yarl's Wood (155).<sup>9</sup>

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4 'Working against the clock; inadequacy and injustice in the fast track process', BID, July 2006

5 Barbara Roche announcement to Parliament, 16 March 2000

6 The legality of detaining applicants for the purpose of the fast track process was challenged in the case of *Saadi* – see BID 'Working Against the Clock', p 20 & 21 for details. The European Court of Human Rights decided in July 2006 that detaining asylum seekers who were not at risk of absconding was in accordance with Article 5(1) (f) ECHR (*Saadi v. UK* [2006] (Application no. 13229/03) [www.echr.coe.int](http://www.echr.coe.int)). The European court also found that detaining for a short, tightly controlled period of time was not disproportionate. The decision is currently being appealed before the Grand Chamber.

7 'Controlling our borders: making migration work for Britain - five year strategy for asylum and immigration', Home Office, February 2005, <http://www.archive2.officialdocuments.co.uk/document/cm64/6472/6472.pdf> Note that in recent meetings of the New Asylum Model Stakeholder group in 2007, Home Office officials stated that the current rate of fast-tracking is around 15 per cent of new applications.

8 Home Office, Border and Immigration Agency press release, 'The New Asylum Model: Swifter Decisions, Faster Removals', 18 January 2006, <http://press.homeoffice.gov.uk/press-releases/new-asylum-model-swifter-decisio>

9 Based on analysis of Home Office statistics at <http://www.homeoffice.gov.uk/rds/pdfs06/hosb1406.pdf>



The government has a stated goal of achieving faster initial decisions; an official target of deciding 75 per cent of asylum claims within two months was set for 2005/6.<sup>10</sup> 76 per cent of applications in 2005/06 had initial decisions made and served within two months.<sup>11</sup> Processing asylum claims in detention, where initial decisions are made in a matter of days, clearly assists the government in meeting this target. BID asked for the data to be disaggregated to allow for the part played by DFT to be assessed but was told that this request cannot be met.

The use of the DFT should be considered against a background of significant political pressure to increase removals of unsuccessful asylum seekers and the announcement of a Public Performance target called Tipping the Balance, whereby the number of removals must exceed the number of new, "unfounded" asylum claims.<sup>12</sup>

### 3 Detained fast track at Yarl's Wood IRC

Yarl's Wood IRC is on the outskirts of Clapham, Bedfordshire and opened in November 2001. The largest centre for families<sup>13</sup> and women in the UK, the centre is run by Serco under contract to the Home Office.<sup>14</sup> It has space to detain 405 people, of which approximately twenty per cent of beds are allocated to DFT.<sup>15</sup> The number of people in detention at Yarl's Wood for over three months rose from five per cent in 2005 to eleven per cent in 2006.<sup>16</sup>

People without dependant children in the UK who claim asylum at an Asylum Screening Unit or at their port of entry can be considered for DFT at their screening interview. The Fast Track Processes Suitability List was issued by the Home Office in 2005 and lists 55 nationalities whose asylum claims are considered suitable for the process. The Home Office, however, makes clear that any claim from any country could be considered for DFT.<sup>17</sup> The criteria for assessing suitability is simply whether in the judgment of the assessor at the asylum screening interview, the applicant's claim for refugee protection can be dealt with "quickly". No further guidance is given of relevant factors on which this assessment should be based, save a list of examples of the types of cases not deemed suitable:

- Applicants whose cases do not appear to be ones in which a quick decision can be reached
- Children
- Children whose ages are disputed and their "*appearance does not strongly suggest they are over 18 year of age*"
- Disabled applicants

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10 Home Office's Public Service Agreement target for 2004/05 was 75 per cent and 2005/06 was 75 per cent. Details of the targets are provided in the 2000 Spending Review Public Service Agreements White Paper available from <http://www.hm-treasury.gov.uk>

11 Home Office, Asylum Statistics, United Kingdom 2005, Tina Heath, Richard Jeffries and Sarah Pearce, 22 August 2006, <http://www.homeoffice.gov.uk/rds/pdfs/06/hosb1406.pdf>

12 <http://www.ind.homeoffice.gov.uk/6353/aboutus/tippingpointsresults.pdf> "*The Tipping the Balance target states that the number of failed asylum applicants removed each month exceeds the number of new asylum applicants who, it is predicted, will not be granted leave to remain in the UK, as a result of their asylum application.*"

13 Families are not currently detained in the fast track.

14 Until April 2007, Yarl's Wood was run by Group 4 GSL.

15 Information provided by Home Office

16 Para 2.4, HM Inspectorate of Prisons (October 2006) *Inquiry into the quality of healthcare at Yarl's Wood immigration removal centre*

17 Home Office, *Detained fast track asylum process suitability list*, February 2006

- People with independent evidence that they have been tortured
- Any person with a physical and or learning disability requiring 24 hour nursing care
- Any person who has a medical condition and requires 24 hour nursing care
- Women more than 24 weeks pregnant
- Any person diagnosed with an infectious disease
- Any person who has acute psychosis, such as schizophrenia, and requires hospitalisation.

After screening, a woman may be sent straight to detention, or might be asked to report back to the Home Office at a later date and then detained. Once at Yarl's Wood, the process of allocating a legal representative, conducting the asylum interview and any appeals happens very quickly.

The total time from arrival at Yarl's Wood, consultation with a legal representative, the asylum interview and the initial decision on the asylum claim is two working days (see timetable below). Against this background, the onus of proving there is a "well-founded" risk of persecution is on the asylum claimant. The time scale for appealing to the Asylum and Immigration Tribunal (AIT) is also very tight.<sup>18</sup>

In contrast, asylum claims are processed in the community over a significantly longer period.<sup>19</sup> Under the current process for deciding claims (introduced as the New Asylum Model but applying to all new applicants from March 2007), the Case Owner aims to give the applicant a decision on their claim within about 30 days of the date the asylum application was made.<sup>20</sup> The intention is that the asylum interview will take place on around day ten.<sup>21</sup>

**Detained fast track timetable** (Yarl's Wood and Harmondsworth)

Day 1	Arrival at Immigration Removal Centre.
Day 2	Asylum interview
Day 3	Service of decision (grant or refusal). If refusal, Legal Representative interview to advise on refusal and merits of appealing.
Day 4/5	Time in which to appeal to Asylum and Immigration Tribunal (AIT) (if refusal)
Day 6/7	Appeal bundle can be lodged with Home Office
Day 9	Appeal hearing
Day 10/11	Appeal determination is promulgated
Day 12/13	Time in which to seek a reconsideration hearing
Day 15	AIT determines whether to allow a reconsideration hearing. If refused then two days to seek a reconsideration hearing from the High Court
Day 17	Reconsideration hearing.
Day 18	AIT promulgate reconsideration hearing
Day 19/20	Possibility to seek permission to appeal to the Court of Appeal
Day 21	AIT determines permission to Court of Appeal application. Appeal rights are exhausted if refused. If granted, standard Court of Appeal timetable applies.

18 AIT timescales are governed by the Asylum and Immigration Tribunal (Fast Track Procedure) Rules 2005 which came in to force on 4th April 2005 (Statutory Instrument 2005 No.560 (L.12). See: <http://www.opsi.gov.uk/si/si2005/20050560.htm>

19 Note that the Joint Council for the Welfare of Immigrants (2006) *Immigration, nationality and refugee Law handbook*, p 682-3 describes the accelerated non-detained processes where the timescale is slightly faster than the one for most non-detained asylum claims, although still significantly slower than the detained process. For example, for 'late and opportunistic' and 'potentially Non-Suspensive Appeals' cases where the interview takes place on day five and appeals must be lodged between twelve and 21 days if the claim is made in Croydon. The 'North West Project' for adults claiming at Manchester Airport or Liverpool puts claimants through an accelerated procedure where the substantive interview takes place between day nine and 14. Appeals following refusals are not accelerated.

20 Script of Border and Immigration Agency (BIA) – Asylum DVD, June 2007

21 BIA Asylum Induction Briefing, July 2007

In 2004 the Refugee Legal Centre challenged the legality of the Harmondsworth DFT, arguing that the procedure was unfair because it did not provide the legal representative with a day free for taking instructions prior to the Home Office interview and a day following interview for the submission of written representations (as had been the case in Oakington).<sup>22</sup> The Court of Appeal decided the system was legal and fair to asylum claimants provided there was flexibility to step outside the timetable. In response, the Home Office introduced a flexibility policy. The policy gives guidance as to when a case may be removed from the DFT and stresses that it "*must be applied in accordance with the key principle of ensuring fairness in the asylum determination procedure. It must be remembered that at this stage in the process, the applicant is entitled both to have his claim heard fairly and to a fair-minded decision*".<sup>23</sup> The circumstances where a claim for protection may not be suitable are based on the complexity of the case, illness, non-attendance of the legal representative, where there is no competent interpreter or where more time is needed to prepare for interview.

Although Yarl's Wood DFT started in May 2005, the official asylum statistics published every quarter did not include information about Yarl's Wood until 2006. (The following information has been drawn out from published official statistics.<sup>24</sup>)

**Number of women sent to Yarl's Wood for fast tracking:** Between May 2005 when Yarl's Wood fast track began and the end of July 2007, approximately 865 women were sent to the centre for their asylum claim to be decided.<sup>25</sup>

**Success rate at initial decision:** Almost no women have won their case at Yarl's Wood; of the 155 cases decided in 2005, 99 per cent were refused, one per cent were granted asylum, and none were granted Humanitarian Protection (HP) or Discretionary Leave (DL).<sup>26</sup> In 2006, of the 270 decisions made, none were granted refugee status, and fewer than ten were given HP or DL.<sup>27</sup> In the first three months of 2007, two per cent got refugee status (less than five people) and one per cent got HP/DL (less than five people).

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22 R (RLC) v SSHD [2004] EWHC 684 (Admin)

23 Home Office (April 2005) 'Flexibility in the fast track process', *Detained fast-track processes - Operational Instruction* <http://www.ind.homeoffice.gov.uk/6353/18383/flexibilitydoc?view=Binary>

24 Asylum applicants received by Yarl's Wood Fast Track (See paragraphs 69 & 70 and Tables 10.5 and 10.6), *Home Office, Asylum Statistics, United Kingdom 2005*, Tina Heath, Richard Jeffries and Sarah Pearce, 22 August 2006 <http://www.homeoffice.gov.uk/rds/pdfs06/hosb1406.pdf>

25 Figure based on summing of published quarterly statistics: 230 in 2005, 370 in 2006, 135 in the first three months of 2007 and 125 in the second three months.

