Detention Action submission to the Tribunal Procedure Committee consultation on Rules in relation to detained appellants, October 2018

About Detention Action

Detention Action is a national charity established in 1993 that seeks to defend the rights and improve the welfare of people in immigration detention by combining support for individuals with campaigning for policy change. Detention Action works in Harmondsworth and Colnbrook Immigration Removal Centres (IRCs) near Heathrow Airport in London, Morton Hall IRC in Lincolnshire, and with people held under immigration powers in London prisons.

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Introduction

1. Detention Action welcomes the opportunity to respond to the Tribunal Procedure Committee (TPC)'s consultation on Tribunal rules in relation to detained appellants and we answer each of the eight questions posed by the Committee, below.

2. This consultation follows our successful litigation against the Government's Detained Fast Track (DFT) system, which implemented fast track limit rules for appealing Home Office asylum decisions for those held in Immigration Removal Centres. This policy was held unlawful by the Court of Appeal in July 2015 in *R (Detention Action) v First Tier Tribunal and others.*[1]

3. The Court of Appeal upheld an earlier High Court judgment quashing the fast track procedure rules as then set out in the Tribunal Procedure (First Tier Tribunal) Immigration and Asylum Rules) 2014 as ultra vires section 22 of the *Tribunals, Courts & Enforcement Act 2007*. The Court of Appeal determined that short time limits contained in the FTR made the system "*structurally unfair and unjust*".[2] Since the judgment was handed down all detained asylum appeals, have been heard under the Principal Rules. The Principal Rules apply to all other immigration appeals and they do not seek to impose strict time limits at each procedural stage.

4. In the three years since the judgment, the Government has agitated for further fast track rules to be brought forward, issuing its own consultation on the matter in October 2016 to the apparent

[1] [2015] EWCA Civ 840.
[2] Detention Action judgment, paragraph 45.

surprise of the TPC under whose jurisdiction procedural rule-making resides and who had planned to consult itself on the appropriate response to the judgment.[3]

5. In its response to its own consultation, the Government stated in April 2017 that it believes that the appropriate timeframe to determine an appeal in the IAC, from the time it is lodged to the time to the time it is determined by the tribunal, should be 25 working days. Further the Government's view is that if the TPC believes that 25 working days is too short this timeframe should not exceed 28 working days. The Government has further posited that a new fast track system should be expanded to cover a greater category of cases, including all those detained under immigration powers such as ex-offenders subject to deportation orders held in IRCs and in prisons. The TPC however reports in the present consultation that the Home Office and Ministry of Justice have now informed the TPC that inclusion of FNOs held in prisons would not be 'operationally practical'.

6. The present consultation applies therefore to individuals detained in IRCs and not those held under immigration powers in prisons. This would nonetheless represent a drastic widening of cases subjected to fast tracking than under the previous discredited system and bring many more individuals within an almost certainly unlawful system.

7. The TPC rightfully points out that it *"is not bound by Government's policy view in relation to rules (although it is, of course, a view that the TPC will take into account)."*[4]Detention Action nonetheless urges the TPC to consider the Government's position it in the context of the Department's wider approach and policy-making record.

8. Earlier this year the former Home Secretary, Amber Rudd, was forced to admit that the Home Office had been working to targets for removals. Removal objectives seem to have been prioritised over the Department's obligations under the law and in the interests of justice. Last year, the Department's 'deport first, appeal later' policy was ruled unlawful by the Supreme Court and it has recently come to light that the Department has unlawfully detained, removed and deported members of the Windrush generation with the legal right to be in the UK. It's policy position on the system for immigration appeals should therefore be considered within this political reality.

9. Of further relevance to the TPC's consideration, is the Home Office's consistently poor first instance decision-making. The latest appeal statistics show that half of the 11,865 cases determined between January – March 2018 were allowed/granted, and this figure was generally consistent across the category of cases the Home Office now seeks to fast track (from 41% for Asylum/Protection to 56% for Human Rights, and 40% of deportation appeals). This is up from 42% of determined cases allowed/granted in January to March 2017, representing a deterioration in Home Office decision making.[5]

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[3] The Ministry of Justice consultation is available at - consult.justice.gov.uk/digital-communications/expedited-immigration-appeals-detainedappellants/

[4] TPC consultation, paragraph 19.

[5] Tribunals and Gender Recognition Statistics Quarterly, January to March 2018, published June 2018, available at - https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/716008/tribunal-grc-statistics-q4-201718.pdf.

