

Videolink: A first experience of bail hearings

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Courts covered: Columbus House, Newport

Number of bail hearings observed: 7 on 2 November 2015

Names of immigration judges presiding over bail hearings observed: S. O. O'Brian J

Bail Observation Project questionnaire used?: For reference only

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Before analysing the method or use of video link during bail hearings, we have to start with a clear explanation. A bail hearing concerns the detention status of detainees in the UK. The detainee has the right to appear in front of a judge who can decide if the detainee is trustworthy and will not abscond. In practice the appearance is rarely in person but, as we saw, by video-link. I thought this made it very difficult for the detainee to communicate, especially if there was need for an interpreter. If the judge thought that the applicant would keep to all the bail conditions, bail was granted, if not, it was refused and the detainee would stay in detention.

I noticed a lot of facts have an impact on the judge's decision. First of all, the sureties' bank statements can influence the decision massively. If the sureties have a regular bank income and a stable financial situation it is more probable that bail will be granted.

Another element that influenced the decision was the previous behaviour of the detainee. If he had never committed a crime and followed the rules, such as signing on regularly at a police station, the judge was more likely to grant bail.

Then the detainee had to have a specific address where he will live if bail is granted. If the bail applicant cannot give proof of that, or if it is deemed unsuitable, certainly the bail will not be granted.

All these elements are objective and analysable. But there are other elements that can influence the judge's decision, and these are not so clear and rational because they are based on emotional impact.

One of these elements is the presence of sureties and their ability to explain and express themselves, and their relationship with the detainee. The more the surety was able to communicate, the more chance the detainee seemed to have of release.

Another element was the interpreter. If the interpreter was not scared of the judge and court atmosphere, spoke clearly and loudly, and took his time to communicate properly with the detainee, he was key to the bail hearing. He made sure the detainee knew what was happening and so could challenge the accusations of the Home Office representative. This did not happen in several cases we saw.

Finally, the most important element was the video link. This is the most important element in the bail hearing because it can hugely compromise the decision of the judge. The video link is basically a television screen that enables communication between the court and the detention centre where the applicant is. When the video link is used the result most of the time is negative. This happens for a lot of reasons.

In one case the judge did not arrive on time. The detainee did not appear to be informed about it and was waiting in front of the video link for nearly an hour without knowing what was going on. The stress caused by that is really high and the detainee's performance is bound to be affected.

The communication, as audio and image, was not clear most of the time. For this reason the judge could not really understand what the applicant was saying and vice versa. The rooms in the detention centre looked uncomfortable and inadequate for the video link. Echo and technical problems were really common, as well as noise from outside the rooms.

Finally, it was really difficult to see the detainee's face and expression, he became just a cut-out. In this way, the sense of empathy, fundamental in this situation, was completely cut off, the applicant becomes just a person on a television, without emotion, life stories and feelings. The detainee was depersonalized.

During the bail hearing there are a lot of elements that can influence the decision. As we saw, some are unchangeable, but others such as the video link, must be changed. If video link were forbidden the detainees would have more chance to express themselves as human beings, to be listened to by the judge and have the same right of all detainees that can attend the court. The detainees have the right to be considered and perceived as human beings in a difficult situation not just a person on a screen. Even if the video link is cheaper for society, it takes away the sensitivity that every person deserves during a bail hearing. It creates a barrier between the court and the defendant.

In reality, when a judge makes decision he has the power to change the detainee's life, and the minimum that we can ask is that the judge is aware of this.