26 "Exceptional Leave to Remain has been replaced by two sub categories. These are Humanitarian Protection and Discretionary Leave. Humanitarian Protection is leave granted to a person who would, if removed, face in the country of return a serious risk to life arising from the death penalty; unlawful killing; or torture or inhuman or degrading treatment or punishment. If a person has been refused asylum they may still be considered for this status. Humanitarian Protection is normally granted for a period of 3 years, after which the person can apply for Indefinite Leave to Remain. A person who is granted Humanitarian Protection is allowed to work and has access to public funds. Discretionary Leave can be considered for people that have not been considered for international protection, or have been excluded. Discretionary Leave may be granted if, for example, the applicant is an Unaccompanied Asylum Seeking Child (UASC) for whom adequate reception arrangements in their country are not available, or if the person is able to demonstrate particularly compelling reasons why removal would not be appropriate. Discretionary Leave can be granted for a period of three years or less." Taken from <http://www.harpweb.org.uk/content.php?section=vital&sub=v3>

27 See official asylum statistics for 2005 and 2006 published at <http://www.homeoffice.gov.uk/rds/pdfs06/hosb1406.pdf> and <http://www.homeoffice.gov.uk/rds/pdfs07/hosb1407.pdf>

**Comparison with the non-detained asylum process:** It is difficult to draw a comparison with rates of success at initial decision in the non-detained process, because the published figures for success rates include all initial decisions, including those made in detention. However, as an indication, of the initial decisions made in 2005, 1,940 (seven per cent) recognised the applicant as a refugee and granted asylum, 120 (0.4 per cent) granted HP and 2,675 (ten per cent) granted DL and 22,655 (83 per cent) were refused.<sup>28</sup> In the first three months of 2007, 15 per cent of applicants were granted asylum, ten per cent given DL or HP and 75 per cent refused.<sup>29</sup>

**Cases taken out of fast track:** A significant number of women had their asylum claim taken out of fast track. In total, published figures show 22% of women in 2005 and 21% in 2006 were taken out of fast track before their case was concluded. Published figures do not provide a breakdown of the reason for the case being taken out, but a response to a request under the Freedom of Information Act revealed that reasons included "claimant accepted as a minor", "release on medical grounds", "Medical Foundation appointment".<sup>30</sup>

**Applications withdrawn:** A small number of women withdrew their asylum applications whilst detained; ten women (seven per cent) in the first three months of 2006, and five women (four per cent) in the second quarter of 2006.

**Appeals lodged:** The majority of women whose asylum claim was refused lodged an appeal. In 2006, statistics show there were 265 refused asylum applications at Yarl's Wood, and 225 appeals lodged – roughly 85 per cent of the total.

**Success rate at appeal:** In 2005, 125 cases had received an appeal outcome, of which three per cent of appeals were allowed, 90 per cent dismissed, and six per cent withdrawn. In 2006, 15 of 225 appeals were successful (6%).<sup>31</sup>

**Comparison with non-detained appeals:** Again, it is difficult to draw a comparison because the general figures for success rate at appeal include those made in detention. 33,940 asylum appeals were determined by adjudicators/immigration judges in 2005. Of these, 5,880 (17 per cent) were allowed, 26,160 (77 per cent) were dismissed and the remainder were withdrawn or abandoned.<sup>32</sup> In the first three months of 2007, the proportion of appeals dismissed was 74 per cent, whilst 20 per cent of appeals were allowed.

**Nationality:** The top five applicant nationalities received into Yarl's Wood DFT during 2005 were Nigerian (23 per cent), Pakistani (eleven per cent), Ugandan (nine per cent), Malawian (six per cent) and Jamaican (five per cent).<sup>33</sup> Women from Nigeria have consistently been the most common nationality.

**Missing information:** No information is published as to the length of detention, the number of women represented at appeal, outcome of detention for the fast track cohort (i.e. removal or release on bail or temporary admission) or success rate of those cases taken out of DFT.

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28 Para 26, Home Office, Asylum Statistics, United Kingdom 2005, Tina Heath, Richard Jeffries and Sarah Pearce, 22 August 2006, <http://www.homeoffice.gov.uk/rds/pdfs06/hosb1406.pdf>

29 Quarterly statistics, Q1 2007 <http://www.homeoffice.gov.uk/rds/pdfs07/asylumq107.pdf>

30 Home Office letter to BID, 10 July 2006. Data relating to period from 01/10/2005 to 31/05/2006

31 See official asylum statistics for 2005 and 2006 published at <http://www.homeoffice.gov.uk/rds/pdfs06/hosb1406.pdf> and <http://www.homeoffice.gov.uk/rds/pdfs07/hosb1407.pdf>

32 Para 35 and 36, p 15, Home Office, Asylum Statistics, United Kingdom 2005

33 Ibid.

## 4 Research methodology and findings

BID gathered information about the Yarl's Wood DFT from court observations, follow up telephone interviews with women whose appeals were observed, interviews with ex-detainees, analysis of BID's casework files, interviews with lawyers and non-governmental organisations, and a review of available literature and statistics. All participants consented to participate in the research and were invited to approve the quotes attributed to them where possible.

**Court observations:** Over a four-week period in January/February 2007, volunteers observed a total of 22 fast track appeals (of 21 appellants) at Yarl's Wood Asylum and Immigration Tribunal (AIT). Volunteers completed a monitoring form, recording information about the basis for the appeal, whether the appellant had legal representation and whether applications for adjournments, for bail or for the case to be taken out of DFT were made at the hearing.

**Follow-up telephone interviews:** BID research volunteers conducted follow-up telephone interviews with seven women whose appeals had been observed.<sup>34</sup> This enabled researchers to gather more details of the detainees' asylum application, experiences of detention, and their opinions of the DFT process, using a structured questionnaire. Volunteer interpreters were used where necessary.

**Face-to-face interviews with ex-detainees:** BID research volunteers conducted six in-depth face-to-face interviews with women who had been through the DFT process at Yarl's Wood. In some instances, BID had assisted the woman while she was detained, in others, contact was facilitated by organisations working with asylum-seeking women including Black Women's Rape Action Project at the Crossroads Women's Centre, Migrants Resource Centre, Medical Justice Network and the Bail Circle. Interviews were conducted using semi-structured questionnaires, allowing individuals to discuss how the process affected their asylum claim, health and welfare, and their lives following release.

**Analysis of BID's casework files:** Five women's cases, where BID had assisted with advice or representation in challenging detention, were analysed, with the consent of the woman. Input from a solicitor working at BID enabled BID to assess whether these cases should have been on the DFT and how effectively the flexibility policy was implemented. One of the cases was also followed up with an interview, in order to gain further insight into the effects of the DFT on the individual's health and welfare.

In addition, information was gathered by way of correspondence and telephone interviews with a number of organisations that provided information relating to their experience in the DFT process, including the Medical Foundation for the Care of Victims of Torture, Legal Action for Women, and the Legal Services Commission (LSC). Interviews were also carried out with a barrister and two solicitors who represent women in the DFT. In addition, BID wrote to all DFT legal aid representatives' in June 2007 inviting them to respond to a short questionnaire. Six responses were received.

Using the Freedom of Information Act, information about DFT was sought from the Home Office, the (then) Department of Constitutional Affairs, the AIT and the LSC.

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<sup>34</sup> It was only possible to complete follow-up interviews with seven of the twenty-one women. This is because researchers were unable to contact a number of women. They may have been taken off DFT at appeal, been granted bail, or removed from the UK.

In total, 31 women were included in this research. In BID's view, the relatively small sample of data gathered illustrates a broader problem. Organisations with more resources than BID should undertake larger-scale analysis of the DFT, and the Home Office, the LSC and the courts should improve data gathering and analysis to enable the DFT to be monitored and evaluated (see recommendations).

## Summary of findings

A total of 31 women's cases were included in the research through observations, interviews or case-analysis. 13 nationalities were involved.<sup>35</sup>

### Court observations: results

- 22 appeals were observed over four weeks, involving 21 individuals.
- Official figures provided to BID confirm that 30 appeals took place in that four-week period. There were 20 appeal outcomes in DFT, of which 19 were dismissed, and one was withdrawn. None were granted and eight were taken out of DFT.<sup>36</sup> (On five days observers were wrongly informed by AIT staff that there were no appeals taking place, and one day observers were told there were no free seats in the court).
- Gender issues were raised in the appeal in 15 of the 22 cases observed (68 per cent).
- Six of the 22 appeals (27 per cent) observed were by women without any legal representation.
- Applications for the case to be taken out of DFT were made in eight cases (36 per cent), of which four were successful. In one case, the representative stated that the woman was a rape survivor and requested an adjournment to allow time for a medical report, which was granted, but did not apply to take the case out of DFT.
- Applications to be taken out of the DFT were rejected in the following cases: a complex case involving torture, suicidal tendencies, sexuality, and a lack of medical evidence; sexual violence; exceptional circumstances based on sexual assault; pregnancy (the appellant was 26 weeks pregnant).
- Applications for adjournments were made in ten of the 22 cases (45 per cent), of which two were granted. In one case the judge refused to proceed because the appellant's solicitor had not turned up, so the judge adjourned the appeal. In another case, where the woman was not represented, it emerged in court that a firm had asked for £300 to continue and then requested a further £2000 payment before they would release her file if she wished the case to be transferred to another solicitor. The judge adjourned for eight days to allow her to attempt to find alternative representation.
- Unsuccessful applications for adjournments were made for the following reasons: waiting for an appointment with the Medical Foundation/ time to gather evidence; lack of representation; lack of time.
- No applications for bail at the appeal were made in any of the cases observed. In one case, a bail application had been submitted by the solicitors late the previous night, but was withdrawn at the appeal.
- In several cases, observers noted that interpreting appeared to happen only when the appellant was being addressed directly and that exchanges between judge, Home Office and representative were not translated. In one case, the twenty-minute submissions of the barrister were not translated at all for the appellant, a Sri Lankan woman.

35 Sri Lanka (8), Nigeria (6), Uganda (4), Cameroon (3), Guinea (2), Somalia (1), India (1), Ethiopia (1), Sierra Leone (1), DRC (1), Pakistan (1), Burundi (1), Togo (1).

36 DCA Access Rights Unit, letter to BID, 7 March 2007

The following examples highlight issues of concern:

One appeal involved a woman from west Africa who claimed asylum a week after arriving in the UK and was immediately detained. Her asylum claim was based on forced marriage, rape and threat of Female Genital Mutilation (FGM). The judge (Denson J) adjourned the case for an hour and reportedly asked for the woman to be medically examined by the detention centre doctor to ascertain whether or not the procedure had already been carried out. The judge gave his decision immediately in court, refusing the appeal. The observer noted that he did not appear to consider the medical evidence. In a follow up phone interview, the woman was very angry that the judge had proceeded in this way.

*"The judge made the decision [on my appeal] in court. The decision was not fair. He saw the proof- that I haven't had FGM. When I came back from the medical centre [her appeal was adjourned for two hours while she was examined at Yarl's Wood], he asked me different questions. He said I planned the story. He just wanted to find a way to dismiss my case...they don't give you enough time for your case. They don't look at what is happening in your country....It's very stressful and you need more time...If you are here for help, they need to give you time."*

An application to take the case out of DFT was made by a representative on behalf of a lesbian woman from an African country. Her appeal raised issues of violent treatment as a result of her sexual orientation and there had not been time to have her wounds assessed by a scarring expert. Judge Flynn refused to take the case out, stating that it was not a complex case and stated that the case should not be delayed. He instead adjourned her appeal for one week.

