

Alternatives to detention in accelerated asylum procedures

DETENTION ACTION

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Executive summary

Non-detained accelerated asylum procedures are used in many comparable European countries to achieve similar objectives to the Detained Fast Track (DFT). Since applicants are not detained, these procedures avoid the legal problems that have led to the temporary suspension of the DFT. Good practice developed in these procedures could be used to develop an alternative non-detained Fast Track in the UK.

Other European states that are countries of destination for asylum-seekers face similar pressures to the UK with regards to the quick processing of claims and avoidance of backlogs. The majority make use of accelerated procedures, whether formally or through informal prioritisation of certain categories of case. Some detain asylum-seekers on a case-by-case basis. However, none automatically detain the whole cohort of asylum-seekers whose claims are judged to be suitable for a quick decision.

These European accelerated procedures have not come under significant legal challenge; indeed some have been welcomed by a wide range of stakeholders. The pilot project at Förrlibuckstrasse, Zürich, which is expected to serve as the model for the restructuring of the Swiss asylum process, is a particularly relevant example, as it addresses a similar context and objectives to the DFT. Independent evaluations have found that it speeds up the process, reduces the rate of appeals, and is welcomed by asylum-seekers going through it.

These procedures indicate that the difficulties of the DFT could be resolved by breaking the automatic link between accelerated procedures and detention. Asylum-seekers whose cases are suitable for a quick decision could be accommodated in reception centres, with on-site presence of most or all of the participants in the process, including case-owners, legal representatives and NGOs providing generalist advice and support, including around voluntary return.

This model would allow greater flexibility in the time-scales for asylum-seekers to prepare their applications and appeals, without the additional pressure for speed created by detention. Screening and identification of vulnerable people could take place over an extended period, avoiding over-reliance on the initial screening interview. This model would provide an excellent opportunity to develop improved partnership working between the Home Office, legal representatives and NGOs, building on previous pilots such as the Early Legal Advice Project and the Key Workers Pilot, which could help to build trust in the system amongst asylum-seekers and civil society.

Summary of recommendations

1. **The UK should break the automatic link between entry to an accelerated asylum procedure and detention.**
2. **The determination of some asylum claims quickly does not necessarily require a separate accelerated asylum procedure.**

If there continues to be a separate accelerated asylum procedure then:

3. **Deadlines for asylum-seekers to prepare their claims and appeals should be longer and more flexible than allowed within the artificially curtailed DFT timetable. Determining the time required to submit an appeal should be a judicial function. Quick processing of asylum claims should primarily be achieved through efficient use of Home Office and Tribunal resources and ensuring that asylum-seekers are engaged with the process.**
4. **Independent support and advice can generate high levels of trust and compliance in accelerated procedures. Time and resources for this should be included in the process.**
5. **High quality legal advice and representation should be available throughout the process.**
6. **Screening of cases and assessment of vulnerability should take place throughout the process.**
7. **Clearly well-founded cases could be included.**
8. **A non-detained accelerated procedure could be based at reception centres.**
9. **This model could allow improved partnership working and trust between the Home Office, civil society organisations and legal representatives.**

Non-detained accelerated asylum procedures in Europe

Accelerated asylum procedures are used across Europe to meet similar objectives to the DFT. The need to process asylum claims quickly is a pressing concern across Europe. The increasing numbers of asylum-seekers travelling to the continent and the crisis in the Mediterranean have generated political pressure to avoid backlogs and maintain public confidence in the asylum system by processing claims in a timely manner.

Accelerated asylum procedures have been adopted by many European states that are comparable to the UK in being to a large extent ‘destination’ countries for migration flows, as opposed to regions of transit. Accelerated procedures can be formal streams within the asylum process, as in France, Switzerland, Sweden and Austria, or informal systems of prioritisation as in Germany and Ireland.¹

However, while there is a wide variety of practice, none of the comparable accelerated asylum processes rely exclusively on detention, as is the case in the DFT.² Comparable European states find that they can conduct accelerated procedures primarily in the

¹ AIDA Asylum Information Database, <http://www.asylumineurope.org/>. Except where otherwise stated, information in this section is sourced from the relevant country pages of the AIDA database.