10. These figures show that the appeals system is centrally important to preventing widespread miscarriages of justice, where as the Court of Appeal recognised, the consequences for individuals are "potentially disastrous".[6] Against this backdrop it is essential that the Tribunal retains flexibility and discretion to conduct cases as it sees fit and that appellants are given adequate time and support to prepare their case.

11. Question 1: Do you think there should be specific rules setting down time limits in cases where an appellant is detained that differ from those in the Principal Rules?

12. No, specific time limit rules for those detained in immigration detention centres are unnecessary and deeply harmful to justice.

13. Immigration cases invariably engage fundamental human rights, including the right to life, the right not to be refouled, the right not to be subjected to torture and inhumane and degrading treatment, the right to family life and so on. The stakes for individuals concerned could not be higher and as the Court of Appeal found, "*appeals are often factually complex and difficult. They sometimes raise difficult issues of law too."*[7] For individuals to be effectively represented, solicitors need adequate time with detainees to take instruction, statements must be drafted, experts instructed, Home Office disclosure sought and legal aid obtained.

14. It is therefore fundamental to the requirements of justice and fairness, that the timescales for such cases are considered individually, based on the unique requirements of each case. Fast track processes or default time limits are entirely unsuitable for these types of appeals and for detained appellants generally given the well-documented failings of our detention system.

15. In quashing the Tribunal Procedure Committee's previous time limit system for detained asylum appeals, the Master of the Rolls summarised the Court's reasoning, saying that *"The scheme does not adequately take account of the complexity and difficulty of many asylum appeals, the gravity of the issues that are raised by them and the measure of the task that faces legal representatives in taking instructions from their clients who are in detention."*[8]

16. It is difficult to see how any fixed and accelerated system would address the issues identified by the Court of Appeal which remain as complex, grave and challenging as they were in 2015. A tweaked or repackaged system would not enable the TPC to discharge its statutory obligations to ensure that (a) in proceedings before the First-tier Tribunal and Upper Tribunal, justice is done, and (b) the tribunal system is accessible and fair[9] and its 'overriding objective' to 'enable the Tribunal to deal with cases fairly and justly'.

Absence of legal aid will exacerbate fundamental unfairness of DFT

[6] Detention Action judgment, paragraph 49.
[7] Detention Action judgment, paragraph 37.
[8] Ibid.
[9] Section 22(4) of the TCA 2007.

17. Indeed, by attempting to wider the category of cases within scope of the fast track, further complexity and challenges will be introduced. The Legal Aid, Sentencing & Punishment of Offenders Act 2010, removed the availability of legal aid for many immigration case categories, including appeals on human rights grounds and deportation appeals.

18. There also remain significant barriers to accessing legal advice for those who are held within IRCs. Evidence from Bail for Immigration Detainees shows that 50% of those who took part in their survey were unrepresented, almost 1 in 5 had never had a legal representative while in detention, and 68% were not taken on as legal aid clients following a free legal aid appointment .[10]

19. In the Detention Action cases, the courts were clear that early and thorough legal advice was crucial for the fairness of the process yet still found the system unlawful in spite of legal aid being automatically available in asylum cases. The implication is that a repackaged fast track system which applies in cases where legal aid is not automatically available has little chance of being upheld.

20. Applicants excluded under LASPO can apply for Exceptional Case Funding. The Legal Aid Agency are currently notifying applicants that non-urgent applications for Exceptional Case Funding will be determined within 25 days, and urgent ones within 10 days. However, legal representatives report that decisions on ECF applications routinely take longer than Legal Aid Agency timescales even though they are marked as urgent. Even if ECF is granted, there can be further barriers and delays in finding a representative to take on the case and for the representative to then begin work.

21. Awaiting a decision on these applications would therefore take up a significant proportion of the allocated timescales and appellants would therefore be likely to be unrepresented at appeal or have a shorter period of time for their representative to properly prepare the case.

There is no case for a fast track system

22. Further, no credible case has been advanced by Government as to why the Principal Rules are not operating effectively and why further time limits are required. The Principal Rules allow for flexibility in deciding an appropriate timescale for an appeal to be determined, as each case will vary in terms of its complexity and evidentiary requirements. The Tribunal has the discretion to expedite a case if considered appropriate and in the interests of all parties.

