

BRIEFING NOTE

Successful challenge to DFT by vulnerable woman

On 5-6 October 2015 the Administrative Court was due to hear a challenge brought by a vulnerable woman to the decision to detain her in the detained fast track process (DFT) at Yarl's Wood. On 2 October 2015 the Secretary of State settled the claim, conceding that in light of a number of judgments where the DFT had been found to be unlawful¹ the Claimant (C) had been unlawfully detained and agreeing to reconsider her asylum claim *de novo* without regard to the negative credibility findings in the SSHD's decision to refuse her asylum claim and the FTT's determination dismissing her appeal in the DFT.

C's claim for asylum is a gender based persecution claim as a woman who had married without the consent of her family to a man of a different caste. She had suffered threats and violence at the hands of her family in her home country and was unable as a woman to obtain protection from the authorities in her home country. She voluntarily attended the ASU on 8 July 2013 and was detained and routed into the DFT. She had a lengthy asylum interview with a male Home Office caseworker and interpreter and was extremely distressed throughout the interview. She met the legal representative allocated to her by the Home Office on the morning of the interview and there was very limited time for the representative to take instructions and advise her before the interview started. Her claim was refused the following day and she was refused legal aid for her appeal. She was without legal representation until a family member arranged private representation. The barrister for her appeal was instructed the day before the hearing. The representatives had not completed their investigations into the case and applied for an adjournment on the day of the hearing on the basis that they needed more time to prepare the case, to obtain witness, medical and other evidence. The FTT refused to adjourn the appeal and counsel had to go ahead on the basis of incomplete evidence. Having to simultaneously prepare an application to adjourn and the substantive appeal was an aspect of the mischief of the FTT fast track procedure rules identified in the second claim brought by Detention Action challenging those rules². The FTT rejected C's credibility, making adverse findings on the basis of the lack of certain evidence and

¹ Referred to in the recital to the order: *R (Detention Action) v SSHD* [2014] EWHC 2245 (Admin) (9 July 2014), *R (Detention Action) v SSHD* [2014] EWCA Civ 1634 (16 December 2014), *R (JM & Ors) v SSHD & Ors* (CO/499/2015, CO/377/2015, CO/624/2015, CO/625/2015) (3 July 2015) and *R (IK & Ors) v SSHD & Ors* (CO/678/2015, CO/747/2015, CO/814/2015) (20 July 2015)

² *Lord Chancellor v Detention Action* [2015] EWCA Civ 840 (29 July 2015)

dismissed her appeal. Applications for permission to appeal were rejected by the FTT and UT and she exhausted her appeal rights.

C subsequently instructed new representatives who submitted new evidence and further representations. C's mental and physical health deteriorated dramatically during detention and in particular after her claim was refused and she faced expulsion. These judicial review proceedings were issued in August 2013 and originally challenged a decision to reject further representations as well as to her continued detention. Permission and interim relief were refused on the papers; a renewed application for interim relief was refused at a hearing, the focus of the case at that time being on her deteriorated physical health due to food/fluid refusal. Thereafter, C instructed Bhatt Murphy. Further representations and evidence, including medical evidence of both her psychiatric state and scarring on her body, were put in together with amended grounds challenging the determination of her claim in the DFT and her ongoing detention. The Secretary of State released C on 31 October 2013 and the claim was subsequently stayed by consent pending the Detention Action litigation. During the stay, the Secretary of State granted C discretionary leave for 30 months due to her deteriorated mental health.

In C's case it was argued that she was entitled to *de novo* consideration of her asylum claim by the Home Office rather than a fresh claim given that the previous determination had been in the context of the unfair DFT process. She was a vulnerable applicant, within the meaning of the judgment of Ouseley J in Detention Action 1 and as defined in the order in *JM v SSHD*, whose claim could not be fairly decided within the constraints of the DFT. The *RLC* case³ makes clear that an asylum applicant is entitled to fairness at each stage of the process and an appeal is not an adequate remedy if the claim has been refused in an unfair process, particularly if the basis of the refusal is adverse findings on credibility.

Anonymised copies of the letter which led to settlement and the sealed final order are attached. The case may be of interest to other representatives as C relied on a submission that the Secretary of State could not rely on a FTT determination decided under the 2005 Fast Track Rules, which were stricter than the 2014 rules found to be unlawful in the second Detention Action claim challenging the vires of those rules.

³ *Refugee Legal Centre v SSHD* [2005] 1 WLR 2219 at para 15

Further, the Secretary of State admitted that detention was unlawful after the DFT had concluded and C was detained pending removal.

The Claimant was represented by Stephanie Harrison QC and Bryony Poynor of Garden Court Chambers and Jed Pennington of Bhatt Murphy. She was also assisted by Medical Justice who provided the key medical evidence that led to her release and grant of discretionary leave to remain.