

# DETAINED FAST TRACK PROCESSES – TIMETABLE FLEXIBILITY

---

## Table of Contents

### **1 Introduction**

#### **1.1 Audience**

#### **1.2 Purpose**

#### **1.3 Background**

### **2 General Points**

#### **2.1 Key Principles**

#### **2.2 Requests for Flexibility and Responses**

#### **2.3 Flexibility – Other Issues**

##### 2.2 Authorisation

##### 2.3 Flexibility Impacts / Rescheduled Interviews

##### 2.4 File Minutes

##### 2.5 Detention Reviews

### **3 Illness**

#### **3.1 Illness Claimed**

##### 3.1.1 Applicant States They Are Fit for Interview

##### 3.1.2 Applicant States They Are Unfit for Interview

#### **3.2 Fitness for Interview**

### **4 Interpretation Problems**

#### **4.1 Interpreter Competence**

#### **4.2 Applicant Changes Preferred Language**

### **5 Representatives at Interview: Late or Non-Attendance**

#### **5.1 Representative Fails to Attend Interview**

#### **5.2 Representative Attends Interview Late**

### **6 Preparation for Interview: More Time Requested**

### **7 Non-Compliance and Implicit Withdrawals**

### **8 Post-Interview Representations**

### **9 Removing Cases from DFT/DNSA Processes**

#### **9.1 Removing Cases from Detained Processes**

##### 9.1.1 Continuing or Releasing from Detention

### **10 Glossary**

# 1 Introduction

---

## 1.1 Audience

This instruction is aimed at all Detained Fast Track Processes officers.

All officers must be familiar with the entirety of UK Border Agency (UKBA) policy on DFT/DNSA suitability, laid out in the Detained Fast Track Processes instruction.

[Back to contents](#)

## 1.2 Purpose

This instruction explains the circumstances in which it might be appropriate for the Detained Fast Track Processes timetables to be extended, or for an applicant to be removed from the processes altogether.

Because the circumstances calling for flexibility or removal from process will always be specific to the facts of a case, this instruction is not intended to be an exhaustive and rigid instruction as to mandatory actions where flexibility or removal from process must in all circumstances be practised. Instead it is intended to outline the most likely issues to arise and suggest approaches which must be followed in those circumstances.

## 1.3 Background

The considerations regarding flexibility apply mainly to the stages up to and including the asylum decision. Where in-country appeals apply, the timescales applied to the processing of the case are determined by the [Asylum and Immigration Tribunal \(Fast Track Procedure\) Rules 2005](#) (incorporating subsequent amendments).

Regardless of the stage of the application and the currency of any appeal rights, overall suitability for the DFT or DNSA process (see Detained Fast Track Processes) must be reviewed on an ongoing basis, as information relevant to suitability may emerge and develop throughout the life of the case. This consideration applies whether at the request of applicants and/or representatives, or as part of the proactive reviews required of case owners (see also [2.5 Detention Reviews](#)).

[Back to contents](#)

## 2 General Points

---

### 2.1 Key Principles

The DFT and DNSA timetable is intended to deliver decisions in up to 7-14 days after entry to the process, depending on the type of decision and normal developments in the case.

It is important that this timetable is maintained as far as is reasonably possible, and that the time an individual is detained is kept to a minimum. However, the DFT and DNSA processes are built on an overriding principle of fairness, and as a consequence, **timetable flexibility or removal from the DFT and DNSA processes must be considered in all situations where fairness demands it.**

[Back to contents](#)

### 2.2 Requests for Flexibility and Responses

As part of their induction to DFT, applicants will be informed about the DFT processes, including information about timescales and the possibility for the applicant or their legal representative to ask for the timescales to be varied, or for the case to be removed from the process altogether.

Even where the applicant or legal representative does not request flexibility, case owners must proactively consider whether flexibility is required in a particular case.

For flexibility requests to be properly understood, thoroughly considered and formally responded to, it is preferable that they be made in writing. However, requests for flexibility may also be made orally. Regardless of the manner of the request, case owners must properly consider the issues raised, taking reasonable steps to obtain clarification if necessary.

If agreeing to exercise flexibility, the case owner must make very clear the terms under which it is offered. If declining to exercise flexibility, the case owner must make very clear the reasons for that decision.

The means by which the response will be best given will depend on the particular circumstances of the case, the nature and the timing of the request. A written response will usually be appropriate for all written requests and detailed oral requests, although where a request for flexibility is received during or near to the end of an asylum interview, it may be appropriate to lay out the conditions of flexibility or reasons for declining the request in the interview record. If a request for flexibility is made orally in other circumstances, but discloses no reasons why flexibility ought to be exercised, it will usually be sufficient to reject the request orally, noting CID and the case file accordingly.

Any doubts as to whether flexibility is appropriate, or indeed how to respond to a request, must be referred to a senior caseworker.