23. Under the Principal Rules, Detained Immigration Appeals are currently taking on average 4.5 weeks following the receipt of an appeal to reach a hearing and 9.3 weeks for a determination. Absent any other evidence to the contrary it should be assumed that these timescales are considered necessary by the Tribunal to ensure that justice is done. It is also worth noting that these timescales are by no means lengthy or excessive. If determinations of appeals in detained asylum cases are taking on average 2-3 months, despite the inevitable complexities, barriers to lawyer-client communication

[10] BID Legal Advice Survey – Spring 2018 available at - http://hubble-live-assets.s3.amazonaws.com/biduk/redactor2_assets/files/657/Legal_Advice_Survey_-_Spring_2018.pdf.

and the significant amount of work required by lawyers, this is certainly not evidence that the system is not operating efficiently.

24. We are not aware of evidence that the current timescales are the result of any unnecessary delays. However if such evidence does exist, then we welcome the TPCs' recognition that timescales can be affected in a number of ways, including by resourcing decisions made by HMCTS. If it is evidenced that delays are being caused by the Tribunal's lack of resources, the appropriate response would be to provide more resources. Similarly, any evidence of delays on the part of appellants can be addressed through easing the obstacles faced by immigration lawyers, such as access to their clients.

Purported safeguards cannot render a fast tracked system fair or just

25. The Government acknowledges that there is a risk of appellants being disadvantaged by a repackaged fast track system, but expects that fairness can be ensured with sufficient safeguards, such as judicial discretion to extend timeframes or remove a case from any fast track process. It is not clear to what extent the Tribunal would have the discretion to extend the timeframe under the Government's proposed model – to the proposed extension to 28 working days or beyond that.

26. The Government made exactly the same argument to the Court of Appeal in Detention Action's litigation. However, as the Court observed, discretion to transfer an appeal out of the fast track does not render a system fair as (a) there may be insufficient time to complete inquiries into further evidence and persuade a judge that more time is needed, (b) it requires an appellant to identify evidential gaps in his case, thereby undermining his substantive appeal and (c) it is "*likely (to put it no higher) that judges will consider the FTR time limits to be the default position… the expectation must be that the time limits will usually be applied. Otherwise the object of the FTR would be defeated*".[11]

27. Any system seeking certainty must be built on the assumption that judges will largely stick to the very tight proposed timescales. Indeed, it is difficult to see the purpose of the timeframes, unless it is to exert such pressure on the judiciary. Were judges to make free use of the option to impose longer timescales at the case management review hearing, there would be no effective longstop timeframe and no certainty.

28. In practice, it is likely that the proposed timeframes will not be sufficient in a large number of cases, and judges will be placed in the position of either undermining the functioning of the system or compromising the justice of the process. The system can either have certainty (with a timeframe of 25 or maximum 28 working days) or it can have judicial discretion to extend timescales; it cannot coherently seek both.

Lengthy immigration detention periods do not justify the introduction of a fast track system and should be reduced through the introduction of a statutory time limit on detention

[11] Detention Action judgment, paragraph 44.

29. Detention Action agrees with the TPC's assertion that it is desirable for appeals involving detained appellants to be resolved promptly and for appellants not to be detained for longer in their own interest. However Detention Action's research, and our experience in supporting thousands of detainees over several years, is that individuals with experience of an accelerated procedure preferred to have extra time to prepare their cases, even if it meant spending longer in detention. While the individuals we surveyed felt that their detention was unnecessary and unjust, reducing the time to properly prepare their case was seen as a further injustice and not in fact in their own interest. This is of course an entirely understandable viewpoint, given that erroneous dispositions arrived at in haste could have far worse consequences for individuals than longer detention in a UK IRC.

30. Furthermore, it is not the case that individuals need to be detained while their appeals are heard. Indeed, detention routinely acts as a major barrier to the swift and effective administration of justice due to communication and visitation limitations on those detained in IRCs and the increased duties and obligations on lawyers representing those held in IRCs, to for example make bail applications, Rule 35 reports etc.

31. It is also the case that the Home Office's immigration detention policy is chaotic, arbitrary and unnecessary. Detention Action's clients are routinely detained, released and re-detained or held for eye-watering periods both before and after an asylum appeals process. Most individuals subject to immigration control are not in IRCs but rather living in the community, and it has consistently been the case that the majority of people that leave IRCs are released into the community and not removed or deported. In the three months to February 2018, 55% of those leaving detention were not removed from the UK.[12] With that in mind, the argument that individuals need to be detained while their appeals are pending is clearly spurious.

32. Government's argument that appeal time limits are the policy tool required to reduce immigration detention is also difficult to square with its consistent refusal to introduce a statutory time limit. A statutory time limit on immigration detention is clearly the policy lever that would achieve this goal, yet civil society's call for a 28 day time limit has been repeatedly rejected by Government.

