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Winner of the JUSTICE Human Rights Award 2010

Consultation on Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 and Tribunal Procedure (Upper Tribunal) Rules 2008 in relation to detained appellants

About BID

Bail for Immigration Detainees is an independent charity established in 1999 to challenge immigration detention in the UK. We assist detained asylum seekers and migrants in removal centres and prisons to secure release from detention through the provision of free legal advice, information and representation. We also provide free legal advice and representation to detainees on deportation.

While detention exists, BID aims to challenge long-term detention and to improve access to justice for immigration detainees. BID believes that asylum seekers and migrants in the UK have a right to liberty and access to justice. They should not be subjected to immigration detention.

BID's general position on Procedure Rules for people held in administrative immigration detention (and response to *Question 8: Do You Have Any Other Comments?)*

BID does not agree that there is an acceptable case for separate Procedure Rules for people in immigration detention. We would draw attention to the following key points:

1. BID believes that people who have immigration or asylum appeals should be dealt with under the same principal Rules. These Rules allow for cases to be expedited or adjourned in the interests of fairness and justice.

2. Appellants who are in immigration detention are already expedited through the Detained Immigration Appeals (DIA) process.[1]

3. Stephen Shaw concluded in his report to Parliament in November 2016 "detention in and of itself undermines welfare and contributes to vulnerability".

4. In BID's experience the use of detention or the quick resort to the use of detention actually risks creating the conditions for absconding that it purportedly seeks to avoid.

5. BID believes that the Government's evidence to the All Party Parliamentary Group into immigration detention that 95%[2] of people released from detention do not abscond disproves the Government's position described at paragraph 42 of the TPC's consultation document that "the lack of clear timescales for appeals results in release of individuals, some of whom go on to abscond". Not only is the rate of absconding very low, it also

[1] Page.4 https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/723738/tpc-consultation-july-2018.pdf

[2] Home Office evidence to the APPG inquiry into immigration detention – page 25 of APPG report

includes within it people who have missed just one reporting event and are subsequently categorised as absconders.

6. The high reporting compliance rate is despite people knowing that it is common for individuals to be detained when they report. Compliance would be even better if the Home Office did not resort to detention so easily.

7. BID notes that the appeals process provides people with an incentive not to abscond, and such reasoning is often accepted by judges of the First-tier Tribunal when considering risk of absconding and when deciding to grant bail.

8. Beyond the evidence (referred to in point 4) that was provided by the Government to the APPG the Home Office has not provided any evidence at all that people abscond if they are released from detention, or that they abscond when they are released from detention pending an appeal hearing.

9. The Home Office's approach to the administrative use of detention ignores the possibility of using alternative means to both enable appeals to take place while maintaining contact with appellants.

10. BID's experience is that the Home Office tends to use detention as a matter of administrative convenience rather than necessity. We are therefore concerned that an expedited appeal system will be used by the Home Office as justification for an increase in the use of detention, and as justification for unnecessarily opposing release on bail.

11. Although BID has not been collecting data on timescales for Home Office decision-making or removals, in our experience Home Office decisions can often take many months, including where people are dealt with under the Detained Asylum Casework process. People also often remain in detention for many months after they are appeal rights exhausted.

12. While BID believes that the introduction of an expedited appeals process risks increasing the numbers of people held in immigration detention, we are also concerned that such a process could lead to a greater sense of unfairness or injustice for those people included in such a process leading to unnecessary administrative problems that could increase the overall length of time that people spend in detention. People may feel their case has been dealt with unfairly and may thus resist removal as a consequence of the perceived injustice of the procedures by which their case has been processed.

13. We hold that the quality of Home Office decision-making is often poor and this is vindicated by recent figures[3] which show that half of all immigration appeals now succeed[4].These alarming statistics emphasises the importance of an immigration appeals process that ensures fairness and justice and provides a meaningful channel for people to hold the Home Office to account.