² Several countries operate ‘airport’ procedures, where asylum-seekers refused entry to the Schengen zone are processed quickly in detention. These procedures are distinguished from the accelerated procedures considered here in that they are not for claims judged suitable for a quick decision, but instead address a perceived prohibition on admitting migrants refused entrance to the Schengen zone.

community, reducing costs and distress reported by asylum-seekers and avoiding legal challenges to the process.

Identification of cases for accelerated procedures

The common factor in these asylum processes, similarly to the DFT, is that applications should be suitable for a quick decision. Different states take different approaches to defining suitability.

Switzerland is piloting an accelerated procedure as part of a restructuring of its asylum process (see below), in which the decision on which procedure to use is taken after an initial phase of information gathering.

In the Netherlands, all cases are initially routed into the 'short asylum procedure'. If it becomes clear that a decision cannot be taken within the eight days allowed for on the short procedure, the case is routed into the extended procedure.

Sweden has an accelerated procedure for manifestly unfounded cases only.

Austria uses accelerated procedures for applicants from a safe country list, those refused entry at the airport and in the public interest (i.e. where the applicant is associated with crime), as well as for Dublin cases.

France routes 25% of asylum claims into a non-detained accelerated procedure, where the applicant is from a country considered to be safe, is considered a threat to public order or the asylum claim is considered to be fraudulent. There are no exemptions for vulnerable people.

Germany and Ireland both use informal procedures to prioritise applicants from certain countries. Applicants from countries likely to generate well-founded, as well as unfounded, claims are included.

How claims are processed on accelerated procedures

Most accelerated procedures make use of open reception centres. Asylum-seekers on the accelerated procedure in Austria are accommodated in the Traiskirchen open reception centre. In Sweden, most asylum-seekers are accommodated initially in open reception centres. Detention of up to two weeks is used for some applicants on this procedure, on the basis of case-by-case assessment. Only 167 asylum-seekers were detained in 2013.

Asylum-seekers in the Netherlands (excluding those applying at the airport) have to apply at the Central Reception Centre at Ter Appel, where initial registration takes place. They are then transferred to a Process Reception Centre elsewhere in the country. A rest and preparation period of six days allows for identity and police checks, medical examinations, NGO support and preparations by the legal representative. The short asylum procedure itself should take eight days, extendable by another six days if more time is needed. Appeals against refusal on the short procedure should be lodged with the regional court within one week.

In France, problematically, asylum-seekers on the accelerated procedure are excluded from the reception system, meaning that they cannot be accommodated in reception centres and must resort to emergency accommodation. This can complicate their access to legal advice.

Timescales on accelerated procedures vary considerably. In Austria, asylum-seekers in Traiskirchen reception centre receive their initial decision within a week, and are given a

deadline of a week to lodge an appeal. In France, the initial decision is made within 15 days, while in Sweden it can take up to 3 months.

Initial decisions are made in around 7 days in Germany and 25 days in Ireland. Appeals are processed according to the regular procedure, unless (in Germany) they are assessed as manifestly unfounded and subject to a non-suspensive appeal.

Case study: Förrlibuckstrasse Test Centre, Zürich, Switzerland

Switzerland is piloting a non-detained accelerated asylum process, based on the Dutch model, with similar objectives and a similar political context to the DFT. In 2011 the Swiss Parliament approved a deep reform of the country's asylum system. Numbers of asylum claims had increased substantially following the Arab Spring, and there was widespread media focus on the 'chaos' in the asylum system. All stakeholders agreed that the system was far too slow. Systemic delays were judged to harm applicants, integration, voluntary return rates and cost efficiency.³

The 'Testphase' pilot began on 1 January 2014, and has been prolonged until September 2016. The pilot is to be extended to the whole of the country following the passage of legislation, the *Erlass 2 Neustrukturierung des Asylbereichs* ('Second Decree on the Restructuring of the Asylum System'). The process aims to resolve asylum claims within 100 days. The restructuring has the following objectives:

- *'The asylum procedures and returns should be executed quickly and respect the principles of the rule of law;*
- *'Persons requiring protection should continue to receive the necessary protection and be integrated as quickly as possible;*
- *'Incentives to make unfounded or abusive asylum claims should be reduced;*
- *'The credibility of the asylum system should be durably reinforced.'*⁴

The principle of the accelerated procedure is that all relevant personnel and services are found under the same roof: the asylum-seekers themselves, immigration officials, legal representatives, interpreters and general advice-providers, including on voluntary return. Similarly to the DFT, this physical proximity is considered essential given the short time-scales involved in the process.⁵

In practice, it was not possible initially to host the asylum accommodation and procedure in the same building. Asylum-seekers are accommodated in the Juch reception centre in Zürich, a 300-bed former housing bloc for migrant labourers, run by Asylorganisation Zürich, while their interviews with immigration officials and other advisers are held at offices a short distance away. It was found that asylum-seekers, new to Switzerland, were getting lost and arriving late at their interviews. This problem was resolved by the provision of a shuttle-bus linking the two locations. In the longer term, there are plans to build a new reception centre opposite the test centre.

³ Simonetta Sommaruga, Federal Counsellor, 'Restructuration du domaine de l'asile : pour des procédures rapides et équitables', press conference 14 June 2013, <http://www.ejpd.admin.ch/ejpd/fr/home/aktuell/reden---interviews/reden/2013/2013-06-14.html>

⁴ Externe Evaluation der Testphase für die Neustrukturierung im Asylbereich, December 2014, Schweizerisches Kompetenzzentrum für Menschenrechte (SKMR), p3, <https://www.bfm.admin.ch/dam/data/bfm/aktuell/news/2015/2015-02-16/eval-zwber4-d.pdf>

⁵ Simonetta Sommaruga, op. cit.

Asylum claims are allocated to the pilot at random. The initial preparation phase of the process lasts up to three weeks. Legal advisers, employed by a state-funded NGO, Verband Schweizerischer Jüdischer Fürsorgen, are based in the reception centre and provide initial legal orientation but not representation. They work with asylum-seekers at this stage to fulfil three functions: provide general advice about the process; clarify their personal situation without exploring the asylum claim, and explain the role of the legal representative. Meanwhile, immigration officials gather information about the applicants, including verifying their identity, examining documents, arranging for medical examination and taking fingerprints. The asylum-seekers also have their first meeting with their legal representative and their first interview with immigration officials during the preparation phase.

According to the independent evaluation, this preparation stage has an impact that is

‘fundamentally positive on the understanding and acceptance of the pilot process. The advice function appears particularly valuable in that it allows the same information to be given to asylum-seekers by different actors, including those independent of Immigration. This affects... the possibility of voluntary return.’⁶

The pilot falls short of providing end-to-end case management, however, although it includes elements of it. The legal advisors provide early intervention, working with asylum-seekers from the start of the process to support them to understand and engage with it. They are based in the reception centres, so develop familiarity with the asylum-seekers. However, their structural role is limited to the preparation phase; they have no formal input once the asylum process begins, or post-decision in helping prepare for integration or return.

The asylum procedure takes place in the Förrlibuckstrasse centre. The immigration authorities and interview rooms are based here, while the legal representatives and other agencies are on the next floor. The staff of another NGO act as ‘Single Point of Contact’ for actors in the process with the exception of the asylum-seekers, conducting the complex task of coordinating interviews within the tight deadlines and packed schedules of all involved. The Returns Office, run by Zürich Canton, provides advice and assistance on voluntary return.

The presence under one roof of immigration authorities, legal representatives and voluntary return advisors clearly has considerable benefits in terms of the efficiency of the process. The role of ‘Single Point of Contact’ appears to contribute to the efficiency of the procedure. However, asylum-seekers themselves are accommodated elsewhere, and may regard the test centre as an alien environment. Disclosure to legal representatives and trust in the system may be undermined by proximity (one floor apart) and physical similarity of the offices of the legal representatives and immigration authorities.

