

Detained Fast Track Processes Operational Instruction

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FLEXIBILITY IN THE FAST TRACK PROCESS

The Fast Track timetable is an indicative one, which should be varied as appropriate in accordance with the guidance below where circumstances require it. This document is a guide to responding to the situations that are most likely to raise issues on the flexibility of the timetable. While it is important that the integrity of the Fast Track process should be maintained insofar as it is reasonably possible to do so, this guidance must be applied in accordance with the key principle of ensuring fairness in the asylum determination procedure. It must be remembered that at this stage in the process, the applicant is entitled both to have his claim heard fairly and to a fair-minded decision.

This document gives guidance on when the timetable should be enlarged to ensure fairness within the Detained Fast Track system. It does not offer specific guidance on when cases should be removed altogether from the process, but caseworkers must be aware that cases should be removed from the process if it is not possible to consider the claim with the requisite degree of fairness within the fast track timescales (even when flexibly applied in accordance with the guidance set out in this document) and consequently the claim is not one which is capable of a quick decision. This might be the case, for example, if the caseworker is satisfied that the applicant is obtaining supporting evidence, that fairness requires that it be taken into account when making the initial decision on the asylum claim, and that it will not be available within a period consistent with Fast Track processing even if the timetable were to be enlarged. It must be remembered that removal from the fast track process should be considered in other situations where the requirements of fairness demand it.

Flexibility in the case of illness

Where an applicant indicates at the time of the asylum interview that he or she is unwell, it should first be established whether they wish to proceed with the interview that day. If they do wish to proceed, access to medical facilities before the interview commences should be offered. It should be noted whether such access has been either accepted or declined. The comments of

the representative should also be noted. However, if an applicant wishes to proceed and the representative expresses a contrary opinion, the wishes of the applicant should normally be regarded as taking priority, unless there is some obvious reason why the stated wishes of the applicant should be regarded as unreliable (for example, if the wishes are expressed against a background of obviously confused or irrational thought or behaviour). If a delay is authorised, the applicant should be informed of the rescheduled date and time. The new interview date and time should normally be within 24 hours of the date and time of the interview which is being delayed. If the delay is being authorised on the grounds of illness, it should be stressed to the applicant that there will be no further delays to the interview if they fail to seek medical attention from healthcare without a good explanation being given as to why the applicant has been unable to attend a healthcare department. Any question of a further delay to the interview on the grounds of illness should be considered with the benefit of additional information from the appropriate removal centre healthcare department.

Flexibility in the case of non- or late attendance of representative

Where the failure of a representative to attend (either to interview the applicant or to attend the asylum interview) would have the consequence that an asylum interview could only be conducted with the applicant being unrepresented, the interviewing officer should in the first instance make contact with the appropriate legal firm and find out the reason for non-attendance. Where the non-attendance is due to problems unrelated to the applicant, the situation should be fully explained to the applicant, who should be offered the options of conducting the interview without the representative or of delaying the interview (normally for no more than 24 hours). If the interview is delayed, the representative should be notified at once of the rescheduled date and time. If the representative is so late as to make the asylum interview impractical on the day on which it is scheduled, the interview should be re-arranged for the following day. If the non-attendance of a representative is due to a late change of representation by the applicant, without informing the duty office, advice should be sought by the caseworker from a senior officer but in most cases one delay of no more than 24 hours should be considered.

Flexibility in the case of inadequate interpretation

Where the interpreter booked to attend the interview is not competent for the purpose (for example, if there are difficulties with the language or dialect spoken, or the interpreter has insufficient vocabulary), then the interview should be delayed to ensure proper interpretation. Subject to the availability of suitable interpretation, any delay for this reason should not normally be for more than 24 hours. This guidance is subject to the proviso that if it is only the representative who expresses concern, the applicant himself appearing to have no difficulty with the interpreter and vice versa, and the caseworker is satisfied that the interpreter is competent for the purpose, then the interview should normally proceed. If the applicant expresses a desire to be interviewed in a language that is different from the one previously requested

and booked, then this should be dealt with in line with guidance found in Asylum Process Manual (Chapter 2 8.5).

Flexibility in the case of non co-operation

Where an applicant who is represented and has adequate interpretation and has no outstanding health issues refuses to comply with the interview process, it will be normal practice to explain the non-compliance procedure fully to the individual and invite them once more to comply. If they choose not to the claim should be considered as per the non-compliance guidelines found in Asylum Policy Instructions (Non- Compliance). A delay will not normally be appropriate in these circumstances.

Flexibility if the applicant or their representative asks for more time to prepare for the interview

Where additional time is requested by any party prior to an asylum interview, due regard should be taken of the date that the representative took conduct of the case. Caseworkers must consider the reason for the request. In most circumstances, it will not be appropriate to delay the interview because the timetable for the Fast Track process should have already afforded both the applicant and the representative sufficient time to prepare for the interview, the representative having had the opportunity to ascertain from the applicant the basis of his claim and the applicant having had the opportunity to explain it to the representative with the assistance of the representative's questions. Both will be freshly aware of all the important aspects of the claim. However, there will be cases where the opportunity has been insufficient, for example where through no fault of the applicant a representative has been instructed on the same day as the scheduled interview. And there will be other situations in which circumstances mean that it would be unfair to insist on the interview going ahead as originally scheduled when more time is needed by the applicant or his representative to prepare for it; every request must be considered in the light of the proffered reasons for the request.

In all cases where such a delay to the start of an asylum interview will result in the interview not occurring on the day on which it was originally scheduled, whether because the applicant or the representative asks for a delay of that magnitude or because the start time is delayed for so long that the interview cannot practicably be started and finished on the same day, advice and authority from a senior officer should be sought. In all circumstances detailed file minutes should be made and the representative and applicant informed of the procedure.

Post interview flexibility

If, following an interview, a representative says that more time is required for them to file material relevant to the claim, then a caseworker must consider whether that proposed evidence is probative of the claim and decide whether to delay the decision. In order to decide whether to do so, the caseworker should ascertain what further material it is proposed to obtain and the timescale in which it is expected to become available. The caseworker will also, by this time, have a good idea of the issues on which the decision is likely to turn. The key question is whether it would be unfair to the applicant to proceed to a decision without considering the further material or at least giving him a reasonable opportunity to obtain it. The question of fairness will depend, amongst other things, on whether the further material is central or critical to the issues on which the decision is likely to turn, or whether it relates to an issue which is only peripheral. This can only be assessed in the light of the way that the issues in the case have emerged during the interview. Timing, and the likelihood of the material being successfully obtained, are also important. In most circumstances it will not be appropriate to delay the decision, but if the caseworker, in discussion with a senior colleague, feels that it would be unfair to proceed with a decision, then the Fast Track timetable should be enlarged and time given for further material to be presented and delivered before the decision is made. Whilst it is perfectly possible to delay a decision for over five days, which is the usual time for further representations in the mainstream system, this should only happen in the most exceptional circumstances. The same principles will apply to any proposed legal research, or evidential research into readily-available objective materials, which the representative wishes to have considered before a decision is made. However, the nature of this material means that it is much more likely to be available quickly so that, if any delay is needed, it can be relatively short.

Flexibility

In addition to the above, the Fast Track timetable can be extended in other circumstances in order to ensure the fair processing of claims in the Fast Track process.

Enquiries relating to this instruction should be addressed to the Detained Fast Track Team at Harmondsworth or Yarl's Wood.