A woman who had been a victim of serious domestic violence in Pakistan was clearly distressed in the appeal hearing. The representative argued in the appeal that the asylum interview should not be viewed as an objective record given that it lasted three hours and twenty minutes, the client was not given a break and she was in tears and distressed. However, the representative did not make an application for the case to be taken out or adjourned.

In one case the legal representative stated he had only received the case at 8 pm the previous night so had insufficient time to prepare. An adjournment to a later date was refused, and instead, a break of 45 minutes was given to allow for instructions to be taken. The representative objected in the appeal that the reasons for refusal letter from the Home Office was relying on information from 'Wikipedia' to prove that the applicant was not credible.

#### **Follow up interviews by phone with women in detention**

- Seven women whose appeals had been observed were then interviewed by phone. Three women were from Nigeria, one from Sierra Leone, one from Sri Lanka, one from the Democratic Republic of Congo and one from Uganda.
- Six of the seven women interviewed said that DFT was confusing and difficult to understand. One woman said it was not confusing; it was unfair.
- All seven women said that they thought the DFT was unfair.
- Five of the seven women said that no one outlined their rights when they were detained, despite having a legal representative at this stage. One could not remember.

- Two of the seven women spoke no English.<sup>37</sup>
- Four women said they did not have enough contact with their lawyer.
- Lack of time to prepare their case was an issue for five women.
- Time spent with the lawyer before the asylum interview varied; two women said they saw their lawyer for 30 minutes, one for less than an hour, and one for three hours (not all women provided this information.) One woman had only telephone contact with her lawyer, and said that he was not familiar with fast track cases. Another woman said that staff at the centre had kept her lawyer waiting for an hour before telling her he had arrived, which reduced their meeting time.
- None of the seven women had applied for bail at the appeal or since the appeal.
- Five women raised health concerns when interviewed, including high blood pressure, stress, insomnia, anxiety and fear.
- Three women said that no one explained to them why their asylum claim had been refused. (Women are given a letter explaining the reasons for refusal, but those interviewed felt that the contents had not been explained to them).

When asked what they thought of the decision to refuse their case, women said:

*"They said I lied. I'm upset they accused me of lying. They don't understand."*

*"I don't know what to do now. They should listen to me. It is my life. If I go back people will look for me. They will kill me. I have no place to go. I have nobody to help me. I want to kill myself."*

*"I don't understand the process. I don't know the rules, so I don't know if I'm following the rules."*

*"No, the system is not fair. There is not enough time for women to explain themselves. Anything you say, they tell you is a lie. The Immigration Service is very rude; they don't want to listen to you. There are lots of traps.... They are biased and inconsiderate."*

### **Interviews with women who had been detained for fast tracking**

- Face-to-face interviews were conducted with six women whose asylum claims had been fast-tracked in detention; three from Uganda, one from Togo, one from Burundi and one from Cameroon. The asylum claims were made in 2005 (two women) and 2006 (four women).
- All women had been detained at Yarl's Wood and later released. Time in detention ranged from one month (shortest) to eleven months (longest), with an average length of 5.3 months. (Months spent in detention 1, 3, 4, 5, 8, 11).
- Five of the women told BID they were victims of torture, including rape. One woman said she had been trafficked. Two women were HIV+, one of whom was also pregnant.
- Three of the six women were not represented at their asylum appeal.
- The length of time in UK before claiming asylum ranged from next day (two women), four days, nine days, two months, eleven months.
- Two of the women were released on bail by an immigration judge and four on temporary admission (TA) by the Home Office.

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<sup>37</sup> The interviews with these women were carried out in their own language.



**S** from Uganda claimed asylum in mid-2005, nine days after arriving in the UK. She was sent to Yarl's Wood and spent eight months there. The detention medical centre sent notification three times that she was a victim of torture to the IND but there was no action to remove her from fast track. A privately-charging lawyer represented her at her interview. No application to take her case out of DFT was made, nor an application for bail. She represented herself at the appeal. S suffered a serious breakdown in detention, and is permanently brain-damaged as a result of being inappropriately re-fed by detention centre staff after a long period on hunger strike. She spent seven months in a psychiatric hospital after being in Yarl's Wood. Her treatment was the subject of a review of health care at Yarl's Wood by HM Inspector of Prisons, Anne Owers.<sup>38</sup> S was interviewed for this research with her supporter and campaigner, Gill Butler.

**N** from a west African country claimed asylum in early 2006, and was detained four days later. She was represented at her asylum appeal, but medical evidence of trauma was dismissed by the judge. Attempts to remove her were futile as she had no travel documents. Her bail application after eight months in detention was refused because the judge said she would abscond. The Home Office released her on temporary admission after eleven months in detention. At the time of her interview with BID, she was pursuing a fresh asylum claim.

**E** from a west African country arrived in the UK in mid-2005 and claimed asylum the next day. She was detained three days later. E said she had only 30 minutes with her lawyer before her asylum interview. Her interview was stopped because she was so distressed. E was represented at her appeal, but she spent only 45 minutes with her lawyer before her appeal and did not see her again following the refusal of asylum. She was given removal directions and phoned her lawyer but she did not respond. She was a victim of torture and attempted suicide whilst in detention. E applied for bail herself after two months in Yarl's Wood, where she explained that she was not well and that she needed medical treatment- she was a diabetic. This was refused. Supporters managed to stop an attempt to remove her and she applied for a judicial review. A doctor from the Medical Justice network visited her and wrote a medical report, which was used in a successful bail application, after four months in detention. She won her judicial review and is now awaiting compensation for unlawful detention. She described to BID what happened when the Home Office tried to remove her:

*"When I went to the airport I asked to speak to immigration. Because I was crying, the man let me speak to an immigration official. I told them I couldn't go back because I'm not safe in my own country. She said if I didn't take the removal flight, a flight would be booked for the next day. Immigration threatened me and said that what happened [in her home country] would happen again - I told her she was scaring me and that if she sent me back I will be killed so she should kill me here. I had no travel documents so they took me to Tinsley House IRC. I was crying and I was scared. I said I will commit suicide- I can't face the same situation twice. It's better for me just to die here. A lady there said I should see the doctor. I saw a nurse who gave me antibiotics and in the evening I saw a doctor who gave me antidepressants. The doctor told me to find a lawyer. I stopped eating because I was too stressed. A Tinsley House worker gave me a leaflet with the telephone number of a Tinsley House welfare GP. She was nice, and tried to contact a lawyer for me, but I was taken back to Yarl's Wood so had no chance to meet her. I called her when I went back to Yarl's Wood and she advised me to apply for bail."*

38 HM Inspectorate of Prisons (October 2006) Inquiry into the quality of healthcare at Yarl's Wood immigration removal centre [http://inspectorates.homeoffice.gov.uk/hmiprison/inspect\\_reports/irc-inspections.html/Yarl's\\_Wood\\_inquiry\\_final.pdf?view=Binary](http://inspectorates.homeoffice.gov.uk/hmiprison/inspect_reports/irc-inspections.html/Yarl's_Wood_inquiry_final.pdf?view=Binary)

**L** from an African country was trafficked into the UK at the end of 2005 and claimed asylum eleven months later. She was between four and five months pregnant when she was detained. She was not represented at her appeal. Via a friend in detention, she managed to find a new lawyer who stopped her removal and put in a fresh asylum claim for her. She found out that she was HIV positive while in detention. After two failed removal attempts, she was released by the Home Office after three months in detention. At the time of her interview with BID, a judicial review in her case was outstanding. She described to BID what happened when the Home Office tried to remove her from the UK.

*"I had lower abdominal pains and bleeding. The nurses told me that this is normal in pregnancy, but it's not- I have three children [in her country]. They still gave me papers saying I was fit to fly. On the day of the flight date, they didn't tell me I was also going to Bedford hospital. Early in the morning ... they told me to get ready in 20 minutes. I wasn't told beforehand. There was no time for breakfast- I was told we have to go. They wouldn't let me eat, despite my condition. The hospital appointment was just to check I was fit to fly. We came back to Yarl's Wood at lunchtime. They told me "pack your things. You are going to the airport." I asked them to let me eat something. They told me "we have to go. There's no time for lunch. You are not supposed to eat. Get out of the queue and pack your bags." I waited for the van for three hours in the office. So why couldn't I eat lunch? You can suffocate travelling in the van. There's no air. It is so hot. They just drive and handle you the way they want-as if you are criminals. I asked for water. They said I should have brought some with me. They gave me a sandwich at about 8pm- the first food I had had all day. I was sick, sick, sick. I asked my friend to talk to [her lawyer] to ask him to cancel the flight. I'm not sure how, but he did it. We left the airport around 12am. I don't know if it was a kind of punishment. They didn't give me food or water back at Yarl's Wood. They had to reallocate me. By the time they finished it was 3am and still no food. I was given another flight date. I had a solicitor, but still was taken to the airport, and had the same experience."*

**M** from an African country arrived in mid-2006 and claimed asylum two months later. She explained to BID that the delay was due to the fact that she was diagnosed and being treated for HIV and TB in a UK hospital. Despite having strong ties to settled close family in the UK, and a very low CD count, she spent five months in detention before finally being released on bail on her fifth bail application, represented by BID. Her asylum claim was based on sexual abuse, rape and torture. She was represented at her appeal. She has now been advised to put in a fresh asylum claim.

**D** from a west African country claimed asylum a few days after arriving in the UK in early 2006. She was detained despite disclosing torture and rape at her screening interview, at which she collapsed and was taken to hospital. She reported as required eight days later, and was immediately detained. She represented herself at her appeal, and when it was refused, applied for a reconsideration hearing herself. She ensured that the case had been sent to the High Court, and kept a receipt. She later discovered the detention centre had not sent her papers to court. She was released after a month in detention but was tagged. She had a tag around her ankle and a satellite tracking device installed in the home of her surety. She had regular appointments at the Medical Foundation and had to ring the private security company 24 hours in advance each time she left her house. The tag was removed without notice or explanation after one month. D is supported by Women Against Rape at the Crossroads Women's Centre and has a new legal representative after speaking out about her treatment at a BID meeting in parliament.

### BID cases

- BID analysed five cases<sup>39</sup> of women who contacted BID for assistance with getting out of detention. The women in this sample were survivors of torture, discrimination, and societal violence.
- None of the cases were taken out of the DFT before the appeal or at the appeal, despite them all revealing a combination of factors at the outset or at different points in the DFT timetable showing they were not straightforward cases so were unlikely to be suitable to be "decided quickly".
- In none of the cases sampled was extra time given to the applicants to obtain vital evidence in support of their cases.

