



## **Written evidence to the review into the welfare in detention of vulnerable persons**

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**Submission by Detention Action**

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## About Detention Action

1. 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 HMP the Verne in Dorset.
2. This submission will address in broad terms the appropriateness of Home Office policies concerning the welfare of those who have been placed in detention. In particular, it will address policy around long-term detention and the Detained Fast Track asylum process.

## Impact on welfare of the lack of time limit on immigration detention

3. The lack of a time limit on detention is a significant cause of distress in detention. Our clients frequently tell us that the most stressful aspect of detention is not knowing when you will be released. This engenders a sense of hopelessness and apathy, contributing to the growth in hunger strikes and mental health problems.
4. *'For me, not having a time limit had a huge impact on my mental health. The stress and anxiety of indefinite detention is unimaginable. When I was released it was like coming out of a cave. I couldn't sleep and I couldn't trust anybody. I still have to fight hard not to think back to that mental torture.'* – Souleymane, detained 3.5 years
5. *'You are left with a feeling of helplessness and a sense of anger. You feel trapped in an endless cycle of punishment. There is nothing else to do but give up. I saw many people self-harm in there. I saw people hang themselves. I tried to commit suicide a number of times.'* – Abdal, detained 4 years
6. *'When I was finally released from detention I felt lost. I felt scared. I had been isolated so long I couldn't look people in the eye. I was so used to only ever moving a few metres this way or that, I found it difficult to walk any more than that. The Home Office turned off my brain for three and a half years, so I had trouble reading. Even basic street or shop signs.'* – Hamid, detained 3.5 years
7. The vast majority of developed countries limit the maximum period of detention. The UK is unique in Europe in having no time limit and routinely detaining migrants for years. It has opted out of the EU Returns Directive, which sets a maximum time limit of 18 months. In May 2013, the UN Committee against Torture urged the UK to "(i)ntroduce a limit for immigration detention and take all necessary steps to prevent cases of de facto indefinite detention."
8. According to the latest Home Office statistics, 397 migrants had been detained for over 6 months at 31 December 2014, excluding those detained in prisons. 108 had been detained for over a year.<sup>1</sup>

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<sup>1</sup> Home Office, Immigration Statistics October to December 2014, Detention, table dt\_11



9. Many migrants are detained unnecessarily when they cannot return. Recent research by Detention Action and partner organisations has found that unreturnable migrants are detained across Europe.<sup>2</sup> The research identifies several factors that cause migrants to be unreturnable, including the refusal of their countries to issue travel documentation, or legal barriers to return to certain countries.
10. The recent Parliamentary inquiry found that the Home Office is failing to follow its own guidance in using detention sparingly and for the shortest possible period. Instead, the 'enforcement-focused culture' of the Home Office leads it to detain 'far too many people unnecessarily and for far too long.' The lack of time limit was 'itself an incentive to poor case-working: the lack of any external pressure to complete cases within a set time-frame led to sloppy practice.'<sup>3</sup>
11. Independent scrutiny has indeed found such inefficiency and poor quality of decision-making in Home Office use of detention. HM Inspectorate of Prisons and the Independent Chief Inspector found in a joint report in 2012 that the detention of ex-prisoners appeared to have become the norm rather than... a rigorously governed last resort.<sup>4</sup>
12. The Home Office has repeatedly been found to have caused inhuman or degrading treatment to the most vulnerable migrants in long-term detention. Over the last three years, the High Court has on six occasions found that the prolonged detention of mentally disordered detainees amounted to breaches of Article 3 of the European Convention on Human Rights. In the case of BA, the High Court described "callous indifference" on the part of the Home Office, alongside "a deplorable failure... to recognise the nature and extent of BA's illness."<sup>5</sup>
13. In July 2014, the Home Office was found to have unlawfully detained for eleven months in Yarl's Wood the wife of a UK resident refugee in conditions that amounted to inhuman and degrading treatment.<sup>6</sup>
14. **Recommendation:** The Government should introduce a time limit of 28 days on immigration detention, in line with recent best practice in the EU.

### **Impact on welfare of the Detained Fast Track asylum process**

15. Vulnerable asylum-seekers are detained for the administrative convenience of the Home Office on the Detained Fast Track (DFT). Since its introduction in 2000, the

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<sup>2</sup> Flemish Refugee Action et al, *Point of No Return*, January 2014

<sup>3</sup> All Party Parliamentary Groups on Refugees and Migration, *The Report of the Inquiry into the Use of Immigration Detention in the United Kingdom*, March 2015

<sup>4</sup> Independent Chief Inspector of Borders and Immigration and HM Inspectorate of Prisons, *The effectiveness and impact of immigration detention casework*, December 2012

<sup>5</sup> BA, [2011] EWHC 2748 (Admin), 26 October 2011

<sup>6</sup> MD, R (on the application of) v Secretary of State for the Home Department [2014] EWHC 2249 (Admin) (8 July 2014). See [http://www.bhattmurphy.co.uk/bhatt-murphy-111.html#.U7\\_K4JRdWAZ](http://www.bhattmurphy.co.uk/bhatt-murphy-111.html#.U7_K4JRdWAZ)

DFT has grown vastly in scope and in size. Many more asylum-seekers are now detained, for longer periods, in worse conditions, with tighter timescales, than was ever initially intended.