14. BID believes that an improvement in Home Office decision-making would make a significant difference in reducing the number of people held in detention and the length of detention, with the consequent benefit for reducing detention overall and the costs of administering the detention estate which the Home Office has identified as among its concerns.

[3] https://www.gov.uk/government/statistics/tribunals-and-gender-recognition-certificate-statistics-quarterly-october-to-december-2017

[4] https://www.freemovement.org.uk/half-of-all-immigration-appeals-now-succeed/

15. BID is concerned that people held in immigration detention continue to face problems with accessing legal aid lawyers. Although people have access to 30 minutes legal advice there have been problems with the take-up of cases by lawyers. We can speculate about the reasons for this, but the fact that lawyers sometimes seem to be reluctant to take on immigration appeal cases (we are still trying to refer a case that that was granted Exceptional Case Funding 2 two months ago) is evidence that an expedited appeals process will further disadvantage immigration detainees.

16. These problems are reflected in the evidence that BID has obtained through its legal Advice Surveys that it conducts every 6 months and which are available here https://bit.ly/2NobeiG. The most recent survey (available here https://bit.ly/2Q6Lc1Q) that was conducted in Spring 2018 indicated that 50% of people who contacted BID did not have a lawyer. Of the 50% that did have lawyers 61% were funded by legal aid and 39% privately.

17. BID's last Legal Advice survey of people held in detention also found that 10% of respondents had to wait over 3 weeks for a 30 minute free legal advice surgery appointment at their IRC, 15% had to wait 2 to 3 weeks, 42% had to wait 1 to 2 weeks and 33% saw a lawyer in less than a week. Further, 68% of detainees were not taken on as legal Aid clients following a free legal advice appointment, 74% had to work on their own immigration case and 23% had lost their legal representative at some point during their detention as a result of being transferred between IRCs.

18. BID believes that these findings provide further evidence that people disadvantaged by their lack of access to legal advice will be further disadvantaged by an expedited appeals process.

19. BID also notes that it is intended that a proposed expedited appeals process be extended at some stage in the future to include people held in prisons. BID is extremely concerned about this proposal given that there are no legal advice surgeries at all for people in prisons and prisoners face extreme problems trying to access legal advice on their often complex immigration and deportation matters. Only 3 out of 50 detainees that we questioned who had previously been held in a prison before being moved to an IRC had received advice from an immigration solicitor while they were in prison.

20. Those held in prisons also face extremely difficult problems in communicating with legal representatives. Travel to prisons (and also to IRCs) can often be expensive and time-consuming, and many detainees do not have the funds to cover legal representatives' legal expenses for travel to see them. At the same time, phone facilities are restricted, making it difficult for people held in prisons in particular to reach and speak to legal representatives. Likewise, those held in prisons do not have access to fax machines and postal correspondence is subject to delays. Often phone connections to IRCs are poor, making conversations either extremely difficult or almost impossible. Correspondence by post can result in extensive delays. An expedited appeals process will obviously compound these problems[5].

The remainder of this response considers each question of the consultation in turn.

[5] See BID's research report, Denial of Justice - http://www.biduk.org/sites/default/files/media/docs/2014-09-16%20FINAL%20version%20prisons%20report%20Denial%20of%20Justice.pdf

Question One. Do you think there should be specific rules setting down time limits in cases where an appellant is detained in an Immigration Removal Centre that differ from those in the Principal Rules?

No. There is no justification for implementing specific rules setting down time limits in cases where the appellant is detained, and such a system would increase the barriers to justice that detainees already face. BID does not agree that specific Rules for an expedited process for detained applicants will either reduce detention or speed up the period during which people are held in detention

The principal Rules are formulated to ensure that the Tribunal is able to "deal with cases fairly and justly"[6], including "avoiding delay, so far as compatible with proper consideration of the issues"[7]. Existing procedures allow for cases to be expedited[8] where necessary and to enable justice to be served, including ensuring that a detained person's appeal is dealt with quickly or ensuring that the interests of a person in need of protection are met.