**N** from west Africa arrived in the UK and claimed asylum on the same day and was immediately transferred to Yarl's Wood. N was raped and tortured in her home country. She reported she had been tortured to the Home Office interviewing officer at her asylum interview in Yarl's Wood. The Home Office interviewing officer asked the detention centre's medical centre for their opinion on any health issues she may have had. Even though she reported torture to the medical centre, and it was recorded under Rule 35(1) of the Detention Centre Rules 2001, no medical examination which would have shown evidence of torture was conducted. There was no report under Rule 35(3) of the Detention Centre Rules 2001 and she was kept in detention. As this report went to print, N was finally released after over eight months in detention.

**K** from an African country claimed asylum the same day she arrived in the UK and during her screening interview at Croydon disclosed she was raped by government soldiers in her home country. The following day she was transferred to Yarl's Wood where she had a second screening interview. She also disclosed she had been tortured to the medical centre staff. A note was made of her disclosure to comply with the Detention Centre Rules 2001. Her asylum claim was refused and she was not represented at her appeal. Her solicitor from the rota said they would not represent her at the hearing unless she paid £1000. At her appeal, the judge found she had been raped and her husband killed, but refused her claim because the manner in which she escaped was not believed and because the rape was seen as an unfortunate but random act, not sanctioned by the State. No independent medical evidence of torture was provided at the hearing. While she was in detention, K was diagnosed as being HIV positive. BID was preparing a bail application for her when she was helped by another woman in detention to find a new legal representative, who secured her release on temporary admission after two months and three weeks in detention.

**B** claimed asylum on the day she arrived in the UK, in late 2006. Following her initial screening interview, she was sent back to the airport where she arrived and within 48 hours of her arrival in the UK she was transferred to Yarl's Wood for her asylum claim to be fast tracked. B told BID that she fled to the UK after she was detained, tortured and raped in her home country for membership of an opposition party. She disclosed torture at her screening and asylum interview, and later disclosed that this had also entailed rape. Independent medical evidence showing scars consistent with torture, and an opinion that she was suffering from Post Traumatic Stress Disorder (PTSD) was subsequently submitted in support of a judicial review of refusal to accept further representations as a fresh claim. B was finally released from detention after six months.

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<sup>39</sup> One of these cases is written up in the previous section as this woman was also interviewed.

F was sent to Yarl's Wood two days after her screening interview. She claimed asylum in the UK after she was raped by the military and her father was murdered. Her asylum claim was refused. F was represented at her appeal but no application was made to take her case out of fast track. A request for the appeal to be adjourned to get evidence of her physical and mental state and of her physical abuse from the Medical Foundation was refused. After her appeal, F found out that she was pregnant, as a result of rape in her home country. She was released on temporary admission after two months in detention.

### Views of legal representatives

In June 2007, BID wrote to all thirty-three<sup>40</sup> suppliers of publicly-funded legal representation for women fast-tracked at Yarl's Wood, inviting them to share their experiences. Responses were received from six legal representatives.

- Four of the respondents deal with up to five women's fast track cases every month; two deal with between five and ten such cases every month.
- Half of the respondents reported practical problems with helping clients. These included: ensuring client access to medical facilities, lack of computer and internet access at Yarl's Wood, the time constraints of the DFT, difficulties in booking an interview room, clients being unable to consult a legal representative prior to their interviews, problems in arranging visits, delays in bringing clients to meet with legal representatives, and difficulty in contacting clients by telephone due to lines being frequently engaged.
- Five of the respondents felt that the speed of the DFT has a negative impact on the fairness of the asylum determination process. Representatives stated that the system does not give enough time to prepare cases thoroughly and gather necessary evidence, and that this is particularly true of appeals. Especially problematic under the time constraints of the DFT is the lack of time to take full instructions, request medical reports, instruct country and/or medical experts, obtain documentation from abroad and locate witnesses. One respondent stated that the speed of the DFT can have a positive impact, and reported several successes. The same respondent noted, however, that these depended on quality representation at the substantive asylum interview and that some private representatives do not understand the principles of the DFT and may not be able to provide this.
- All six respondents reported cases of women who have been put into DFT but who do not fit the criteria. Such cases included women with deteriorating physical/mental health, pregnant women, survivors of sexual abuse and torture, trafficked women, disputed minors, and complicated cases on which decisions cannot be made quickly. One respondent observed that some women are wrongly placed into the DFT system because they are inaccurately assessed at the screening interview stage.

<sup>40</sup> Firms providing legal representation for clients detained under the fast track system at Yarl's Wood under contract to the Legal Services Commission (at May 2007) are: Aman Solicitors & Advocates, Cardinal Solicitors, Christian Gottfried & Co Solicitors, CLC Solicitors, Clore & Co, Corbin & Hassan Solicitors, Duncan Lewis & Co (Harrow), Duncan Lewis & Co (Hackney), Hackman Solicitors, Harrow Solicitors & Advocates, Howe & Co, Immigration Advisory Service, J D Spicer, Knox Ukiwa Co Solicitors, Lawrence & Co Solicitors, Lawrence Lupin Solicitors, Nandy & Co, O'Keeffe Solicitors, Oldhams, Owen White & Catlin, Palis Solicitors, Pickup & Jarvis, Pinidiya Solicitors, Polpitiya & Co, Rahman & Co, Refugee Legal Centre, Rodman Pearce Solicitors, Sheikh & Co, Sheikh & Co, Simmons Solicitors, Spence & Horne, Sriharans, Warnapala & Company, Wilson & Co.

- Two respondents were positive about the staff at Yarl's Wood, one stating that they are generally cooperative with legal representatives and the other reporting good working relations with the fast track team at Yarl's Wood, and that they are aware of the constraints of the fast track system and grant requests for extension of time to submit representations. One respondent observed that interviewing officers are often too harsh on clients and can become very aggressive. A further respondent observed that the system does not allow clients full access to legal advice/representation, due to the difficulties in obtaining full instructions and access problems.
- One respondent observed that approximately 80 per cent of clients represented by them have eventually been removed from DFT because the client is a survivor of torture or rape, or the case is found to be too complex. In BID's view, this rate is not comparable with other solicitors and shows the lottery of representation. Several respondents expressed concern that the quality of legal representation was patchy, and that representatives had to work "twice as hard" in DFT.

Telephone interviews were carried out with three legal representatives and an email submission was received from one representative. Concerns were raised about all stages of the process, including inadequate screening leading to torture survivors being detained. One representative stated that the screening process makes it impossible for there to be any meaningful decision-making on suitability. Concerns were also raised about inadequate time to prepare for appeals, lack of flexibility on the part of the Home Office to take cases out that are clearly unsuitable, and the reluctance of many immigration judges to grant adjournments or take cases out. Several people commented on the extremely low success rates in DFT as an indication of the unfairness of the process.

## 5 Discussion

The data gathered by BID suggests that women asylum seekers are set up to fail at every stage of the DFT; at the screening interview, the asylum interview, when accessing legal representation, at the appeal stage and after appeals are refused, when women risk languishing in detention if they are not removed.

Legal representation is available at public expense to all women for their initial asylum claim, using a rota system maintained by the LSC. Representatives without a fast track contract generally cannot undertake fast track work using legal aid, although privately-charging lawyers can and do represent women.<sup>41</sup> In BID's experience, the quality of legal representation on the rota is very varied. As such, allocation to a duty representative will prove a vital lifeline for the lucky ones, and a fig-leaf of representation for the rest. The LSC has not undertaken any comparative analysis of rates of success by those on the rota.<sup>42</sup> Allocation to a lawyer on the rota is administered by the Home Office; women can not choose who to approach. Should women be unhappy with the quality of work or the decision not to represent them at their appeal, their ability to complain is almost meaningless. This is because the DFT timetable continues, leaving women without representation and vulnerable to refusal and removal.

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<sup>41</sup> In BID's experience, some women choose to remain with the lawyer who was working on their case before they were detained. In addition, some see the duty lawyers as 'government lawyers' as they are provided within the detention centre.

<sup>42</sup> The LSC require monthly reporting but state that the data has not thus far been of sufficient quality to assess.

As highlighted, provisions for a case to be taken out of DFT exist; if this happens, the woman is automatically released from detention. The Home Office can decide at any point that a case is not suitable and release.<sup>43</sup> Legal representatives can make a bail application at any stage, can apply for release under Rule 30 of the Fast Track Procedure Rules, and immigration judges can order release. However, BID's research suggests that each of these 'safeguards' is inadequate.

The following discussion considers each stage of the DFT in the light of the data gathered by BID, and shows how current policies and practices are stacking the odds against women.

## 5.1 Screening interview and the decision to detain

As explained above, the decision to process an asylum claim in detention is made on the basis of a screening interview when the applicant claims asylum at a UK port, an Asylum Screening Unit or at a local enforcement office. Claims considered suitable for the DFT are ones that are deemed to be 'straightforward' and capable of being decided quickly.<sup>44</sup> This research suggests that the assessment of suitability for the DFT process and the decision to detain is overly simplistic, flawed and ineffective in identifying gender-related cases.

As a result, the Home Office's own policy on who should be in DFT is not followed in many cases. Women rape and torture survivors, and women who do not meet the detention criteria are sent to Yarl's Wood, including women who have explicitly said at their screening interview they are claiming asylum because of rape. One ex-detainee interviewed told BID that she disclosed that she was a victim of torture at the screening interview. She had recently arrived in the UK so it was impossible for her to put forward independent evidence of torture at this stage.

A legal representative interviewed for this research has found detaining claimants of torture to be a common experience; *"on the S1 form [used for screening interviews] there is a box that says 'why do you want to claim asylum' and some ladies have said 'because I've been tortured and raped.' Even so, they have been detained."*<sup>45</sup>

Women do not have legal representation at the screening interview. National Intake Unit instructions states, *"immigration officers who conduct these screening interviews are not expected to engage in any analysis of asylum claims."*<sup>46</sup> As the Immigration Law Practitioners Association states *"it is a mystery of the fast track process how the straightforwardness of claims can be accurately assessed when the screening interview elicits no or virtually no information about the substance of the claim."*<sup>47</sup>

43 The guidance on flexibility in taking cases out of the DFT states "caseworkers must be aware that cases should be removed from the process if it is not possible to consider the claim without the requisite of degree of fairness, within the fast track timescales and consequently the claim is not one which is capable of a quick decision." (Detained Fast Track Processes Operational Instructions dated April 2005.) The flexibility document does not offer detailed guidance as to the circumstances in which a case should be removed from the fast track beyond giving an example.