16. The UNHCR (The UN Refugee Agency) has called for detention only to be used when necessary, reasonable and proportionate, with an individual assessment of each case. However, the DFT appears to have become a default option for the Home Office to push asylum-seekers through a process which seems designed to fail them. The decision to fast-track an asylum case is made when very little is known about the person's situation, and yet its implications for the individual are massive. The Home Office refuses 99% of asylum claims which they have placed on the DFT. Asylum-seekers and their legal representatives report major difficulties in presenting their cases properly in the fast-paced process of interviews and appeals. Confusion, disorientation and stress are rife. Asylum-seekers are held in prison-like conditions for weeks and months at a time.
17. On the 9<sup>th</sup> July 2014, the High Court ruled in a challenge brought by Detention Action that "the DFT as operated carries an unacceptably high risk of unfairness", thus crossing the threshold of unlawfulness.<sup>7</sup>
18. *'It feels like jail, you know? I can't sleep well. I can't eat proper, I lose my weight. I lose my patience. My life is damaged. I have already seen very bad, very sad times. I have already too much stress. - Mohammed, Afghanistan*
19. *'It's very complicated in detention. You don't have someone to talk to you. You have no family here, you have no contact with your family there. It's very hard, it's very hard. I don't have words to say, to express it. I not expect something like this.'* - Solomon, Ethiopia
20. *'At the time, I did not know that the thing ruining my life was called the Fast Track. Maybe nobody told me because they knew how terrible it was and they did not want to hurt me. It has given me severe psychological problems. People go in balanced and they leave broken. - Sharif*
21. Around half of the 1,300 migrants in detention we support every year are on the DFT. Many tell us of their distress at being locked up in what they experience as a prison. Our 2011 report *Fast Track to Despair* documented the experiences of asylum-seekers on the DFT. The majority of the asylum-seekers were confused and disorientated, due to limited or late information, lack of interpreters or translated materials, lack of literacy, the stress of detention and isolation from support from their communities.<sup>8</sup>
22. The UN High Commissioner for Refugees has monitored the DFT since 2007, but its

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<sup>7</sup> *Detention Action vs Secretary of State for the Home Department* [2014] EWHC 2245 (Admin), 197.

<sup>8</sup> Detention Action, *Fast Track to Despair*, 2011, p18



repeated criticisms, including of “unreasonable expectations of evidence provision”<sup>9</sup>, have not been addressed.

23. The DFT is designed for asylum claims that are considered to be suitable for a quick decision. However, the decision to fast-track an asylum case is made when very little is known about the person’s situation. As a result, vulnerable people with complex cases, including victims of torture, trafficking, gender-based violence and homophobic persecution, are regularly detained on the DFT.
24. The criteria for suitability for the DFT have gradually widened: there is no longer a nationality list of suitable countries, for example. The screening process simply does not ensure that unsuitable cases are excluded from the DFT, because the questions asked do not address the details of the person’s case and are unlikely to elicit information that would demonstrate unsuitability, such as experience of torture, trafficking or mental ill health. The High Court in *Detention Action* found “deficiencies” in the screening process and noted that “the process inherently cannot identify all the claims which are in fact unsuitable for detention or a quick decision”.<sup>10</sup> Mr Justice Ouseley expressed “real unease about the cases which go through the DFT system when they should not have done so.”<sup>11</sup>
25. Wrongly entering the DFT can have devastating effects on a vulnerable person’s chances of asylum. The Home Office refuses 99% of asylum claims which they have placed on the DFT.
26. Safeguards that should ensure that unsuitable cases are taken out of the DFT are ineffective. Rule 35 of the Detention Centre Rules requires detention centre medical staff to report on any person for whom detention is harmful or who may have been a victim of torture. However, the Independent Chief Inspector of Borders and Immigration and the HM Inspectorate of Prisons have criticized the poor quality of the reports and of the responses from Home Office case owners.<sup>12</sup> The High Court concluded that Rule 35 reports “are not the effective safeguard they are supposed to be” and do not work as intended to remove unsuitable cases from the DFT.<sup>13</sup>
27. The High Court criticized many deficiencies of the DFT, but found that they did not in themselves make the operation of the process inherently unlawful. However, the judge concluded that these shortcomings put a premium on the availability of early legal advice, in order to identify and challenge unfairness in individual cases. The Home Office has now committed to ensuring asylum-seekers and their representatives have four days’ notice of the substantive interview.

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<sup>9</sup> UNHCR, *Quality Integration Project: Key Observations and Recommendations*, 2010, p2

<sup>10</sup> *Detention Action vs SSHD*, op cit, 112.

<sup>11</sup> *ibid*, 194.

<sup>12</sup> HM Inspectorate of Prisons and the Independent Chief Inspector of Borders and Immigration, *The effectiveness and impact of immigration detention casework*, December 2012

<sup>13</sup> *Detention Action vs SSHD*, op cit., 133.



28. On 16 December 2014, the Court of Appeal upheld Detention Action's appeal that the automatic detention of asylum-seekers making appeals on the Fast Track was unlawful. The Home Office was detaining asylum-seeking appellants on the basis that their appeals could be processed quickly, although it was unclear why this required their detention. The Court of Appeal found that the detention of appellants under the 'quick processing criteria' was unlawful as it failed to satisfy the requirements of clarity and transparency. Lord Justice Beatson made clear that, had it been necessary to decide the point, he would have found that detention could also not currently be justified. The Court of Appeal issued an order requiring that the Home Office assess each appellant on the Fast Track, and only detain those who are considered at risk of absconding. The Home Office now assesses the absconding risk of all asylum-seekers going through the appeals process. However, since then less than 4% of asylum-seeker appellants have been released, although asylum-seekers in the community are rarely assessed as absconding risks at this stage.
29. **Recommendations:** The DFT is incompatible with the welfare of asylum-seekers, and should be abandoned.
30. If the DFT is to continue, there should be a fundamental reform of the process:
31. The screening process and safeguards should be reformed to effectively identify and exclude unsuitable cases.
32. There should be thorough and independent consideration of whether appeals are suitable for the DFT process.