Question Two. How long is it reasonable to expect most appellants detained in an Immigration Removal Centre to be able to:
a) Lodge a notice of appeal after receiving a decision?
b) Prepare for a hearing after lodging a notice of appeal?
c) Request permission to appeal after receiving a judgment?
d) Renew a request to appeal to the UT after permission is refused by the FTT?

BID believes that an expedited immigration appeals procedure should not apply to people in detention as they are in the most vulnerable situation. People held in immigration detention should in fact be provided with more preparation time to obtain necessary legal advice and representation; to enable them to obtain necessary evidence; to enable them to communicate with relevant parties to a case including witnesses and experts; and to achieve the overall aim of ensuring a fair and just preparation and disposal of an appeal.

People held in detention while facing deportation face the greatest challenge, as their case requires careful and detailed preparation of submissions in the context of complex legislation. The removal of legal aid from this area of work leaves people at a severe disadvantage as they often have to prepare their cases without assistance and must teach themselves about the law in order to learn how to prepare their cases properly. In addition to frequently poor phone signal and limited access to fax machine, detainees are further disadvantaged by restrictions on websites that are important for preparing their immigration case (including social media, NGO and legal websites, and the Home Office's website). Given these multiple and mutually reinforcing difficulties, it is difficult to see how the government's proposed time limit of 5 working days to apply to the FTT for permission to appeal could possibly allow sufficient time for the appellant to prepare. In BID's experience, it takes a minimum of 6 weeks from deciding that an expert report is required until the finalised report is produced.

Timeframes and time limits in an expedited process risk subsuming how long should be allowed for an appeal in an individual case to how long **is** allowed by an expedited procedure. The powers of presiding judges, provided by the Principal Rules, including the power to issue directions and the use of case management review hearings, help to ensure the fair and just disposal of cases without delay.

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[6] Paragraph 2(1) of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014.
[7] Paragraph 2(2)(e) *ibid*
[8] Paragraph 4(3)(a) *ibid*

The availability of Exceptional Case Funding (ECF) for some deportation and Article 8 cases also requires assistance and understanding of the ECF application process and its requirements, often necessitating access to legal advisors or other help. The process can be slow and, even if successful, it can be very difficult for a detainee to find proper legal aid representation. Imposing an expedited timetable will therefore create a further obstacle for people held in immigration detention who require ECF so as to be able to prepare their cases to ensure the fair and just disposal of their appeal.

BID has made 9 ECF applications since May 2016, although the number of applications that we make will increase due to changes in our work. Given the immense difference that legal aid funding can make to an applicant in terms of legal representation and funding for expert reports and research to support a case we have ensured that the ECF applications have been completed with thoroughness to establish the merits of a case as well as the reasons why a person requires legal aid to assist them with their case.

Of the 9 applications that we made, the fastest was dealt with within 3 weeks, the average was more than 4 weeks and the longest took 6 weeks (the latter took in the Christmas period). In most of these cases we made applications for adjournments at the point where a case was listed for a Case Management Review hearing (CMRH) and not a full hearing. In those cases we were able to update the court so that the CMRHH was adjourned to a later date by which time we expected to hear from the Legal Aid Agency. In 3 cases we applied to adjourn the full hearing. The applications were granted. One was initially refused but granted on renewal. In one case, the lawyer who was acting in the protection matter made an adjournment request on the basis that we had made the ECF application so that they could represent on the Article 8 ECHR claims as well as the protection matter. That was granted.

We are concerned that an expedited process will leave lawyers with little time to prepare ECF applications and that this will also impose greater burden upon the Legal Aid Agency to expedite its decisions. Those people who lack legal representation and who come under the expedited detained appeals process may not be aware of the possibility that they can not only apply for ECF, but that the Tribunal Procedure Rules also allow them to apply for adjournments. For this reason an expedited process will also disadvantage appellants who are held in immigration detention as they will have fewer opportunities to gain the advice that they need during the appeal process.