44 Home Office, *Detained fast track asylum process suitability list*, February 2006

45 Sadia Rashid, interview with Sarah Cutler (BID) 02/03/2007

46 National Intake Unit, *New Asylum Model Immigration Service Operational Instruction*' Home Office, 10/02/2006 (our italics)

47 Para. 38, Immigration Law Practitioners' Association (November 2005) Training pack: *Fast track asylum determination procedures: how best to represent your clients*

In place of any detailed analysis at the screening interview, officers make referrals for fast track using the 'Detained Fast Track Suitability List'. This list gives no guidance on what factors are used to assess whether a case can be decided quickly and does not explicitly state that asylum claims raising issues of gender-related persecution should not be included. It provides a list of cases not suitable for fast tracking (pregnant women who are more than 24 weeks pregnant, unaccompanied children, people with independent evidence of torture, people with a medical condition requiring 24 hour nursing or medical intervention). It is not clear how it is possible to provide independent evidence that the claimant has been tortured at the screening interview. It also includes a list of countries that "*may well give rise to claims which may be decided quickly.*"<sup>48</sup>

The parliamentary Joint Committee on Human Rights (JCHR) is "*concerned that the decision to detain an asylum seeker at the beginning of the process simply in order to consider his or her application may be arbitrary because it is based on assumptions about the safety or otherwise of the country from which the asylum seeker has come.*"<sup>49</sup>

The Home Office states "*Individuals are not detained simply for having claimed asylum*" but then goes on to say that "*The detained fast track is not arbitrary. Any asylum claim, whatever the nationality of the claimant, may be fast-tracked where it appears after screening to be one that may be decided quickly.*"<sup>50</sup>

### **Straightforwardness: gender claims**

The Home Office does not collate information about how many asylum claims made by women are based on gender-related persecution. However, it has been recognised that "*The experiences of asylum seekers are gendered in several ways, including forms of persecution in countries of origin, the migration journey, experiences of social services and the legal process itself.*"<sup>51</sup>

The Immigration Appellate Authority (now the AIT) published the Gender Guidelines in 2000 in recognition of gender specific persecution to which women claiming refugee protection are subject and in response to societal and cultural factors which affect women's willingness to disclose information about their experiences.<sup>52</sup> The Home Office Asylum Policy Instruction (API) of October 2006 "Gender issues in the asylum claim"<sup>53</sup> sets out "*additional considerations decision-makers should have in mind when assessing claims for asylum that could include gender related issues.*" These instructions highlight how decision-makers need to have awareness of gender issues, particularly regarding disclosure of traumatic experiences and the need to consider the particular situation of women.

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48 Detained Fast Track Asylum Process Suitability List, Annex 1, February 2006

49 House of Lords, House of Commons Joint Committee on Human Rights, The Treatment of Asylum Seekers 10th Report of Session 2006-07, Volume I – Report and Formal Minutes para 226

50 p 24 House of Lords, House of Commons Joint Committee on Human Rights, (July 2007) Seventeenth Report, Government Response to the Committee's Tenth Report of this Session: The Treatment of Asylum Seekers <http://www.publications.parliament.uk/pa/jt200607/jtselect/jtrights/134/134.pdf>

51 'Vulnerable groups in the asylum determination process', June 2007, ICAR [http://www.icar.org.uk/bob\\_html/04\\_iac\\_briefings/Vulnerable\\_groups\\_in\\_the\\_asylum\\_determination\\_process\\_June\\_2007.pdf](http://www.icar.org.uk/bob_html/04_iac_briefings/Vulnerable_groups_in_the_asylum_determination_process_June_2007.pdf)

52 The failure to follow gender guidance in Yarl's Wood reflects a broader problem. In 2000 the Immigration Appellate Authority published the Asylum Gender Guidelines, with the aim of ensuring that "the asylum determination process is accessible and that the procedures used do not prejudice women asylum seekers or make it more difficult for them to present their asylum claims." (Immigration Appellate Authority, Asylum Gender Guidelines, 05/12/2000). Despite the UK being one of the few countries having gender guidelines, there appears to be a gulf between policy and practice, with guidelines often not followed. Ceneda and Palmer (2006) *Lip Service or Implementation?* explain that this is due to: problems in interviewing and interpreting; lack of knowledge of women's issues and country of origin; lack of awareness of gender issues; culture of disbelief at the Home Office. Indeed, the government has refused to force immigration judges to apply them by giving these Guidelines statutory status. The Black Women's Rape Action Project documents how the Guidelines have been downgraded further since the introduction of the AIT in 2004 and quotes the AIT Deputy President Ockleton as stating "*the Gender Guidelines are not and never have been the policy of the AIT and they have no AIT approval. Their inclusion on the AIT website was an error.*" (Note from the Deputy President C. M. G. Ockleton p25 issued 17/2006, cited in 'Misjudging Rape: Breaching Gender Guidelines and International Law in Asylum Appeals', Black Women's Rape Action Project & Women Against Rape, Crossroads Books, December 2006.)

53 Available at: <http://www.ind.homeoffice.gov.uk/documents/asylumpolicyinstructions/apis/genderissueintheasylum.pdf?view=Binary>

*"Women who have been sexually assaulted may suffer trauma. The symptoms of this include persistent fear, a loss of self-confidence and self-esteem, difficulty in concentration, an attitude of self-blame, shame, a pervasive loss of control and memory loss or distortion. Decision-makers should be aware of this and how such factors may affect how a woman responds during interview.*

...

*An inability to provide information relevant to an asylum claim may not of itself undermine credibility. In certain cultures men do not share information about their political, military or even social activities with their female relatives and decision-makers should consider whether this might account for gaps in a woman's knowledge. If an applicant does not immediately disclose information relating to her claim, this should not automatically count against her. There may be a number of reasons why a woman may be reluctant to disclose information, for example feelings of guilt, shame, concerns about family dishonour."*

This research shows that the Gender API is undermined by the use of DFT for women, and the fast track timetable and structure makes it very difficult for decision-makers to follow the API.

Five of the six ex-detainees interviewed by BID and all five cases analysed included allegations of rape or other forms of gender-related persecution.

Gender was known to have played a role in the asylum claims of 14 of the 21 women whose appeals were observed by BID over the four-week period. Eight involved multiple forms of gender persecution. (In three cases, gender did not play a role and in the remaining four cases it was not known whether it played a role as no specifics of the case were given.)

Case no.	Gender issue raised in appeal hearing
1	FGM, domestic violence, sex trafficking and forced prostitution
2	Domestic violence
3	Rape and torture
4	Sexual violence and rape
5	Domestic violence and indecent assault
6	Sexual assault and attempted rape
7	Pregnant
8	Torture and rape
9	Torture, rape and sexual abuse
10	FGM and rape
11	FGM and rape
12	Violent persecution based on sexual orientation
13	Domestic violence
14	Rape

BID is concerned that women's asylum claims are being inaccurately described as 'straightforward.' This was confirmed by the Home Office New Asylum Model 'Quality Team' following their one-month snapshot of all cases passing through the DFT at Yarl's Wood in February 2006, which concluded: *"the referral mechanism to the detained fast-track was not sufficiently robust to identify potential gender-related claims which are not suitable for fast-track."*<sup>54</sup> Of the 45 cases referred to the DFT in February 2006, ten raised gender issues set out in the Gender API, of which only six were dealt with appropriately and dropped out of the process before the initial decision.<sup>55</sup>

<sup>54</sup> Home Office, New Asylum Model Quality Team, Yarl's Wood Detained Fast Track Compliance with the Gender API, August 2006

<sup>55</sup> Ibid



The report went on to recommend that the Home Office should *“Establish a more robust referral mechanism which allows an immediate substantive consideration of the basis of the asylum claim before a case is designated as potentially straightforward and amenable to a quick decision”* and implement gender awareness training and the introduction of *“robust performance management and quality review mechanisms”* to assess the practical application of the Gender API.

There has not been any follow-up audit to assess whether the training has had any impact on case-owner decisions. Neither has there been any action to adapt the screening process or implement a more robust referral mechanism. The findings of BID's research suggest that this needs to happen as a matter of urgency.

Asylum Aid's Refugee Women's Resource Project has pointed out that in order to comply with the Gender Equality Duty (brought in by the Equality Act 2006, which came into force in April 2007<sup>56</sup>) procedures should be put in place to ensure that women whose claims raise gender-based issues are not placed in fast track or are removed as soon as such issues are identified.<sup>57</sup>

It is important to recognise the psychological impact on women of their case being deemed 'straightforward' as well as being told they will have their asylum claim determined inside a 'removal centre'. As Legal Action for Women point out *“the injustice of having what they suffered dismissed and their case classified as “straightforward” with the implication that everything they say is untrue bears heavily on women, and continues to have grave consequences once they are released.”*<sup>58</sup> One detainee told BID *“they don't listen to you. They are not interested in you, only in the Home Office.”* Another detainee claimed that *“anything you say, they tell you is a lie. It is very rude. There are lots of traps.”*

Another woman commented:

*“Fast track is just a system to refuse people. There is no time to listen to you. Even the judge didn't listen. When they put you in fast track there is [only] a very small chance to get out. I never heard [of] one person who won a fast track case in one year. How can everyone be lying?”*

The inclusion of female rape and torture survivors also indicates that the Detention Centre Rules are being flouted.<sup>59</sup> These require that detainees are examined within 24 hours of arrival at the detention centre and that evidence of health problems or torture should be reported to immigration, and acted upon.

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56 The Act introduces a general duty on all public authorities to eliminate unlawful sex discrimination and promote equality of opportunity for women and men. The Duty provides a positive obligation on the public authority to identify issues for sex equality in their services, employment and policy making. As part of its Gender Equality Duty, the BIA produced a Gender Equality Scheme and an Action Plan. In relation to detention this states *“Detention Services staff to receive appropriate training. Particular needs of detainees to be assessed before they enter detention. Incoming detainees to go to an appropriate location and receive appropriate facilities and support.”* It also states that *“Measurable indicators will be drawn up and published after appropriate consultation”* and *“Existing procedures to be assessed for relevance to gender equality by the end of March 2008.”* Border and Immigration Agency: Race, Disability and Gender Equality Scheme, May 2007, page 63 [http://www.ind.homeoffice.gov.uk/6353/aboutus/Three-strand\\_Equality\\_Scheme.pdf](http://www.ind.homeoffice.gov.uk/6353/aboutus/Three-strand_Equality_Scheme.pdf)

57 Women's Asylum News, Asylum Aid, June 2007, p 4

58 Email submission to BID in response to questions for this research, Legal Action for Women & Black Women's Rape Action Project, 20/4/2007

59 See Detention Centre Rules, Rule 30 and 35 and see D & K [2006] EWHC Admin 980

BID's findings also highlight how women who have been trafficked are very unlikely to be protected if they are put in the DFT. The UK Government recently signed the European Convention against Trafficking in Human Beings, Article 13 (1) of which provides victims of trafficking with a recovery and reflection period of at least 30 days. It states that during such a period it shall not be possible to enforce any expulsion order against the victim. This provision is incompatible with the DFT where the speed of the process makes it likely that some women victims of trafficking will be refused asylum and removed from the UK.

## 5.2 The asylum claim and interview

As set out above, many of the asylum claims by women processed in detention involve gender issues. This research suggests that the quality and fairness of the initial decision-making in the DFT is liable to be undermined by the speed of the process; the asylum interview takes place two days after arrival in Yarl's Wood, which could be a matter of days after arriving in the UK. This means that a woman must disclose very traumatic experiences with very little preparation, to people she doesn't know, and without the time to build up trust in her legal representative.