[Back to contents](#)

### 2.3 Flexibility – Other Issues

#### 2.3.1 Authorisation

Before flexibility is exercised and timescales extended, for instance by the cancellation and rescheduling of an interview, authorisation must be sought from an officer of SEO level or

above. It is acknowledged that in many circumstances there may be little choice other than to extend timescales, but seeking authorisation will ensure consistency and help to ensure that all reasonable options to proceed have been given thorough consideration.

### 2.3.2 Flexibility Impacts / Rescheduled Interviews

If flexibility is likely to impact another event, appropriate action must be taken in respect of that event. Where appropriate, the applicant and legal representative or other parties to the impact must be promptly informed of the rescheduled event.

### 2.3.3 File Minutes

Requests for flexibility, and the terms of any flexibility that is exercised must be fully minuted on file and CID notes. Where the decision to exercise flexibility will have an impact that will affect the overall process timetable (e.g., if one or more days will be added to the timescales), the circumstances and reasons for the decision to exercise flexibility must be minuted on file and CID, and where appropriate, the name of the senior officer authorising the action taken must be recorded.

### 2.3.4 Detention Reviews

Under existing detention policy (see ch. 55 of the Enforcement Instructions and Guidance), a detainee's ongoing appropriateness for detention must be regularly reviewed. These reviews must take place at fixed intervals, as well as in response to significant information material to the applicant and his/her case, and the basis of detention.

It is likely that in some cases, the issues that require consideration of whether to exercise timetable flexibility will also be issues that require detention to be reviewed.

[Back to contents](#)

## 3 Illness

---

An individual will enter DFT/DNSA processes only if, at the time of referral, the information available indicates that they are suitable for DFT/DNSA according to the DFT/DNSA entry policy, which includes criteria relevant to health.

Individuals are also medically screened within 24 hours of arrival at the IRC ([Rule 34 of the Detention Centre Rules](#)). [Rule 35\(1\)](#) requires medical practitioners to report on cases where they are concerned that ongoing detention would be injurious to health. Rule 35 reports require a written response by case owners. (See Rule 35 of the Detention Centre Rules).

### 3.1 Illness Claimed

If an applicant claims ill-health, case owners must briefly investigate the nature of the illness and ask the applicant if he/she feels well enough to proceed with the interview at the time booked (without delaying access to medical care where the need is urgent).

Case owners must not make clinical judgements as to the applicant's fitness for interview. In all cases, applicants must be offered the opportunity to access the healthcare facilities, and in the first instance be assured that their attendance at the healthcare facilities will not affect the decision on their case.

#### 3.1.1 Applicant States They Are Fit for Interview

Notwithstanding the complaint of ill-health and the offer to access the healthcare facilities, an applicant may decide to proceed with the interview. This should ordinarily be respected, and the interview allowed to proceed, 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).

#### 3.1.2 Applicant States They Are Unfit for Interview

With the offer of the opportunity to access healthcare facilities, the applicant must be clearly informed that there will be no further delays to the interview for health complaints unless they have been certified by a medical practitioner as being unfit for the interview.

If the applicant has been pronounced fit for interview but again claims ill-health, they must be warned that repeated but unfounded claims of ill-health leading to interviews being delayed, may be regarded as vexatious, which may have consequences of the claim being treated as implicitly withdrawn or refused for non-compliance grounds.

[Back to contents](#)

### 3.2 Fitness for Interview

An applicant's fitness for interview is a judgement to be made by IRC healthcare staff only.

If healthcare staff do not certify the applicant as being unfit for interview, the interview should recommence immediately on the same day or as soon as is reasonably practicable and without undue delay. If healthcare staff certify the applicant as being unfit for interview, care should be taken to ascertain whether the applicant is likely to be fit for interview within DFT timescales. Suitability for DFT Processes must be reviewed.

[Back to contents](#)

## 4 Interpretation Problems

---

Applicants are asked their preferred language for interview at screening, and also at induction to the DFT/DNSA process (following arrival at the IRC). This should ensure that a competent Home Office interpreter is booked in the correct language.

### 4.1 Interpreter Competence

If it emerges that the Home Office 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 must be delayed to allow for another suitable interpreter to attend. Subject to the availability of suitable interpretation, any delay for this reason should not normally be for more than 48 hours.

If the legal representative expresses concern but there is no reason to doubt the applicant's capacity and the applicant claims no difficulty with the interpreter (and vice versa), if the case owner has no other reason to doubt the interpreter's competence, the interview should normally proceed.

[Back to contents](#)

### 4.2 Applicant Changes Preferred Language

If the applicant asks to be interviewed in a language other than the one he/she previously requested and subsequently booked by UKBA, case owners must explore why the applicant has requested a particular language at screening and induction, only to request a different language at the time of the interview. In such circumstances, only if there are good reasons to indicate that the applicant could not sufficiently make him/herself understood in the asylum interview should the interview be delayed to obtain a different interpreter.

