

Videolink: A first experience of bail hearings

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Court covered: Taylor House, London

Number and date of bail hearings observed: 3 on 8 November 2016

Names of immigration judges presiding over bail hearings observed: not recorded **Observation Project questionnaire used?:** For reference only

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On 8th November 2016, I observed three bail hearings at Taylor House Immigration Tribunal.

Immigration detainees are people who have not committed a crime but simply do not have valid permit to be in the UK. These people are not criminals, and if they have a criminal past, they have served their sentence or paid their fine. People in large amounts of debt are never imprisoned. So why should overstayers?

Detention conditions are incredibly poor and staff often treat detainees in a derogative and degrading manner. Detention centres are not much different to prisons. The main rationale of detention is to affect removal straight away when authorities have the power to send the person back to their country of origin. However, detention by law, is only allowed for a reasonable period of time. Instead in the UK detainees are often kept in detention for months and even years, because the country to which they are to be sent back to is refusing to issue travel documents or there are barriers to removal such as judicial reviews challenging the Home Office decision to refuse asylum. These judicial reviews take many months to complete and a person cannot be removed within that time. Maintaining their detention for months and years is unreasonable, arbitrary and barbaric.

The biggest flaw of the justice system was the video communication between the detainee and the judge. The sound quality was unacceptably poor, to the point where nobody present in the courtroom could actually understand what the detainee was desperately trying to explain. This is inevitably vital and crucially important information which can have major impact on the outcome of the hearing. It can ultimately impact on one's right to liberty. We were struggling to hear information relating to the detainee's medical condition, the impact it has had on his family, information relating to the sureties and his experience in detention.

I can understand the rationale for communicating with detainees through video calls. It includes reducing costs and time spent travelling from detention to court and back. However, I do not agree that these 'advantages' outweigh the pure injustice that goes on in bail hearings. Economic cost should never stand in the way of justice. Therefore, video calls should be abolished and detainees should be granted the basic courtesy, fairness and human respect of being physically present at their important life-changing bail hearing.

Video calls have an inhuman quality when the detainee is not present. It is impersonal and intimidating. Detainees are not able to hear everything that happens in the courtroom, not able to see everybody on their physical level and therefore weakens them to the point of submission alone in the detention room. They are not able to feel the atmosphere and be engaged at a personal level with their solicitor, barrister, judge, sureties and family and friends who are at the hearings to support the detainee. They are unable to object to incorrect remarks made in passing, which are very difficult to catch on video. I observed that at some moments, the judge was trying to speak away from the microphone, so to make her voice less understandable by the detainee. She clearly did not want him to hear everything she was saying regarding his bail application to the Home Office and the Barrister.

Immigration detention is a cruel practice in the first place. But not being able to attend the event on which your life depends on in the next months or even years, is incomprehensible to me. I am calling for basic human rights to be respected. As a country, which advocates for human rights and boasts out protection over them, we are allowing bail hearing to infringe on a very basic, fundamental human right, the Right to a Fair Trial (Article 6 of the European Convention of Human Rights).

In the first bail hearing, the home office did not have proof of address in which the detainee would reside if granted bail. The judge could not therefore make a decision without this technical piece of information. I observed the family of the detainee, particularly the father, rushing to court, seeming extremely nervous and distressed at the sight of his son in detention, through a monitor, anticipating a result.

The home office was granted half an hour to find a proof of address in order to proceed with the case. The clerk told the detainee that she did not know how long this would take in reality. The detainee said he would wait in the room for as long as necessary until the trial could proceed. The detainee was also unaware of facial expressions and obvious frustrations in court which were not be obvious in the video but could be easily felt inside the courtroom, had the detainee been physically present.

After it was shown that there was no proof of address, the judge asked the Home Office representative to apologise for wasting the court's time. The bail hearing was withdrawn due to the Home Office coming unprepared to court. This was very disappointing and saddening to people whose life is dependant and strongly affected by this, such as the detainee and his family and friends.

The second bail hearing is when the sound quality began showing its impact on the case. The detainee was asked to explain his situation. He was speaking continuously for roughly two minutes. After which, the judge's only reply was 'Did anybody understand a word he said?'. The sound kept cutting off his words and therefore making the sentences difficult to put together. Of course, the court should never assume or try to make out what the detainee is trying to say, as such assumptions are likely to be wrong, and the court cannot rely on false evidence which they thought may have been given.

The judge managed to assume with reasonable accuracy, that the detainee said he was diabetic. The judge asked his representative for evidence of his medical condition. His representative said that when he visited him in the detention centre, it was obvious to the eye that he suffered diabetes. The judge was not impressed by this evidence and said that it is not admissible in court, with frustration. His representative also attempted to pass as evidence that the detainee 'said' he was taking insulin injections and therefore his knowledge of the need to take insulin when one has diabetes was sufficient enough evidence in court in his opinion. The judge correctly pointed out that most people have this basic knowledge and once again, without evidence of insulin injections or diabetes, his statement that he was diabetic could not be used in this bail hearing because of insufficient evidence.

This was the fault of the detainee's representative, who should have obtained proper medical evidence of diabetes if he really believed that the detainee suffered from the condition. This is another example of how powerless and voiceless detainees are during their hearing. They are not even present in court to defend themselves in situations like this. The detainee most likely did not understand why his condition was not taken into account, because many gestures, small comments, remarks and tensions are not communicated through the video call.

At the third bail hearing, the family of the detainee came prepared and ready to furiously fight for the detainee. They were the sureties, however, they failed to bring a tenancy agreement to show that their living conditions are suitable for the detainee and a written note by the landlord that he permits the detainee to reside at his property. I observed that it is incredibly hard for a non-home owner to acquire permission from the council or their landlord for the detainee to stay with them. Landlords and Councils are in most cases, unwilling to give such permission, because of the 'illegal' status of the detainee.

Detainees are rarely likely to have relatives or friends who are home-owners and willing to act as sureties. Therefore, the unfortunate reality is that, because of the negative light in which detainees are wrongly portrayed, it is almost impossible for them to be granted bail if they have no surety who is a home-owner.

On the 6th December 2016, I visited Taylor House Immigration Tribunal again and observed another bail hearing.

The detainee in this case was present at the hearing. His sureties were not present because they lived in Manchester, had child-care obligations which prevented them from travelling far. But also crucially, they were not properly informed of the date of the bail hearing and the importance of their presence. All they received was a letter, which may or may not have reached them, stating the date of the hearing. However, letters are often lost, and taking into account that the sureties were not fluent in English, they most likely did not fully understand the nature and importance of the letter, if they received it in the first place. I think this is an inappropriate way to inform sureties of a bail hearing. They should be called and clearly informed of the consequences of their failure to attend. The court should ensure that the sureties are aware and understand the details of the hearing.

On a positive note, the judge in the case was very helpful. By law, she had no other option than to refuse bail in the circumstances. However, she offered the detainee options which he could pursue in order to challenge that decision. She advised him that he could speak to the Welfare Officer in detention who could seek legal aid for him or advise him on contacting a solicitor. When the detainee raised his concerns that he could not afford a private solicitor, the judge offered him the option of seeking pro-bono legal advice on how to be granted bail. This kind of personal advice by a judge never happens when the detainee appears through a screen monitor Or at least I never heard of it. This shows the empathy felt by the judge and the human aspect which the hearing obtained when the detainee was present and was looking into the eyes of the judge. He was able to understand the reasons for his bail refusal, as the judge clearly repeated them multiple times in order. This detainee had the benefit of some guidance and compassion on a human level, which most others never experience through the video call.