Unlike in the regular asylum process, applicants are entitled to automatic free legal representation for the initial stage of the accelerated process. This representation is provided by an NGO, Berner Rechtsberatungsstelle für Menschen in Not, under contract to the government. Subject to an assessment of merits, this representation continues during the appeals stage. Provision of free legal representation is a new development in

⁶ Schweizerisches Kompetenzzentrum für Menschenrechte (SKMR), *Externe Evaluation der Testphase für die Neustrukturierung im Asylbereich*, December 2014, p3
<https://www.bfm.admin.ch/dam/data/bfm/aktuell/news/2015/2015-02-16/eval-zwber4-d.pdf>

Switzerland, and is arguably weaker than the UK legal aid system. The low level of appeals may reflect quality decision-making and the less adversarial nature of the system, or it may indicate reluctance of some representatives to pursue appeals with merit. However, the evaluation found that, while asylum-seekers reported concern that legal representatives worked in the same building as the immigration office, the majority nevertheless trusted them to work in their interests.⁷

After the preparation phase, asylum-seekers are routed into either the accelerated, extended or Dublin procedures. If it is judged that more time is required to investigate a claim or seek evidence, the applicant goes into the extended asylum procedure. It was anticipated that 20% would enter the accelerated procedure and 40% the extended procedure, but in practice a higher rate of 34% of claims were accelerated, against only 22% on the extended procedure. Between January and October 2014, 829 cases were resolved on the pilot, of which 365 went through the accelerated procedure. 43% of applicants had left the country by the time of writing of the evaluation, slightly lower than the target of 60% due to the higher level of grants of leave to remain in Switzerland.⁸

Where asylum is refused and any appeals have been determined, asylum-seekers are informed of the decision and notified that they are likely to be detained and removed. In most cases, an attempt is made to arrange return without detention by holding a formal meeting where an official explains that they must leave and what the options are, including detention. Previously Dublin returnees were automatically detained, but recently a process has been developed for conducting Dublin returns without detention where the person is cooperating.

The accelerated process generated a higher rate of absconding than the regular process, of 23.5% against 12.0%. The evaluation assessed that better information about the process was leading some applicants with poor chances of asylum to make a realistic assessment of their prospects and decide to abscond.⁹ These absconding levels are high from a UK point of view. However, it should be noted that Switzerland is a transit country for many asylum-seekers, which inevitably increases the likelihood of absconding. Stakeholders believe that the majority of absconders leave the country, so the absconding rate is not a major political issue. Case management could contribute to reducing the rate of absconding. It is in any case significant that over three-quarters of asylum-seekers chose not to abscond, in a process that makes no use of detention.

The external evaluation of the protection of rights found that asylum-seekers were better informed about the process, including from independent sources, had a clearer sense of their chances of asylum, and had a more positive perception of the asylum system:

*'With few exceptions the asylum-seekers welcomed the accelerated procedure. All asylum-seekers with good, and many with poor, chances of asylum expressed in the focus-group interviews their appreciation of the fact that in the pilot procedure they would not remain long in uncertainty.'*¹⁰

According to the Secretary of State for Migration, the evaluation of the pilot shows that:

⁷ *ibid.*, p9

⁸ Eidgenössisches Justiz- und Polizeidepartement EJPD, Staatssekretariat für Migration SEM, *Evaluation Testbetrieb, Zusammenfassung der Zwischenergebnisse*, February 2015, p12,

<https://www.bfm.admin.ch/dam/data/bfm/aktuell/news/2015/2015-02-16/eval-amtsbericht-d.pdf>

⁹ *ibid.*, p12

¹⁰ SKMR, *op. cit.*, p16

'The asylum procedures tested in the pilot centre are undertaken and resolved faster than in the mainstream process, as was the objective. This acceleration of procedures has not had a negative influence on the quality of decisions: the improvement in legal protection has contributed to ensuring that the procedures are carried out correctly. This leads also to improved acceptance of decisions by asylum-seekers, as shown by the low level of appeals of only 15%.¹¹

Recommendations

1. The UK should break the automatic link between entry to an accelerated asylum procedure and detention.

Quick resolution of suitable asylum claims is to the benefit of all parties, but it is essential that fairness is not compromised as a result. A variety of comparable European destination countries use non-detained accelerated procedures that meet their immigration control objectives. Without exception, these procedures avoid the use of detention, other than on a case-by-case basis or for manifestly unfounded claims subject to a non-suspensive appeals process. As a result, they appear to avoid the majority of the problems associated with the DFT. None of these models can be imported wholesale to the UK, but the Zürich model appears to represent good practice that could be adapted.