[Back to contents](#)

## 5 Representatives at Interview: Late or Non-Attendance

---

Representatives are notified of interview dates and times in advance and are given full contact details for the relevant DFT/DNSA office. They can be provided with maps and details of public transport on request.

### 5.1 Representative Fails to Attend Interview

If a legal representative is properly notified of an asylum interview but fails to attend, the case owner must attempt to make contact with the appropriate legal firm to ascertain the reason for non-attendance.

If the legal representative's non-attendance is due to problems unrelated to the applicant, the situation must be fully explained to the applicant, who must then be offered the options of either conducting the interview without the legal representative, or of delaying the interview (taking into account the reasons and the need for reasonableness and fairness), but normally for no more than two working days.

If the representative's non-attendance is due to a late change of legal representation by the applicant which has not been notified to the DFT/DNSA Duty Office, the applicant must be offered the options of conducting the interview without the legal representative, or of delaying the interview (again, normally for no more than two working days).

[Back to contents](#)

### 5.2 Representative Attends Interview Late

If the legal representative is so late as to make the asylum interview impractical on the day on which it is scheduled, the interview should be rescheduled for the next working day, or as soon as is reasonably practicable.

[Back to contents](#)

## 6 Preparation for Interview: More Time Requested

---

The DFT and DNSA timetables allow applicants and their legal representatives time to prepare for the substantive interview, as they consider appropriate.

As the timetable is intended to afford opportunity to prepare for the substantive interview, in most circumstances it will not be appropriate to delay the interview further by allowing the applicant and legal representative additional preparation time. However, fairness requires that each request for more preparation time be considered on its own merits, and according to the prevailing circumstances in the case.

In considering a request for more preparation time, all relevant factors must be taken into account. Such factors may include:

- When the legal representative took responsibility for the case;
- What information the legal representative already has about the nature of the case;
- The actual opportunity the legal representative and applicant have had to confer;
- Whether there have been significant difficulties in communication between the representative and the applicant that could not reasonably be overcome;
- Whether for any other reason, the legal representative and the applicant have, through no fault of their own, not had sufficient time to discuss the particular facts of the case and prepare for the asylum interview.

If it is determined that fairness requires the applicant and representative be given further preparation time, the interview should be rescheduled accordingly, ideally for later the same day, but normally no more than one working day later.

[Back to contents](#)



## 7 Non-Compliance and Implicit Withdrawals

---

Proceeding with an interview may on occasion not be possible, owing to an applicant's failure to attend an asylum interview or to otherwise comply with the process.

Case owners must in such cases take reasonable steps to ascertain the reason why the applicant has not or will not comply with the interview procedure, in order to establish whether a flexibility consideration applies. Where no flexibility consideration applies, withdrawal or non-compliance action may be appropriate.

In circumstances where the applicant fails to attend an interview, and cannot provide an adequate explanation to show that the failure was due to circumstances beyond his or her control, it may be appropriate to regard the application as implicitly withdrawn under paragraph 333C of the Immigration Rules, according to the instruction Withdrawal of Applications.

In circumstances where the applicant attends his interview, but then fails to complete it (or fails to comply with another material part of the application process) and cannot provide an adequate explanation, it may be appropriate to consider the application on the evidence held at that point, and if refusing the application, to do so on non-compliance grounds under paragraph 339M as well as paragraph 336 and 339F of the Immigration Rules, according to the instruction Non-Compliance.

The Withdrawal of Applications and Non-Compliance instructions both publish timescales for allowing applicants to provide explanations for non-attendance/non-compliance. For the purpose of the Detained Fast Track processes, the timescales referred to in those instructions do not apply. This is because in DFT Processes, the applicant can be contacted promptly, can contact his/her case owner promptly, and in the IRC setting, can more easily obtain medical and legal support than might be expected in a non-detained setting.

The time provided for an explanation for a case in DFT Processes must be reasonable in all circumstances, sufficient to allow for the case owner to make enquiries and for the applicant to provide genuine explanations where they exist.

[Back to contents](#)

## 8 Post-Interview Representations

---

Following an asylum interview, applicants or legal representatives may state that more time is needed before a decision is made, for them to file material relevant to the claim.

By this time, the nature of the applicant's claim will be known to case owners, who will be in an informed position to consider such requests. Case owners must consider whether the prospective evidence is probative of the claim and decide whether to extend timescales.

The fact that an individual is in DFT should not bear on the decision on whether to wait for further evidence. The central consideration is whether it would be unfair to the applicant to proceed to a decision without considering the further material mentioned, or at least giving him/her a reasonable opportunity to obtain it.