Women are supposed to be allowed to choose a gender-appropriate interview but in practice this is not routinely offered to women and they do not know they have this option.<sup>60</sup> In June 2007, after intensive lobbying coordinated by the Refugee Women's Resource Project, the Home Office agreed to a proactive policy of asking all asylum applicants at the screening stage whether they have a preference as to the gender of their case owner but this has not yet been put into practice.<sup>61</sup>

Of seven detainees interviewed, none were aware of the right to a gender-appropriate interview. Four of seven women were interviewed by a man. As one ex-detainee explains:

*"They didn't ask me if I preferred a woman or a man... In my case, a woman would have been very good because I would not feel shy to talk about everything. With a man, you feel scared – you can't say everything to a man."*

One ex-detainee told BID that because of what she had been through she was not able to tell men what she had suffered at the hands of men. It was not until she was visited by a female befriender that she was able to explain what had happened to her.

Gill Butler, a Yarl's Wood Befriender explains: *"we're talking about deeply traumatised women, arriving in this country, thinking that they're going to be safe and then they're suddenly picked up, and all of a sudden they have to give all their details and they're just psychologically not ready to do it, and certainly not when there's a man present. So very often, we as visitors find that we're the first people that they've told, which takes place over an extended period of time."*<sup>62</sup>

60 The Home Office Gender API states: "Every effort will be made to comply with any request for an interviewer or interpreter of the same sex as the applicant that is made in advance of an interview. Requests made on the day of an interview for a same sex interviewer or interpreter will be met as far as is operationally possible. This may mean a delay for an applicant while a same sex interviewer/interpreter becomes available."

61 Women's Asylum News (August 2007) Asylum Aid, Refugee Women's Resource Project. <http://www.asylumaid.org.uk/New%20RWRP/WAN/WAN%20August%20no.68-final.pdf>

62 Interviewed conducted with Gill Butler dated 23/02/2007

However, it should not be assumed that provision of female legal representatives and interpreters will address the problem. Many victims will never speak about sexual violence or will remain silent about it for long periods. Where there are factors that would cause women not to disclose such information, such as feeling ashamed, they are unlikely to do so unless clearly asked about such experiences and given space and time to disclose their painful experiences – impossible in the DFT.

A study published recently in *The British Journal of Psychiatry* found that *“Those with a history of sexual violence reported more difficulties in disclosing personal information during Home Office interviews, were more likely to dissociate during these interviews and scored significantly higher on measures of post-traumatic stress symptoms and shame than those with a history of non-sexual violence”* and concluded that *“The results indicate the importance of shame, dissociation and psychopathology in disclosure and support the need for immigration procedures sensitive to these issues.”*<sup>63</sup>

It seems highly unlikely that women will feel able to fully disclose their experiences in the short time period allowed by the DFT.

Legal representatives are funded to be present at the asylum interview, but may have had little time to prepare and to build a relationship of trust with their client. They have complained that the speed of the DFT does not allow them to follow best practice in taking instructions from their client at the initial meeting. One solicitor described the problems associated with insufficient contact with her clients preceding the asylum interview: *“I have spent three hours trying to get [asylum seekers] to talk about their situation – it’s really traumatic for them. Then there is insufficient time to talk about the rest of their claim.”*<sup>64</sup>

For those women too ill or distressed to proceed with the interview, the flexibility policy outlined above is supposed to allow for the timetable to be varied in the interests of justice. Our analysis of the cases of women assisted by BID and the views of legal representatives provides evidence that the flexibility policy is in many cases not followed, and provides limited protection for women.

## 5.3 The appeal

The majority of women whose claim is refused at Yarl's Wood go on to appeal, although they have only two days to do so. The court is on site at Yarl's Wood.

During the two days, the woman and her representative, if she has one, must consider and draft full grounds of appeal. This may include gathering extensive supporting evidence such as a detailed witness statement, medical or psychological evidence, country specific information, and expert evidence.

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63 "Impact of sexual violence on disclosure during Home Office interviews" Bögner D, Herlihy J and Brewin CR (2007). *British Journal of Psychiatry* 191, 75-81. *The British Journal of Psychiatry* (2007) 191: 75-81. doi: 10.1192/bjp.bp.106.030262 © 2007 Abstract at: <http://bjp.rcpsych.org/cgi/content/abstract/191/1/75?maxtoshow=&HITS=10&hits=10&RESULTFORMAT=&fulltext=Impact+of+sexual+violence+on+disclosure+during+Home+Office+interviews&andorexactfulltext=and&searchid=1&FIRSTINDEX=0&sortspec=relevance&resourcetype=HWCIT>

64 Interview with Lisa Amin, 2/3/07

In BID's view, it is unlikely that adequate preparation can be done in this short time. As one legal representative explained: *"In a recent case the judge said, 'you've had four days, isn't that enough to find an expert report?' Experts often can't give a report in that timescale. Expert reports are often from academics – they have full time jobs. Also you have to have time to check out an expert- the Home Office attack competency. Moreover, original documents frequently need to be obtained, translated and authenticated."*

That women are often unable to gather medical or country reports to corroborate their accounts is very significant; the Black Women's Rape Action Project and Women Against Rape found that *"women with expert reports corroborating their account of rape were six times more likely to win their case than those without."*<sup>65</sup>

## Legal representation

Despite the speed of the process, women are not automatically entitled to free legal representation at their appeal. The Home Office is always represented. Although all those in the DFT are entitled to publicly funded legal representation during their asylum interview, at the appeal stage, representation by a duty solicitor is subject to satisfying the 'merits test.'<sup>66</sup> To use legal aid, the representative must assess the case as having more than a fifty per cent chance of succeeding, or deem the prospects of success to be 'borderline or unclear' but of overriding importance to the client.

In a letter from the LSC, all legal representatives on the duty rota are reminded that: *"In many fast track cases the prospects of success will be unclear because you will only have had a very limited amount of time to take instructions and prepare the case"*<sup>67</sup> Despite this instruction, it would appear that a significant number of legal representatives are not granting legal aid and women are going unrepresented at appeal. In our court monitoring sample, six out of 22 cases were conducted without legal representation. BID was unable to determine whether this sample is representative because no information is collected about the numbers represented at their appeal.<sup>68</sup>

Women without representation are extremely unlikely to succeed in their appeal. Applications for adjournments or to remove the case from the DFT are very unlikely to be made; every application to be taken out of the DFT in our sample was made by a legal representative and eight of the ten applications for adjournments were made by legal representatives.

ILPA argues that the lack of automatic representation at appeal renders *"the 'fast track' system [...] at best, on the borderline of human rights compliant...international human rights laws require that any tribunal must ensure respect for the principle of procedural equality and there should be a reasonable opportunity to present ones case under conditions that do not place the individual concerned at a substantial disadvantage vis a vis his opponent and to be represented by counsel for that purpose."*<sup>69</sup>

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65 Black Women's Rape Action Project & Women Against Rape (December 2006) *Misjudging Rape: Breaching Gender Guidelines and International Law in Asylum Appeals.*

66 This type of legal aid is known as Controlled Legal Representation (CLR).

67 Legal Services Commission, *Fast Track Duty Scheme*, Letter dated 01/06/2006

68 The Department of Constitutional Affairs stated in their response to a BID Freedom of Information Request that "... separate statistics are not kept for fast track appeals that were represented or unrepresented. The previous disclosure of this data was achieved by staff at Yarl's Wood going through each individual case and manually collecting this data. AIT does not have the resources to do this manual calculation on a regular basis as the figures are not required for a business purpose." Department of Constitutional Affairs, *Freedom of Information Request Response*, 07/03/2007.

69 ILPA Memorandum dated 13/10/2006, cited in House of Lords, House of Commons Joint Committee on Human Rights, *The Treatment of Asylum Seekers 10th Report of Session 2006-07, Volume II – Oral and Written Evidence*, Ev 414

According to the LSC, if a legal representative decides not to represent a woman at her appeal, they must explain to her how she can challenge their refusal to grant legal aid. This happens through an independent Funding Review Committee, and requires the woman to complete a form (called a CW4 form) that is supposed to be provided by the legal representative.<sup>70</sup> However none of the detainees who were not represented at their appeal knew what a CW4 form was. No information is collected by the LSC about the number of CW4s submitted by women in the DFT, nor the outcome of any funding reviews that do take place. BID suspects that very few women are aware of this right, and is concerned that even if a form was submitted, the truncated appeal process means that the appeal will go ahead anyway without a representative before the issue is dealt with.

Legal Action for Women, Women Against Rape and the Black Women's Rape Action Project report that they receive daily accounts of poor legal representation from women on the DFT from refusing to return calls to being told in writing not to raise essential details of the persecution they suffered as it would complicate the case.<sup>71</sup>

*"We have helped many women complain about their lawyer but often women don't know what they are entitled to and therefore it is only the very worst treatment, if anything, that gets noted. One woman in Yarl's Wood has reported five law firms to the LSC, three of which have badly represented her since she's been in detention. The LSC's response was to ask her to resolve her complaints with the solicitors under rule 15, as they do not get involved until this procedure has been exhausted. This is a scandal considering that the LSC know the woman could be removed in the near future ensuring that she won't be able to pursue her complaints. Complaining to the LSC in general seems pointless, since there is no other lawyer to go to as an alternative and the LSC is not independent but runs the legal clinics inside detention that people have so many complaints about."*

In the course of this research, BID worked with two women who wanted to complain about their legal representative. One woman had her money reimbursed after she complained to the Solicitors Regulation Authority about the bill she had received.

A further obstacle to securing publicly funded representation for the appeal is that since October 2005, the LSC requires legal representatives to reach a 40 per cent success rate in the asylum cases they represent at appeal or risk sanctions (referred to as the Performance Indicator). Representations have been made by BID, ILPA and others to argue that the performance indicator must not apply to DFT cases.<sup>72</sup> The pressure on immigration firms to meet this target compounds existing pressures on resources and the result is likely to be that some cases are not granted public funding, despite the fact they have merit.

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70 Legal Services Commission, Fast Track Duty Scheme, Letter dated 01/06/2006

71 Email submission to BID in response to questions for BID research, Legal Action for Women & Black Women's Rape Action Project, 20/4/2007

72 Refugee Council Briefing, The New Asylum Model, March 2007 and para 6.2, Kathryn Cronin, ILPA, Oral Evidence taken before the Joint Committee on Human Rights on 20/11/2006 cited in House of Lords, House of Commons Joint Committee on Human Rights, The Treatment of Asylum Seekers 10th Report of Session 2006-07, Volume II – Oral and Written Evidence, Ev348

## Adjournments

The Asylum and Immigration Tribunal (Fast Track Procedure) Rules 2005 state that *"the overriding objective of these Rules is to secure that proceedings before the Tribunal are handled as fairly, quickly and efficiently as possible, and where appropriate, that members of the Tribunal have responsibility for ensuring this, in the interests of the parties to the proceedings and in the wider public interest."*

Evidence gathered from court observations shows that some adjournments based on a need to gather evidence, have more time to prepare, and for problems relating to legal representation, were rejected.