2. The determination of some asylum claims quickly does not necessarily require a separate accelerated asylum procedure.

Some states, such as Germany and Ireland, use informal methods to prioritise decision-making in asylum cases that are suitable for a quick decision. The objectives of the DFT could potentially be met within the mainstream asylum process through flexibility and case-by-case assessment of timescales required.

If there continues to be a separate accelerated asylum procedure then:

3. Deadlines for asylum-seekers to prepare their claims and appeals should be longer and more flexible than allowed within the artificially curtailed DFT timetable. Determining the time required to submit an appeal should be a judicial function. Quick processing of asylum claims should primarily be achieved through efficient use of Home Office and Tribunal resources and ensuring that asylum-seekers are engaged with the process.

No European country imposes deadlines on asylum-seekers as short as the DFT. European accelerated asylum procedures involve shortened deadlines relative to the regular asylum procedures for asylum-seekers to prepare their cases and submit appeals, but these deadlines are never as curtailed as those on the DFT. It appears that many of the time savings are achieved through tight timescales for immigration authorities and courts to arrange hearings and make decisions, avoiding unnecessary delays.

This flexibility is made possible by the avoidance of detention. Detention imposes a need for speed, to avoid excessive detention costs, impact on individuals and legal challenges to detention. Without detention, greater flexibility can be exercised in setting deadlines. In the UK context, this would avoid the need for the Fast Track Rules to impose fixed timescales

¹¹ Staatssekretariat für Migration, *Neustrukturierung Asylbereich: Erste Evaluation des Testbetriebs liegt vor*, 16 February 2015, <https://www.news.admin.ch/message/index.html?lang=de&msg-id=56234>

on the appeals process. Instead, a Case Management Review hearing would allow the First Tier Tribunal to assess the appropriate timescales on a case-by-case basis. This would be likely to reduce the rate of fresh claims and judicial reviews, saving costs and possibly even reducing the overall average time required to resolve asylum claims.

4. Independent support and advice can generate high levels of trust and compliance in accelerated procedures. Time and resources for this should be included in the process.

The evidence from European accelerated procedures supports previous research findings that asylum-seekers are more likely to trust and comply with an asylum system if they have access to independent advice and information that enables them to fully understand and engage with the process. The Swiss model includes an initial period of up to three weeks for the asylum-seeker to understand the process and the immigration authorities to build up a picture of his or her profile and circumstances. Advice on voluntary return is also available on-site.

This on-site advice function could be formalised into a case management role, based on international good practice in alternatives to detention. This role could be responsible for guiding the asylum-seeker through the process and ensuring that they are aware from the start of all possible outcomes.

A community-based Fast Track in the UK could involve much more active participation of civil society organisations. This would address the widespread mistrust, alienation and hostility felt by asylum-seekers on the DFT, and consequently address the increased risk of absconding relative to the DFT. Independent support and advice could be based on-site, without the challenges involved in working in a detention environment. This role could be based on the good practice developed in the Key Worker Pilot carried out by Refugee Action in 2010-12.¹²

5. High quality legal advice and representation should be available throughout the process.

The Swiss example demonstrates the value of including on-site legal advice throughout the accelerated procedure. The DFT duty rota already enables asylum-seekers to access legal advice quickly, avoiding delays while they find a representative. However, the detention environment means that (unlike in the original Oakington model) legal representatives are not based on-site. The time required for representatives to book limited interview rooms, travel to the centres and go through security introduces significant inefficiency and delay. Early and effective access to legal advice could more effectively be delivered in a non-detained accelerated procedure.