Vast numbers of vulnerable adults, torture survivors and people with mental illness continue to be detained in IRCs and would therefore fall within scope of any new fast track system

33. At the present time there are significant numbers of vulnerable individuals, being detained routinely for long periods in IRCs.

[12] Assessment of Government progress in implementing the report on welfare in detention of vulnerable persons, a follow up report to the Home Office by Stephen Shaw, July 2018, available at - https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/728376/Shaw_report_2018_Final_web_accessible.pdf.

34. The Government's Adults At Risk policy has the stated intention of leading to a "reduction in the number of vulnerable of people detained"[13]. It has however been widely discredited; its definition of torture was found to be unlawful, it allows for detention to continue in cases of extreme vulnerability and it continues to be subject to test case litigation.

35. As Shaw reported in July 2018, "*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*" and *"I remain concerned that more needs to be done to ensure that individuals who are at risk are not detained … there remains a need for robust independent oversight".*[14]

36. The current Adults At Risk policy does not effectively prevent the detention of vulnerable individuals including torture survivors, victims of trafficking and people with serious mental health issues and others who should clearly not be detained. It does not have the function of screening out those who should not be subject to an accelerated procedure, which will be a wider category of individuals than those who should not be detained.

37. It is not clear whether the Government believes an additional screening procedure would be necessary for a repackaged fast track system, but in any event, the previous screening mechanism and other safeguards failed to effectively screen out those who should not be subject to accelerated procedures. The Government has consistently shown itself incapable of screening and diverting vulnerable individuals away from unsuitable immigration processes. Reinstating a time-pressured system of appeals will exacerbate existing injustices and lead to procedural unfairness for those who most need the full protection of the law.

38. Furthermore, from a practical perspective current safeguards do not operate effectively to ensure that evidence of vulnerability, relevant to the appropriateness of detention and often to the substantive immigration matter, can be placed promptly before the Home Office or Tribunal. Within a fast track procedure, this would further limit an individual's access to justice. .

39. For example, there are currently significant delays in securing a Rule 35 report. In Detention Action's experience, people in detention can wait for weeks for an appointment and the report to be completed. Her Majesty's Chief Inspector of Prisons reports in the most recent inspection of Yarl's Wood that "[r]eports often took too long to complete"[15] ... and that "[t]here were unacceptable delays in the Rule 35 process."[16]

Deportation appeals are wholly unsuited to fast-tracking

[13] Immigration Action 2016: Guidance on Adults at Risk in immigration detention, July 2018, available at - https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/721237/Adults_at_risk_in_immigration_detention_-_statutory_guidance__2_.pdf

[14] Ibid at footnote 13.

[15] Report on an unannounced inspection of Yarl's Wood Immigration Removal Centre, June 2017, available at - https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2017/11/Yarls-Wood-Web-2017.pdf p14

[16] Ibid at p18

40. The inclusion of deportation appeals of former prisoners, detained in IRCs is simply illogical. In these cases it falls to the Home Office to initiate the process by issuing a deportation order. The Home Office continues routinely to do this at the end of the sentence, instead of effectively managing cases by initiating the deportation process at an appropriate point during the sentence which would allow appeals to be largely determined by the completion of the sentence.

41. It would be irrational for the Home Office to delay for months or years, then impose deadlines of days and weeks on appellants. Instead of encouraging the Home Office to address its administrative inefficiencies, the system would limit appellants' time to make crucial appeals, and compromise the Tribunal's authority to set appropriate timescales according to the needs of justice.

42. It would also be totally arbitrary to administer a fast track system for deportation appeals of those in IRCs and a different system for those detained in prison. And it is unclear how this would work in practice. What if an individual is transferred from prison to an IRC midway through their appeal process? Would their case move to the DFT? Will they be able to retain their solicitor? If they were unrepresented, would they then be screened and have a fresh opportunity to apply for ECF?

43. It is altogether unclear why the Tribunal should take on the formidable administrative challenge of managing deportation appeals to Fast Track timescales, in order to save the Home Office from the much simpler administrative task of managing cases properly. Both appellants and Tribunal would face the absurd situation of intense timescales, following months or years of inaction from the Home Office.