Case owners will need to ascertain further information and consider the following issues:

- What further material it is proposed to obtain;
- Whether the applicant or legal representative's statements regarding the further material suggest it is reasonably likely to be obtained and submitted;
- Whether, in light of the particular circumstances of the case, 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;
- Whether the material can be obtained within DFT/DNSA timescales, and if any explanation for not being able to obtain the material is reasonable;
- Whether the material is already available such that delaying the decision is not necessary;
- What steps have been taken / are proposed to be taken to obtain the material;
- What opportunity the applicant and the legal representative may have to obtain the material (taking into account the fact of detention, the facilities available to the applicant, the facilities available to the representative, etc.);
- Whether it is reasonable to expect advanced sight of original documents through facsimiled copies.

In most circumstances it will not be appropriate to delay the decision, but if case owners, in discussion with a senior officer, feel that it would be unfair to proceed with a decision, then the DFT/DNSA timetable must be extended and time given for further material to be presented and delivered before the decision is made.

It is possible to delay a decision for over five days, but this should only happen in exceptional circumstances.

The same principles will apply to any proposed legal research, or evidential research into readily-available objective materials, which the legal 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.

[Back to contents](#)

## 9 Removing Cases from DFT/DNSA Processes

---

### 9.1 Removing Cases from Detained Processes

In some circumstances, it may emerge that it is not possible to fairly consider and manage a case within the DFT or DNSA timescales, even if allowing for reasonable extension of those timescales according to flexibility considerations.

DFT and DNSA policy requires that claims be amenable to a quick and fair decision. If a quick decision is not possible, such as where a case cannot be decided even under timetable flexibility considerations, the case will not be suitable for DFT or DNSA processes.

DFT and DNSA policy outlines various other considerations which, in general, would make a case unsuitable for entry or ongoing management within DFT or DNSA processes. See the Detained Fast Track Processes instruction for further information about DFT and DNSA policy on suitability for the process.

Any decision to remove a case from the Detained Fast Track Processes must be reasoned and documented (according to locally set feedback procedures) and authorised at a minimum of SEO level.

In cases where case suitability is reviewed but where a decision is taken that the case should remain within DFT, careful and proactive consideration must be given to whether, in light of the facts known about the case, flexibility should be exercised. This applies whether the suitability review was initiated by a request from the applicant/representative, or as a result of other information arising.

#### 9.1.1 Continuing or Releasing from Detention

Removal from a detained process is not the same as releasing someone from detention (although in most circumstances the former will indeed lead to the latter). It is important to note that there may be reasons under UKBA detention policy to continue an individual's detention, notwithstanding his/her claim not being suitable for DFT or DNSA processes. If however continued detention is no longer appropriate, the individual must be released from detention, to an applicable contact management regime.

See ch. 55 of the Enforcement Instructions and Guidance (which fully addresses general detention policy), and the Case Contact and Compliance Management strategy (which addresses contact management).

[Back to contents](#)

## 10 Glossary

---

Term	Meaning
<b>DFT Processes</b>	<b>Detained Fast Track Processes</b> An umbrella term, used to describe the two processes running mainly at IRC Harmondsworth and IRC Yarl's Wood – the Detained Fast Track Process (DFT), and the Detained Non-Suspensive Appeals Process (DNSA). Also referred to as <u>DFT Processes</u> , and DFT/DNSA.
<b>DFT</b>	<b>Detained Fast Track</b> One of the processes running at IRC Harmondsworth and IRC Yarl's Wood. Involves detaining applicants for a short period, to make a quick decision, which if refused, will ordinarily be subject to quick appeal timescales.
<b>DNSA</b>	<b>Detained Non-Suspensive Appeals</b> One of the processes running at IRC Harmondsworth and IRC Yarl's Wood. Involves detaining applicants for a short period, to make a quick decision. If refused asylum and if issued a certificate under Section 94 of the 2002 Act, applicants will not have an in country right of appeal.
<b>Harmondsworth</b>	<b>IRC in West Drayton, near Heathrow</b> Main IRC for male DNSA and DFT.  <b>Office opening times</b> 8am – 8pm Monday to Friday 10am – 5pm on weekends
<b>IRC</b>	<b>Immigration Removal Centre</b> Detention facilities used by the UK Border Agency, either directly managed or operated under contract with the UK Border Agency. (Previously and colloquially still called detention centres, but renamed IRCs by Section 66 of the 2002 Act.)
<b>NSA</b>	<b>Non-Suspensive Appeals</b> The processes whereby asylum applicants – if refused asylum with a certificate under Section 94 of the 2002 Act – will not have an in country right of appeal.
<b>Yarl's Wood</b>	<b>IRC in Bedfordshire</b> IRC for female DNSA and DFT.

[Back to contents](#)

# Document Control

## Change Record

Version	Authors	Date	Change Reference
1.0		26/04/05	First version
2.0	MK	11/01/12	Full review and restructure to updated template