

Bail Observation Project Report

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Organisation: Research for MSc Global Migration (UCL) dissertation

Number of bail hearings observed: 26

Courts: Hatton Cross (London) Taylor House (London) & Eagle Building (Glasgow)

Dates: May-July 2017

Summary of findings

Breakdown by location

	Bail granted	Bail refused	Application withdrawn	Application adjourned	Total	Success rate of total applications	Success rate of applications that were not withdrawn/adjourned
Taylor House	7	1	5	2	15	47%	88%
Eagle Building	0	1	1	0	1	0%	0%
Hatton Cross	4	3	3	0	10	40%	57%

Breakdown by outcome

Applicant present in person	Bail granted	Bail refused	Application withdrawn	Application adjourned	Total	
Legal representative + sureties	4	0	0	1	5	
Legal representative	0	0	0	1	1	
Sureties	0	0	1	0	1	
Neither	0	0	5	0	5	
Bail summary served before hearing	3	0	6	0	9	

Bail summary not served before hearing	1	0	0	1	2	Total = 12
Applicant appeared via video link						
Legal representative + sureties	5	2	0	0	7	
Legal representative	0	0	0	1	1	
Sureties	1	0	0	0	1	
Neither	0	2	1	0	3	
Bail summary served before hearing	5	4	1	1	11	
Bail summary not served before hearing	1	0	0	0	1	Total = 12
Applicant <i>in absentia</i>						
Legal representative + sureties	1	0	0	0	1	
Legal representative	0	0	0	0	0	
Sureties	0	1	0	0	1	
Neither	0	0	0	0	0	
Bail summary served before hearing	1	1	0	0	2	
Bail summary not served before hearing	0	0	0	0	0	Total = 2

Bail hearings have no grand-standing legal submissions, have fewer immediate consequences than other FtTIAC hearings and take place in non-descript, chaotic hearing centres. They are by nature unspectacular. Yet they offer important insights into the processes of the UK immigration and asylum systems, and the policy directions these systems are taking. For the applicants and their families at the hearings, they also offer respite from the cycle of indefinite detention and the physical and emotional violence it can inflict.

Impact of legal representation

Bail was granted in 77% of the hearings I observed where both a legal representative and sureties were present, yet when neither were present, bail was never granted in the hearings. Legal representatives are important for a number of reasons.

A key role played by representatives is challenging the contents of the bail summary in a way that resolves any issues arising from it. On three occasions the bail summary was not served on time and on a further seven occasions, the bail summary served proved to be inaccurate. Indeed, the HOPO twice brought new evidence, including police reports, witness statements, and even a witness to court that weren't outlined in the bail summary, making it almost impossible for the representative to thoroughly prepare for the hearing. On one occasion, the judge successfully challenged the date of birth (DOB) recorded on the bail summary which had recorded the applicant as being 20 years older than he was. In no unrepresented cases was a strong challenge of a bail summary by an applicant accepted by the judge.

Secondly, in the event of no sureties being present, the presence of counsel also affects whether the application is withdrawn or adjourned. When a legal representative is present, adjournments seemed to occur in place of withdrawals. I saw no represented cases being withdrawn, yet 100% of represented cases with no sureties were adjourned. It is worth noting that an adjournment doesn't require the applicant to lodge another bail application, and the postponed hearing will be heard with the same judge. Consequently it is likely to be heard quicker than an application that was withdrawn and a new application submitted.

Impact of video link technology

I would suggest that the impact of using video link in hearings is universally hugely influential, across all hearing centres and applicant circumstances, and thus may be considered a significant factor in the outcome of hearings in its own right. In fact, bail was never refused in instances where the applicant was produced in person, and was refused 31% of the time when they were produced via video link.

Technical difficulties using video links were very common in my observations, delaying hearings further and leading to farcical situations such as an usher in EB shouting '*Hello Dungavel!*' at the screen for several minutes before realising the video was on pause, by which time the detainee had been taken back to his room. Beyond causing delays to the

hearings and visibly frustrating judges because of this, the hearings themselves were negatively affected by the use of video link. Even when the video link was functional, there were often sound or screen delays and the applicant's sureties in the public gallery were never in the applicant's field of vision.

Simultaneous interpretation over video link also frustrated certain judges I observed, who saw it as delaying the hearing and presenting a distraction. One particular judge at Hatton Cross at the beginning of each hearing would always ask the applicant if their level of English meant it was absolutely necessary to interpret all of the proceedings, which would invariably result in the applicant's acquiescence to the judge's authority, even if this very question had to be interpreted for them.

The reinforcing nature of video link technology, interpretation & legal representation

Without legal representation, the applicant may find it difficult to ensure that their interpreter plays an active role and offers simultaneous interpretation, in the face of judges who often see this as a block to efficiency.

Consequently without effective interpretation and legal representation, and with no sureties to support them, the applicant may struggle to be fully engaged in their hearing and may interject at inappropriate times. The judge may then never communicate with the applicant as another human nor engage fully or critically with their application. These interdependent factors are therefore prone to snowballing into an obstruction of justice.

Recommendations

1. Video-technology is not sufficient for bail hearings. Applicants are particularly vulnerable to miscarriages of justice when video conferencing is used due to a not uncommon reliance on interpretation and self-representation. Its use should be reconsidered.
2. Legal representation is vital not only to act as an advocate of the bail applicant, but also to ensure the smooth running of the hearing and to navigate procedural complexities. Greater effort should be made to

ensure applicants are aware of their rights to legal aid if applicable, particularly for those detained under immigration powers in prisons.