44. Finally, the nature of appeals against deportation, and the evidentiary requirements involved, make the proposed timetables unworkable. Many clients will have deportation appeals raising Article 8 Human Rights Act grounds. These appeals often require family members to be called to provide evidence, or at the very least to meet with the solicitor and provide a witness statement. The threshold for winning an appeal on Article 8 grounds is such that representatives are required to collate this evidence from numerous sources. It is unreasonable to expect this evidence to be gathered within the short timescales, both for the appellant, but more widely for the family members. Appellants are usually detained far from family and friends, many of whom will have other commitments and may need more notice to appear or be interviewed for a witness statement.

45. <u>It would be inappropriate to introduce time-scales on the basis of unsubstantiated Home Office claims regarding absconding risks</u>

46. The Government argues that the lack of clear timescales for appeals results in release of individuals, some of whom then go on to abscond. Detention Action believes that Immigration Judges have the expertise and authority to determine an appropriate timescale for an appeal to be heard fairly, and that it also follows that Immigration Judges are able to determine whether or not it is appropriate for the individual to remain in detention for that time period, weighing up the full facts of the case including any risk of absconding.

47. It is also difficult to give weight to the Government's vague assertion that "some" abscond. The Government has produced no evidence to this effect and conversely, in evidence provided by the

then Immigration Minister to the APPG Inquiry into the Use of Immigration Detention published in 2015, he made clear that 95% individuals comply with their reporting requirements.[17]

48. If there are concerns about managing the risk of absconding, expediting the appeals process in an attempt to make removal more likely within a reasonable timeframe is not the answer. Evidence both internationally and from the UK shows that community-based alternatives to detention are effective in supporting migrants in the community and enabling them to remain engaged with the immigration process.

49. In his initial review in 2016, Shaw argued that the Home Office should demonstrate "much greater energy in its consideration of alternatives to detention", and "that remains [his] view" in his follow-up report in 2018, highlighting his concern that too many vulnerable people continue to be detained.[18] Shaw makes explicit recommendations for developing alternatives to detention for ex-offenders and for vulnerable persons, including that Detention Action's Community Support Project be expanded.

50. Detention Action's pilot Community Support Project works with young men with previous convictions who have barriers to removal and have experienced, or are at risk of, long-term detention. Over its 4 years of operation, 93% of the Project's participants have not reoffended and 83% have remained in touch with the Project.

51. The Home Office is supportive of the Project and has also recently announced a pilot project for women who would otherwise be detained in Yarl's Wood. These projects offer a humane and fair model for reducing immigration detention and ensuring that individuals are given the time they need to prepare immigration appeals. Instead of turning backwards and trying to reinstate a broken fast track system, these models should be further explored and rolled out on a national level.

Question 2: How long is it reasonable to expect most detained appellants 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?

52. See our response to Question 1, above.

Question 3: 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? 11 of 11
c) Renew a request to appeal to the UT after permission is refused by the FTT?

53. See our response to Question 1, above.

[17] The Report of the Inquiry into the use of immigration detention in the UK, page 25, available at - https://detentioninquiry.files.wordpress.com/2015/03/immigration-detention-inquiry-report.pdf.
[18] The Shaw Report, page 121.

Question 4: Should the rules impose time limits on judges dealing with appeals where a party is detained?

54. No, the rules should not impose time limits on judges dealing with appeals where one party is detained. It is inappropriate for the timescale concerning decisions about an individual's immigration appeal to be determined or influenced by the fact of a person's detention.
55. As we set out above, it is our experience that individuals would prefer sufficient and appropriate judicial time to be given over to the consideration of their appeal, taking into account its unique circumstances, than for this process to be truncated due to concern about excessive immigration detention.

56. This is especially the case given that Home Office delays and incompetence routinely result in protracted detention periods before and after the appeal process and that a simple statutory time limit on immigration detention would resolve this entirely.

57. The Tribunal should certainly not take on the pressure and burden to reduce detention, which is the proper function of the Home Office.

Question 5: 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?

58. A case management review should routinely involve an in person hearing, as the issues are complex and of great significance to appellants and the just disposition of their claim. However, it is not clear how a case management review hearing would operate in practice, and how this could sensibly be accommodated within a fast tracked process.

59. If the Tribunal were to find that the case should stay within the fast track rules, any in person hearing would potentially also be the full substantive appeal hearing. As a result, appellants and representatives would need to be prepared to go ahead with the full hearing at the case management review hearing.

60. Just as under the 2014 Fast Track Rules, representatives would be required to argue the evidential gaps in their case in order to request an adjournment, while being prepared to then immediately argue that their evidence is sufficient, if the appeal goes ahead. The Court of Appeal rightly found "*that this puts the appellant in an invidious position and is unfair and unjust*."[19]

61. The TPC is right to raise the issue of one party to the litigation being in a position to make decisions as to which cases will enter the expedited process or to influence this decision, but a case management review hearing within an expedited timeframe would not be sufficient to mitigate this unfairness.