BID is aware that the current consultation is unlikely to consider extending time limits given that it is considering an expedited appeals process. We therefore argue that current arrangements for case management review hearings are sufficient to allow consideration of the extension of time limits or time frames where detainees require more time to access legal advice and communicate with legal advisors, or to prepare their cases. Similarly to ensure fairness and that justice is done, the Procedure Rules need to ensure that provision is always made for applicants to be able to lodge out of time applications to appeal, whether to the Tribunal or to the Upper Tribunal.

If the Secretary of State believes that it is in the interests of people who have a strong case to remain in the UK to have their appeals dealt with quickly, such matters can either be dealt with by way of a Case Management Review Hearing (CMRH) or by the Secretary of State granting the appellant leave to remain in the UK.

The case studies below illustrate the difficulties of preparing an immigration case from detention and the impossibility of the government's proposed time limit of 5 working days to apply to the tribunal for permission to appeal (the clients' names have been changed).

Case study: Darryl

The Home Office was seeking to deport Darryl, separating him from his family and life in the UK. Darryl managed to retain a legal aid solicitor who was willing to submit an ECF application for him and prepare his deport appeal. However, the ECF application was still being processed when his hearing was listed. The solicitor advised Darryl that he could not represent him until the ECF application was approved. As a consequence, Darryl was required to seek an adjournment unrepresented. The adjournment was refused by the Tribunal and the hearing proceeded with Darryl unrepresented. Darryl lost the appeal. The ECF application was finally successful and his solicitor appealed the decision at the Upper Tribunal. Permission was granted on the basis of procedural unfairness, wasting Tribunal resources and also legal aid resources.

Case study: Ryan

Ryan originally came to the UK to study bio-medical sciences in 2004. He later had a post-study work visa and began a career in the NHS. He met and married his wife and continued to work. In 2010 their relationship broke up and he contacted a lawyer about his visa. His world was turned upside down when he paid a bogus solicitor £6,000 to deal with his immigration affairs. He ended up being convicted for working illegally and fraudulently completing papers. He was detained post-sentence and is now facing deportation. Ryan currently has an EU national partner that he met in 2013 before being convicted and they have a four-year-old son. He was detained in immigration detention for 6 months post-sentence. He could not find a legal aid lawyer and BID's Article 8 deportation advice and appeals project took on his Article 8 case. He has now been released from detention on bail and is living with his partner and children, preparing for his deportation appeal hearing later this year.

Case study: Mohamed

Mohamed is an Afghani refugee who came to the UK when he was 12 years old. He has a partner in the UK and is the father of two British children. Mohamed suffers from PTSD as a result of traumatic experiences experienced early in his life. He became involved in crime and was convicted and subject to a deportation order. The deportation order would require that he be removed to Afghanistan, thus permanently separating him from his children and partner. Following his criminal sentence, he was placed in immigration detention in an IRC. Mohamed's PTSD symptoms worsened significantly in detention. He had a legal aid lawyer for his deportation appeal based on his asylum and family life claims, with BID acting on his behalf in his bail application. However, one week before his deport appeal hearing at the First Tier Tribunal, Mohamed contacted BID and instructed that his lawyer had dropped his case and he didn't know why. At this time, Mohamed's mental state was very poor. BID contacted his lawyer to make enquiries about the status of his case. His lawyer explained that the firm had ceased practising legal aid work and so they could no longer represent him. Mohamed drafted a letter to the Tribunal requesting an adjournment of his deportation appeal so that he could retain a representative and explained to the Tribunal his particularly poor mental health at the time of the hearing, submitting healthcare reports from the Immigration Removal Centre. The Tribunal refused his request for an adjournment. On the day of the deport appeal hearing, Mohamed made another request for an adjournment; however, the adjournment was again refused, and the appeal proceeded. Mohamed represented himself and lost the appeal. As a result, Mohamed also lost his bail hearing at this time.