The front-loading of legal advice at the start of the process is likely to be most effective in promoting understanding of and compliance with the procedure, as well as ensuring protection of rights. A non-detained accelerated procedure would be an opportunity to develop the model piloted in the Early Legal Advice Project. The Swiss case suggests that improved access to legal advice can reduce the rate of appeals lodged.

6. Screening of cases and assessment of vulnerability should take place throughout the process.

¹² Refugee Action, *Evaluation of the Key Worker Pilot*, April 2012

Non-detained accelerated procedures can assess applicants' needs and situations throughout the process, tailoring deadlines accordingly and allowing cases to move more flexibly between the accelerated and regular procedures. In Zürich, screening effectively takes place throughout the initial advice period and involves an independent advisor working with the asylum-seeker and communicating with decision-makers, allowing the authorities to make an informed decision about the appropriate procedure and timescales. As Juch is not a detention centre, no harm is done to a vulnerable asylum-seeker by initially placing them there.

7. Clearly well-founded cases could be included.

The avoidance of detention would allow the inclusion of clearly well-founded cases, which are theoretically eligible for the DFT but in practice (understandably) not included. This would increase the proportion of asylum claims that could be processed quickly, potentially reducing backlogs and the cost of asylum support. It would bring clear benefits to the individuals concerned, whose integration into the UK could begin at an earlier stage. Finally, it would dispel the impression amongst asylum-seekers that the accelerated procedure is purely a means of refusing claims, promoting instead an impression of fairness.

8. A non-detained accelerated procedure could be based at reception centres.

Where European states use accelerated procedures, they have in general used designated reception centres. The reception centre approach allows the procedure to maintain and extend the advantages of the Oakington model, with all participants in the procedure present under the same roof; indeed, the non-custodial environment makes it much easier to involve independent support and advice and promote trust in the process.

As was recognised in the design of the Oakington Fast Track, these benefits apply primarily at the initial decision stage, at which asylum-seekers need to be available at short notice for interviews. The availability of the asylum-seeker at subsequent stages is much less crucial, since appeal hearings can proceed in their absence. Consequently, asylum-seekers could be required to reside at the reception centre for the initial screening and decision stage, as is the case in Sweden. At the point of refusal of asylum, there could be flexibility as to whether the person moves to live with friends or family if available, remains in the reception centre if an accelerated appeals process is possible, or transfers to asylum support accommodation and the regular asylum appeals process. This arrangement would not prevent the Home Office from detaining an applicant and taking them out of the accelerated procedure at any stage, where detention under the general detention criteria can be justified for the period of the regular asylum process.

Reception centres could be located close to the existing DFT offices at Harmondsworth and Yarl's Wood, or alternative Home Office facilities. Accommodation, offices and interview rooms could all be provided in the same building, or transport provided between facilities within the same locality.

An alternate approach would be to convert one of the lower security Immigration Removal Centres (e.g. Campsfield House) into open reception accommodation. This would reduce the expense of creating a new centre, using existing interview rooms and office space whilst enabling greater on-site presence of legal representatives and civil society organisations than is possible in an IRC. The wings would require significant alteration to the physical environment and procedures to facilitate easy entry and exit, in order to ensure that they do

not continue to feel like detention centres, undermining the benefits to trust and compliance of the reception centre model.

9. This model could allow improved partnership working and trust between the Home Office, civil society organisations and legal representatives.

The reception centre model would allow better communication and partnership between the various stakeholders of the asylum process, many of which could be based on-site. The move away from detention, alongside piloting of front-loaded legal advice and NGO case management support, would be an opportunity to build trust in the asylum process amongst civil society organisations. A non-detained accelerated asylum procedure could allow all stakeholders to work together in a coordinated way to ensure that the process is both fair and perceived as such by the people going through it.

About Detention Action

Detention Action is a national charity established in 1993 that aims to change the way that migrants are treated by immigration detention policy in the UK. Detention Action defends the rights and improves the welfare of people in detention by combining support for individuals with campaigning for policy change. Detention Action works primarily in Harmondsworth and Colnbrook Immigration Removal Centres, near Heathrow Airport in London and the Verne IRC in Dorset.

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