[19] Detention Action judgment, paragraph 43.

Question 6: 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?

62. As above, we do not believe that specific rules should be made in relation to cases where an appellant is detained.

Question 7: Should the time spent in detention outside the tribunal process affect any decision on potential fast track rules?

63. Yes, Detention Action believes that the TPC is right to consider the wider context, including the length of time individuals are detained outside the tribunal process. If Government wants to reduce the time individuals are in detention, there are many policies they can implement, which do not mean reducing the time available to appellants at the very point they need it most.

64. Individuals are often detained for long periods outside the tribunal process. Data is available on the overall periods of detention, however it is unfortunate that the Home Office does not record data on detention periods prior to an initial decision and subsequent to disposition of an appeal and so has not been able to provide this information to the TPC.

65. Of those leaving detention in 2017, **22,593** people were detained for up to two months, **4,491 f**or between two and six months and **935** for between six and 12 months, **225** held over a year, **194** people had been in detention for between one and two years, **27** people for between two and three years, **3** for three to four years. One person was released from detention in 2017 having been detained for at least **5** years (at least **1,845 days**).[20] It is unsurprising then that in his recent follow up report, Sir Stephen Shaw found that "the time that many people spend in detention remains deeply troubling".[21]

66. Detention Action has sought to provide some, albeit limited, data to assist the TPC in determining the periods that individuals are detained either side of the appeals process. In response to an FOI request, the Home Office provided us with data on the timescales at the start of the process for cases being processed under Detained Asylum Casework. In Harmondsworth between January 2018 and March 2018 applicants waited 21- 40 working days between the date they claimed asylum and their substantive interview and 6-20 working days between their substantive interview and the asylum decision. It is not clear how long individuals waited on average, but they could potentially be waiting over 8 weeks between claiming asylum and receiving an initial decision, prior to any subsequent appeals process.[22]

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[20] AVID, Immigration detention statistics for 2017, http://www.aviddetention.org.uk/news-events/news/immigration-detention-statistics-2017 and Home Office, *How many people are detained or returned, March 2018,* available at: https://www.gov.uk/government/publications/immigration-statistics-october-to-december-2017/how-many-people-are-detained-or-returned#data-tables

[21] The Shaw Report 2018.

[22] Detention Action requested further data through an FOI request on the timescales for cases in which a decision to make a deportation order or notice of liability for deportation has been served but this request was refused on the grounds that the cost of meeting the request would exceed the cost limit.

67. Detention Action's own monitoring has revealed that the average timescale from asylum claim to substantive interview was 7.4 weeks, with the shortest time being 4 weeks and the longest 10.7 weeks.[23] From interview to decision, the shortest period was 3.4 weeks and the longest was 8.7 weeks.

68. Many individuals also spend significant periods of time in detention after the appeals process has been completed.[24] Although it has not been possible to carry out extensive monitoring,[25] Detention Action collected data on 11 cases of individuals subject to deportation who left detention between August 2017 and May 2018 or who were still detained on 30th August 2018. Of these, while there was significant variance between cases, individuals waited on average 144 days (20.5 weeks) between becoming appeal rights exhausted and leaving detention. The seven individuals still in detention had been detained at that point for 294 days (42 weeks) on average since becoming appeal rights exhausted.

69. Both the official and Detention Action figures show that people are subjected to protracted detention periods before an initial decision is even received. Detention Action's sample figures show even more protracted detention periods after the appeals process is completed. Detention Action urges the Committee to take this context into account when considering whether time-pressured time scales are required at the point when appellants most need adequate time.

Question 8: Do you have any other comments?

70. No, however we would be very happy to explain or elaborate on any aspect of our submission, if that would be of assistance to the Committee.

[23] Detention Action monitored 13 cases processed between September 2017 and March 2018, of which we were able to obtain data for 12 cases for the period between asylum claim and substantive interview and 10 cases for the period between interview and initial decision.

[24] Detention Action requested information on these timescales for deportation cases (dealt with by Criminal Casework) and again the request was refused on costs grounds.

[25] Detention Action do not act as legal representatives and therefore we do not routinely request case files for clients which would contain detailed information of the dates and progression of any appeal and period of detention. As a small organisation with very limited capacity, we were unable to undertake more extensive monitoring.