He was dismayed and his mental state deteriorated further. BID encouraged him to keep trying to find a representative, especially as his case had merit. At BID's urgings, Mohamed made another appointment to see a Detention Duty Advice[9] (DDA) lawyer within the IRC. The DDA lawyer did not take on Mohamed's case, citing capacity, and recommended that he keep trying to find a lawyer. BID also encouraged Mohamed to return to the DDA lawyer as many times as necessary until he could find a firm with capacity to take his case. He eventually had an appointment with a DDA solicitor who accepted him as a client. Mohamed was granted permission to appeal and his appeal is upcoming.

Question Three. How long is it reasonable to expect the respondent to be able to:
a) provide the relevant documents after receiving the notice of appeal?
b) Request permission to appeal after receiving a judgment?
c) Renew a request to appeal to the UT after permission is refused by the FTT?

Current arrangements under the Procedure Rules would seem to be adequate.

However it should be borne in mind that in terms of preparedness the Home Office is always in a better position than a person held in immigration detention and therefore at an advantage when it comes to meeting deadlines and preparing for an appeal. Despite this the Respondent often discloses documents or provides its evidence very late. Case Management Review hearings would assist to ensure that the Respondent discloses its evidence by an agreed date and to allow the Tribunal to ensure all parties have sufficient time to prepare before an appeal is allowed to proceed.

Question Four. Should the rules impose time limits on judges dealing with appeals where a party is detained? In particular, should the rules require that:
a) Judges produce a decision within a specified timeframe; if so, what should that timeframe be?
b) IAC Judges produce a decision on an application for permission to appeal within a specified timeframe; if so what should that timeframe be?
c) Upper Tribunal Judges produce a decision on an application for permission to appeal within a specified timeframe; if so what should that timeframe be?

Time limits should not be imposed upon judges to reach decisions. Judges should be allowed as much time as they feel they require to reach a fair decision. At the most judges could be provided with a reminder after a certain period or encouraged to issue a note after a certain period confirming that they are mindful of the passage of time and confirming that they are still considering a case.

If the government aims to limit the whole appeals process to 25 working days, this will substantially reduce the decision-making time of judges. As the TPC outlines in its consultation document, in 2017/18 'it took an average of 9.3 weeks from receipt of an appeal for the IAC to issue a judgment disposing the case'. Under the government's proposed timescales, judges in both the FTT and the UT would have 5 working days to allow or refuse an application.

Question Five. If specific rules were made in relation to cases where an appellant is detained, should they also provide for a case management review in all cases? Should such a case management review involve a hearing?

[9] The Detention Duty Advice scheme is a system whereby legal aid law firms are given contracts by the Legal Aid Agency for lawyers to enter IRCs and take appointments with detainees, to give legal advice and possibly take on cases for representation

If specific rules were made in relation to an appellant who is detained there should be a case management review hearing. A hearing is required to ensure fairness and is particularly important for unrepresented appellants who may not be able to make out their case or explain themselves in writing. This will allow judges to ensure that all the relevant issues to a case have been addressed by an appellant so that their evidence is prepared in time for any proposed hearing. Therefore case management review hearings for unrepresented people held in immigration detention are particularly important to protect against unfairness and injustice.

It could be made open to all legally represented people in immigration detention to be given the option of having either case management review hearing or a paper review. Such an approach can also allow for submissions to be made as to why an oral hearing is required, and may also allow for straightforward matters to be dealt with by hearings held via video-conferencing.

Case management hearings should also consider whether or not a case should be moved to be heard under the Principal Rules and or allow for the amendment and extension of timescales under the expedited process.

Question Six. If specific rules were made in relation to cases where an appellant is detained, should the rules apply a different rule to adjournments than the Principal Rules? In particular,
a) should the rules apply a different test when deciding whether a case should be adjourned; and
b) should they require that the case be relisted within a particular timescale?

The emphasis should be on fairness. Timescales should be decided by Judges with this in mind. The Principal Rules already allow this.