Of 22 cases, ten adjournments were applied for, of which four were granted (two being taken out of fast track entirely). The two cases that were adjourned and taken out of DFT entirely involved claims of gender, sexual violence and torture.

Unsuccessful applications for adjournments included one where the woman was waiting for a medical examination at the Medical Foundation.<sup>73</sup> This was rejected as the judge stated that this was not a compelling reason as it was only a preliminary appointment and would lead to more delays.

In one case of an adjournment request by a woman without representation, the Home Office argued that even if an adjournment was granted, it was unlikely that the appellant would find representation as she did not have the financial means. The appellant argued that she might approach her church members for support, but the judge stated that he did not find it in the interest of justice to grant the adjournment.

There were differences in the approach of judges to adjournment requests. For example, in one case an adjournment was granted on the basis that a fair hearing would require legal representation on the part of the appellant, in another case, it was deemed not in the interest of justice to grant an adjournment, requested because the woman lacked representation. One judge also adjourned the case without an application being made, as the appellant did not have a representative.

## Applications at the appeal for the case to be taken out of the DFT

During BID's court observation, of 22 cases involving 21 appellants, eight applications to take the client out of fast track were lodged, of which four were granted. Successful requests were on the basis of gender issues and sexual violence, torture and country information (UNHCR country report on Sri Lanka).

The Home Office states that just as in the main asylum process, a case-by-case approach should be taken within the DFT: *"If there is any doubt as to the suitability of the ability to make a quick and fair decision, the case is taken out of the Fast Track process."*<sup>74</sup> However, the fact that four of 21 women were taken out of the DFT at appeal, suggests that the Home Office screening process and ability to identify complex cases before the appeal are seriously flawed. Official figures show that in the month of February 2007, of 30 appeals heard, eight (26 per cent) were subsequently taken out of fast track. This constitutes a considerable amount of unnecessary, traumatic and expensive detention.

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<sup>73</sup> Under the Asylum Policy Instruction on the Medical Foundation, a referral to the Medical Foundation, which is accepted for assessment, should lead to release from detention and the fast-track.

<sup>74</sup> Home Office cited in Immigration Law Practitioners' Association (November 2005) Training pack: *Fast track asylum determination procedures: how best to represent your clients*

It is also worrying that applications for the case to be taken out of the DFT, with apparently strong grounds, were rejected. Refused requests included: a complex case involving torture, suicidal tendencies, sexuality, and a lack of medical evidence; sexual violence; exceptional circumstances based on sexual assault; pregnancy (the appellant was 26 weeks pregnant). In one rejected case, the judge did not think the claims of sexual violence made the circumstances "exceptional" and in another case, a torture claim was not deemed "complex" and the appellant's suicide risk was considered "doubtful".

### Problems with interpreters

During court observations, problems with interpreters were noted. Interpreters form an important part of the appeals process as they are the link between the appellant and the justice system – their role is therefore crucial as the process itself is often confusing.

Interpreters were observed at 17 of the 22 appeals. 13 of 17 court observers reported that not everything was being translated. In one case the interpreter's English vocabulary appeared limited. He appeared to fully translate everything said to the appellant, but seemed to experience problems translating everything the appellant said. This was a particular problem because the appellant had no representation.

In BID's view, everything should be translated; not to do so creates disempowerment and lack of equality of arms as well as adding to feelings of disorientation and confusion, particularly for women representing themselves.

### Bail applications at the appeal

All detainees have the right to challenge their detention by way of an application for bail to an immigration judge.<sup>75</sup> Applications for bail can, and arguably should, be made at the time of the fast track appeal hearing. No bail applications were made in the hearings observed by BID.

## 5.4 Detention after the appeal

The justification for detaining people in the DFT is the quick determination of their claims. Once the asylum decision has been served, under the current law, a woman should only continue to be detained if she meets the general detention criteria set out in the Operational Enforcement Manual (OEM).<sup>76</sup> However, there is no systematic process in place to identify and release those who are not fit to be detained, or who do not meet the detention criteria.<sup>77</sup> This research shows that many asylum seekers remain in the DFT for weeks or even months after their case has been refused.

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<sup>75</sup> The Guidance Notes for Adjudicators from the Chief Adjudicator states that "the burden of proving that the presumption in favour of liberty does not apply lies on the Secretary of State. As detention is an infringement of the applicant's human right to liberty, you have to be satisfied to a high standard that any infringement of that right is essential." Moreover, in all cases detention must be used sparingly, and for the shortest period necessary (See: Home Office Detention Policy in OEM Chapter 38.) Despite all asylum seekers having the right to bail it appears that this right is not being exercised in practice. BID identifies serious flaws in the bail process that reduced access to the courts. These included the requirement for sureties, the merits test for public funding for legal representation and the lack of accommodation for those applying for release.

<sup>76</sup> Baroness Scotland has stated that "we may also detain claimants after we have made and served a decision in accordance with our general detention criteria." (Baroness Scotland, written statement to Parliament, Hansard (HL), 16 September 2004, WSS129-131)

<sup>77</sup> HM Inspectorate of Prisons (October 2006) *Inquiry into the quality of healthcare at Yarl's Wood immigration removal centre*

It may be the case that while a legal power to detain an asylum seeker exists at the outset of the detention, the detention becomes unlawful because it continues for longer than was expected, or is reasonable.<sup>78</sup> BID is also concerned that the DFT is used for women who it will be difficult to remove if their claim fails, because of a lack of travel documents. There is nothing in the DFT Suitability List to alert immigration officers to problems re-documenting and therefore removing, certain nationalities.

The length of detention for fast tracking found to be proportionate by the House of Lords in *Saadi* was detention for a period of seven days for the purpose of decision making by the Secretary of State. However, the ruling of the House of Lords in *Saadi* does not consider the length of detention post-decision, which is significantly longer in Yarl's Wood and Harmondsworth than in Oakington (the centre where Mr Saadi was detained).<sup>79</sup>

The JCHR expressed concern about this situation, noting: *"there is a significant risk that a period of detention which IND initially intended to last for a few days can turn into weeks, months and even years."*<sup>80</sup> BID supports JCHR's call for an automatic, prompt, independent judicial review of the decision to detain in all cases after seven days.<sup>81</sup>

As well as being potentially unlawful, long periods of detention are damaging to women. One interviewee explained: *"I was there for eleven months. I didn't know that this country could take people like this."* Another ex-detainee was told that she would be in detention for between eight and ten days. She was in detention for two months before she was released.

Although women have the right to apply for bail at any time, in reality this is often not a meaningful option. This can be because of a lack of legal representation, or because women who were detained shortly after arriving in the UK have no community contacts or friends to act as sureties or provide accommodation.

The JCHR states that *"we have heard considerable evidence that although the right to apply for bail is available to all detained asylum seekers after seven days, in reality many detainees are not aware of, or are unable to exercise, this right because of language difficulties, a lack of legal representation and mental health issues. Bail hearings, when they occur, are usually unsuccessful."*<sup>82</sup> Official figures provided to the JCHR show that in two years, only 19 bail applications were successful at Yarl's Wood (twelve per cent of the 149 made).<sup>83</sup>

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78 As paragraph 38.1.1.2 of the Operational Enforcement Manual states "to comply with Article 5 and domestic case law, the following should be borne in mind: (b) the detention may only continue for a period that is reasonable in all the circumstances (c) if before the expiring of the reasonable period it becomes apparent that the purpose of the power, for example, removal, cannot be effected within that reasonable period, the power to detain should not be exercised."

79 *Saadi v SSHD* [2002] UKHL 41

80 House of Lords, House of Commons Joint Committee on Human Rights, *The Treatment of Asylum Seekers* 10th Report of Session 2006-07, Volume I – Report and Formal Minutes para 275

81 *Ibid*, para 274

82 *Ibid*, para 280

83 *Ibid*, para 281 "We have been provided with information by IND on the number of bail hearings at Yarl's Wood. In the two year period between January 2005 and January 2007 there was a total of 149 applications for bail. Of these applications for bail, 76 were refused and 54 were withdrawn. Only 19 applications were granted."



Legal representatives funded by the LSC are not obliged to make bail applications for their clients. However, new reporting requirements were introduced from 1 July 2006, when the LSC wrote to all fast track duty representatives expressing its concerns about fast track clients being able to exercise their right to bail. Suppliers are now required to record reasons for not making a bail application as well as to give the client an opportunity to request a review of the decision not to grant legal aid (CLR).<sup>84</sup> The letter states that even where a client's substantive appeal lacks merits and would not warrant the grant of CLR for the appeal, the case may still warrant the grant of CLR funding for a bail application.<sup>85</sup> That is, CLR can be granted for the sole purpose of making a bail application. To BID's knowledge, there has not been any evaluation of whether this new guidance has increased the number of bail applications.

HM Inspectorate of Prisons expresses concern about the number and quality of reviews of detention, stating that *"we find monthly (non-judicial) reviews are repetitive, do not reflect changed circumstances, including the longevity of detention, and in some cases are missing altogether"*.<sup>86</sup> Moreover, the HMIP Inquiry into the Quality of Healthcare at Yarl's Wood revealed that *"when we examined immigration files which contained reviews of detention, those reviews seemed remote and uninformed. There was little sign that emerging and often deteriorating medical conditions were properly taken into consideration in decisions about continuing detention. The team came across cases where medical reports had been submitted but were barely addressed, even in the monthly detention review letters which were supposed to reassure detainees that their detention was under continuous consideration; and of on-site medical advice being ignored."*<sup>87</sup>

Detention Centre Rule number 35 (3) requires health services to alert the detaining authorities if detention or continued detention might be injurious to health, and if there is an allegation of torture or evidence of suicidal intent. The HMIP report found that this was at best implemented procedurally, not substantively.<sup>88</sup> The same report found that there was no system to communicate other areas of concern raised under this rule and there was evidence of inappropriate, informal contact between healthcare and immigration staff about fitness to detain with little record of what was said or arrangements for follow-up.<sup>89</sup>

BID is extremely concerned about the lack of a systematic process in place to identify and release those who are not fit to be detained. Moreover, the fact that there are no protocols at Yarl's Wood for the assessment and counselling of rape survivors, or management of sexually transmitted diseases, is of grave concern. One detainee discussed her traumatic experience:

*"I wasn't sure of my health so they [Yarl's Wood] tested me for HIV. It came out so bad- I found out I was positive. They never provided counselling. I asked for counselling but they ignored me, even the day that I found out I was HIV positive, still no counselling. You really feel you need to talk to someone. There is nowhere to turn to. Just cameras everywhere."*

<sup>84</sup> Legal Services Commission, Letter to the Fast Track Duty Scheme, 01/06/2006

<sup>85</sup> Ibid.