However should an expedited appeals process introduce new or restrictive tests for considering adjournments or timescales the following issues should be addressed: ensuring fairness; the greater the risk of an unfair disposal of a case the greater may be the need to adjourn a case or to extend time limits; consideration as to whether or not an appellant is legally represented, and if not, what steps are being taken to obtain legal representation, etc.

Question Seven. Should the time spent in detention outside the tribunal process affect any decision on potential fast track rules?

Yes. Any delays obtaining evidence during the decision-making process or regarding the complexity of a case that may have contributed to a delay in the application process should be taken into account. This may serve as evidence of the need to extend timescales to ensure fairness with the appeals process. Similarly, any reason for believing that delay may be caused in the event that an appeal is rejected may have an impact upon a decision on whether or not a case should be retained in an expedited appeals process. For example if the evidence indicates that a person is not removable e.g. as they are a Western Saharan national born in Algeria who Algeria may not accept, or they may not be removable as they are stateless but they may or may not benefit from the Statelessness Rules under the Immigration Rules as they have previously committed a criminal offence. Such delays would be a factor to be considered via a case management review hearing to ensure all the issues that could potentially be at issue within the appellant's appeal are properly dealt with and considered by all parties to a case.

Further, time spent in detention outside the appeals process may be evidence of an individual's inability to properly prepare their original application from within detention (whether with or without legal representation) and therefore of the need to exclude them from an expedited process.

Overall delays outside the Tribunal process may also be evidence of the SSHD's failure to expedite cases under his consideration and therefore evidence that an expedited appeals process will make no overall difference to the central issue the SSHD wishes to address i.e. to increase the number of people removed from the UK.

BID is concerned that the Ministry of Justice's consultation of 12 October 2016 (referred to in paragraph 12 of the TPC's consultation) stated at paragraph 25 that "not all IRC detainees currently spend the duration of their whole appeal in detention" and that "For a substantial proportion of these individuals, it is expected that a substantially faster appeal process would justify detention until their appeal is determined, possibly increasing the average time such individuals spend in detention". So it is accepted that timeframes or specific time periods may lead to an increased use of detention, and that this will be as a result of the detention of people who would normally not be detained simply because they have an appeal that may be concluded more quickly. The fact that such people could then remain in detention for long periods as is sometimes currently the case is certainly relevant.

Question Eight. Do you have any other comments?

The certification process for out of country appeals and the power to grant permission to remain to meritorious cases already enables an expedited decision-making process. But once an application to remain has been refused and an appeal right is engaged there is no reason why people should be treated differently simply because some are held in detention and some are not. The priority should be to enable the fair application of the Principal Rules so that people held in detention are not disadvantaged by the fact of their detention.

In case the TPC decides to consider an overall timeframe rather than specific time limits for each stage in an expedited process, the risk is that this will cause the same injustices as would specific time limits for each stage of the process. Ensuring the fair and just disposal of an appeal requires attention by a judge to the facts and circumstances of each appellant, all within the context and requirement of the Principal Rules to avoid delay[10]. Timeframes and specific time limits for stages in a case risk an approach where the need for justice and fairness is subsumed to the need for expedition.

BID is concerned that the Home Office tends to conflate the appeals process with the removals process, and relies on unsubstantiated claims of absconding risk or of delays to support a call for an expedited process. We are concerned that that the introduction of an expedited process tries to address a problem that does not exist. The assumption that the introduction of a timetable will result in shorter periods of detention again fails to take into account the main reasons for people remaining in detention for long periods, not only when they have an appeal pending, but also when appeal rights are exhausted. The belief that more people will therefore be detained and that this will reduce absconding fails to take into account the fact that the systematic use of detention in this way most likely encourages absconding risk.

Paragraph 26 of the Home Office's consultation dated 12 October 2016 and referred to in paragraph 12 of the TPC's consultation states that "it is not clear how the expedited process would affect mean detention time." For this reason there is no need to introduce an expedited timetable to appeals when this risks undermining access to a fair and just appeal procedure. It risks complicating the appeals system and encourages a perception that regardless of the merits or needs of a case, appellants will be forced to comply with potentially unfair and unjust restrictions simply for the sake of adhering to a timetable. Similarly, this risks more people being detained at a time when the

[10] Paragraph 2(2)(e) *ibid*

original Shaw report in November 2016 has called for a reduction in the use of detention, particularly of vulnerable adults (yet the Government's statistics[11] show an increase in the use of detention of vulnerable adults[12] (i.e. those who have received a Rule 35 report)).

According to the TPC's consultation document, its approach to drafting rules considers that the recent Supreme Court case, *R (UNISON) v Lord Chancellor* [2017] UKSC 51, sets out the relevant guidance, and of particular relevance is the Supreme Court's position that 'a procedural regime must not create a real risk that individuals will not have effective access to justice and that any intrusion on the right to access justice must not be greater than is justified by the objectives which the measure it intended to serve". This submission has illustrated the multiple and mutually reinforcing ways that an expedited appeals process will compound the difficulties detainees already have in gaining access to justice. The objectives served by an expedited process must be of sufficient importance so as to displace considerations of access to justice. This is a high threshold and places a considerable burden on the government.

Yet the policy's stated objectives are not consistent. The MoJ states in its consultation document that 'the policy aim is to minimise the period of detention in all cases[13]'. However, the Government's position described at paragraph 42 of the TPC's consultation document is that "the lack of clear timescales for appeals results in release of individuals, some of whom go on to abscond". If the introduction of an expedited process is designed to correct a supposed tendency of the current system to lead to release of detainees, it is likely the changes will bring about an increase in the frequency and length of detention.

The MoJ also suggests that: "For a substantial proportion of these individuals, it is expected that a substantially faster appeal process would justify detention until their appeal is determined, possibly

[11]

Quarter	Number of r35s submitted	Releases as a result of r35	% of rule 35 reports leading to release
2014 q3	380	56	14.7
2014 q4	337	62	18.3
2015 q1	422	84	19.9
2015 q2	404	74	18.3
2015 q3	614	121	19.7
2015 q4	540	151	27.9
2016 q1	635	208	32.6
2016 q2	803	318	39.6
2016 q3	724	256	35.3
2016 q4	468	161	34.4
2017 q1	690	172	24.9
2017 q2	653	145	22.2
2017 q3	696	102	14.6
2017 q4	683	107	15.6

SOURCE: Home Office Detention Data Tables

[12] Stephen Shaw, in the foreward to his 2018 report: "I think every one of the centre managers told me that they had seen no difference in the number of vulnerable detainees (and, in some cases, that the numbers had actually increased)"

[13] Ministry of Justice- Immigration and Asylum Appeals: Consultation on proposals to expedite appeals by immigration detainees

increasing the average time such individuals spend in detention[14]". Detention should only be used where there is no alternative (although BID believes that the Home Office could make greater use of existing alternatives to detention such as regular reporting) and not on the basis that a person has been included into an appeal procedure. That is particularly important in circumstances where people will often remain in detention for many months after they have exhausted appeal rights. The fact that a person is already in detention is sometimes used as reason to express concern that if they are released from detention they may abscond. So an expedited appeals system may actually increase the number of people who are unnecessarily kept in detention for periods that are far longer than that assumed by an expedited appeals process.

To encourage detention in such circumstances also erodes a person's ability to properly prepare their appeal; denies them the family and private life ties that they have established and upon which they may rely to support their appeal; and encourages absconding risk which such policy ostensibly seeks to avoid.

Many case management review hearings will involve examination of the production of evidence that often takes a long time to obtain e.g. independent social worker reports into the welfare of children. It would perhaps be reasonable to assume that any cases where appellants make clear in grounds of appeal that their claim rests on their family life rights or other circumstances that will require expert evidence to support their claim be excluded from any expedited appeals process. This will avoid unnecessary case management review hearings.

[14] Ministry of Justice- Immigration and Asylum Appeals: Consultation on proposals to expedite appeals by immigration detainees