<sup>86</sup> Anne Owers, HM Chief Inspector of Prisons, Memorandum dated 03/10/2006 cited in House of Lords, House of Commons Joint Committee on Human Rights, The Treatment of Asylum Seekers 10th Report of Session 2006-07, Volume II – Oral and Written Evidence, Ev333

<sup>87</sup> HM Inspectorate of Prisons (October 2006) *Inquiry into the quality of healthcare at Yarl's Wood immigration removal centre*, para 3.64

<sup>88</sup> Ibid, para 3.62

<sup>89</sup> Ibid, para 3.63

Several women described the problems accessing health care.

*"You are searched every time [you go the nurse], every minute. Even if you have your period and you ask them for tampons they only give you three to five tampons [a time] and ask you to come back the next day. In my case, I need tampons everyday, but I [was not] bleeding because of period, because I was traumatised. They make you feel shame – they make you come back everyday, and the way they look at you. You can't have proper treatment in Yarl's Wood. They said I was diabetic, but I didn't receive any treatment. I didn't see a gynaecologist although I asked to see one many times and suffered gynaecological problems. Because I was stressed and having nightmares, I asked to see a psychiatrist, but was told they [Yarl's Wood] couldn't provide one. I was [only] given a prescription on the day I was released. It was like they were mocking me. Because I didn't know anyone in the UK my befriender gave me temporary ... accommodation."*

Another stated: *"The medical facilities are just not there – no matter how serious the medical situation is, they don't believe you. Coming out, my health was worse than when I went in."*

## 5.5 Release

The women BID interviewed for this research who were released after several weeks or months in detention were angry and traumatised by their experiences. Most were reliant for practical and emotional support on support groups such as Black Women's Rape Action Project or supporters from the Yarl's Wood Befrienders. Several had new legal representatives pursuing fresh asylum claims and some were suing the Home Office for unlawfully detaining them. Women often described feeling in limbo about their legal case, and struggling to deal with their health issues, the shock and trauma of being detained in the UK, and with day-to-day survival. As the women were not allowed to work, they were reliant on handouts to top up their entitlement to meagre support from the state. One woman was interviewed shortly before she was due to give birth, and was fearful of how she would cope when her baby was born. As described above, one woman was electronically tagged on release, despite having claimed asylum on arrival in the UK and being a torture survivor. This is wholly inappropriate.

## 6 Conclusion

The design and concept of DFT is fundamentally at odds with providing a fair system to examine and judge the protection needs of women fleeing persecution.

UK and international standards have been developed in recognition of the particular needs of women refugees, if they are to disclose their experiences, document those experiences and get a fair hearing. These include UNHCR Guidelines, IAA Gender Guidance and Home Office Asylum Policy Instructions. The design of the DFT goes against these principles and as a result, the chance of a woman asylum seeker securing refugee status or humanitarian protection is dramatically reduced, if her claim is decided in detention.

The document for considering suitability for the DFT gives no guidance on identifying complex cases that raise issues of gender-related persecution, and the allocation of asylum cases to be decided in detention is often arbitrary. The government's argument that it is not arbitrary is contradictory; the Home Office states "*Individuals are not detained simply for having claimed asylum*" but then goes on to say that "*The detained fast track is not arbitrary. Any asylum claim, whatever the nationality of the claimant, may be fast-tracked where it appears after screening to be one that may be decided quickly.*"<sup>90</sup>

The Home Office's own research, published in August 2006, concerning compliance with the Gender API concluded that screening fails to identify women who have experienced gender persecution and they are not easily withdrawn from the DFT once placed in it. Yet, more than one year on, no changes to the screening process have been implemented.

The provision of legal representation is a lottery, can be poor quality, and women cannot complain effectively if they are badly represented. The fact that there are some good quality legal representatives who secure release for most of their clients does not mean that the fast track can be justified.

The performance indicator and merits test for public funding for legal representation combine to create barriers to accessing representation. Approximately one third of women are not represented at appeals, yet the Home Office is always represented. This means that for many women, there is no equality of arms. Further, the truncated timescales for preparing for appeals mean that they are likely to fail even with representation. Many adjournment requests are refused, and judges are dismissing accounts of rape and torture in some cases, without the medical or expert evidence to judge properly.

Detention can be prolonged once the asylum process has finished. Women who cannot be removed are unable to exercise their legal right to challenge their detention because of problems accessing legal representation and the merits test for legal aid. Indefinite and prolonged detention damages women's physical and mental health and their health needs are not met in detention.

If women do get out of detention, they are left in limbo, often destitute or on emergency support as 'failed asylum seekers' (known as section 4 support). Women whose only option is to submit a fresh asylum claim struggle to find legal representatives to assist them. Women are liable to be electronically monitored, including tagging, as a condition of release from detention. This is disproportionate given that such women are very unlikely to abscond and is humiliating and degrading.

The Home Office Minister and senior officials appear to have uncritically accepted that DFT is necessary and justified. There has been no attempt to reduce reliance on the extreme measure of depriving a person of their liberty in order to determine their asylum claim. This is despite speedier non-detained options being available in the New Asylum Model and UNHCR research showing that asylum seekers do not abscond in 'destination countries' at the beginning of their asylum claim, so detention is not necessary at this stage.<sup>91</sup> Pronouncements by Ministers and senior Home Office officials that DFT is used to deter abuse and for late and unfounded claims are not evidence-based. Scrutiny of the DFT is rendered nearly impossible by the paucity of statistics and the government's complacent attitude to evaluation and monitoring.

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90 p 24, Government response to JCHR

91 Field, O and Edwards, E (2006) *Alternatives to the Detention of Asylum Seekers and Refugees, Legal Protection Policy Research Series*, UNHCR

BID recognises not all asylum claimants will have a well-founded fear of persecution for a convention reason or meet the conditions for humanitarian protection or discretionary leave to remain in the UK. But, DFT is both an inhumane system and a blunt instrument harming many women.

Those responsible for, and administering, the DFT - the Home Office, legal representatives and the courts – must take heed of the hidden injustices inherent in the process and act to uphold the right to seek safety without penalty in the UK.

## 7 Recommendations

Detained fast tracking of asylum claims should end. Women asylum seekers should not be detained while their claims are decided.<sup>92</sup>

Until detained fast track ends, the following steps should be taken as a matter of urgency to minimise the harm done to women:

### The Home Office should

- adhere to international and domestic legal standards by being required to demonstrate to an independent body that in each case, detention is being used because all alternatives are unsuitable and detention is therefore necessary and proportionate.
- remove the arbitrary target of processing a percentage of asylum claims in detention and review the use of DFT in the light of the New Asylum Model, with a view to reducing use of detention.
- implement the recommendation of the JCHR that *"If asylum seekers are to be detained at the beginning of the asylum process, then the period of detention should be limited to a maximum of seven days."*<sup>93</sup>
- review the suitability list and gender guidelines to include a non-exhaustive list of types of women's cases which should be excluded from the DFT.
- bring the DFT in line with the Gender API and the Gender Equality Duty.
- implement the recommendations of the NAM Quality Team, in particular:
  - establish a more robust referral mechanism which allows an immediate substantive consideration of the basis of the asylum claim before a case is designated as potentially straightforward and amenable to a quick decision.
  - establish and deliver a specific and detailed training programme for all case owners in NAM which deals with gender-related issues in the asylum process and ensures all case owners are aware of their obligations under the Gender API.
  - set up robust performance management and quality review mechanisms which specifically address case owners' understanding and practical application of the Gender API.

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92 BID is also opposed to the detention of men for the purpose of deciding their asylum claim. See 'Working against the clock' for details.

93 JCHR, para. 227

## The Legal Services Commission and the Ministry of Justice should

- 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 per cent success rate at appeal target applied to publicly funded legal representation.
- require publicly funded representatives to automatically present a bail application on behalf of their fast track clients.
- ensure contracts for legal representatives to work in Yarl's Wood require them to demonstrate a policy that provides women legal representatives to women asylum seekers as a matter of priority. If no women legal representatives are available, the male legal representative who attends should check with the client whether she would prefer to see a woman representative.

## Immigration judges should

- Refuse to preside over fast track cases where a legal representative is not present.
- Monitor and evaluate the granting of adjournments and requests to be taken out of fast track.
- Ask the AIT to consider issuing practice guidance to judges to ensure the process is fair and consistent.

## Legal representatives should

- Seek to bring about an end to the use of DFT, including giving consideration to collectively refusing to participate in a system that fundamentally prejudices asylum applicants.
- Collectively arrange for the issues of access, facilities and obstacles to accessing clients to be addressed.
- Make bail applications for all those on the DFT.
- Follow the forthcoming ILPA guidance on best practice in the fast track. This will entail making applications for all fast track cases to be removed from the fast track procedure. You should query the suitability of the case to be fast tracked and seek reasons as to why it is considered suitable. Once an application is made to take a case out of the fast track, the onus must be on the Immigration Service to explain why the case can be dealt with within 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.
- Provide female legal representatives for female clients if possible; if no women legal representatives are available, the male legal representative who attends should check with the client whether she would prefer to see a woman representative.

## The public and detainees should

- Put concerns about the DFT 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. Ask them to raise the issue with the Immigration Minister, Liam Byrne MP and Bridget Prentice MP, Parliamentary Under Secretary of State in the Ministry of Justice.
- Please copy any letters sent or responses received to [enquiries@biduk.org](mailto:enquiries@biduk.org)

## Transparency, monitoring and evaluation

The Home Office, the AIT and the LSC should jointly agree to collect and publish data about the fast track, so that it can be monitored and evaluated. These data should include:

- success rates at appeal
- representation at appeal (publicly and privately funded)
- length of detention
- outcome of detention (ie release or removal)
- comparative application and success rates among suppliers; to include number of applications for cases to be taken out of fast track, applications for bail, number of cases refused legal aid funding, number of funding review applications and the outcome of such applications.

There should be an independent evaluation of the use of detained fast track in the context of the New Asylum Model.

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## List of interviews and evidence submitted:

Paul Nettleship Oral Testimony Summary submitted to the Independent Asylum Commission, March 2007 – submitted to BID by email for use in research, April 2007

Sadia Rashid, Lawrence Lupin Solicitors, interview with Sarah Cutler (BID) 02/03/2007

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Email submission to BID in response to questions for BID research, Legal Action for Women & Black Women's Rape Action Project, 20/4/2007

Ros Akar, Wilson and Co, telephone interview with Sarah Cutler (BID), 12/4/2007

Fiona Hannan, Legal Services Commission, letter to BID of 5 June 2007, in response to BID letter of 10 April 2007

Ragi Kotak, Barrister, interview with Sarah Cutler, May 2007

“I feel ashamed that I've been in detention. Even now when I have to mention it. It reduced me. I will never forget it- it is like a **SCAR** on my body.”

“When I was in detention they didn't tell me that my case was on fast track. I didn't even **know** what **fast track** means. I couldn't speak English. At the **screening interview** the interpreter didn't interpret everything- [this meant that] **there were many confusions in what I was saying.**”

E, detained for four months