Still a Travesty: Justice in Immigration Bail Hearings

Second report from the Bail Observation Project

Applicant: Why don't you want me to say one word?

Judge: I see you have never lived with the mother and child (child born while father in detention)

Applicant: No decision, no deportation, nothing. It's doing my head in

Observer: Video link allowed judge to ignore the applicant

Observer: Judge did the Home Office's job.

Legal representative: The judge simply adopted this unsubstantiated bail summary on behalf of the respondent (the Home Office)

Observer: Would that all such hearings were as straightforward and fair.

Home Office presenting officer: I always have to say that removal is imminent

Observer: Applicant weeping, ended moaning and shouting, wailing, seemed very unwell.

Judge: It costs so much to keep them in detention I let them out when I can

Applicant: Home Office, judge, they working for each other

Judge: I don't believe one word of what you say

Applicant: Detention is killing me. I'm 49 with a family, where am I going to run to?

Acknowledgements

To Gill Baden who originated the project

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Front cover: quotations from hearings observed; image: Sheldon Court hearing centre, Birmingham; *photo: Stalingrad O'Neill*

Note: In the text, references such as *T24*, *N7*, are made to individual bail application hearings, as recorded by observers in questionnaires. *T* indicates a hearing at Taylor House in London, *N* a hearing at Columbus House in Newport, *B* one in Birmingham, and *H* one at Hatton Cross, Feltham, Middlesex.

The judge, the detainee and the Home Office representative

My video link bail hearing of 28 July 2011 was presided over by a judge who, from the outset, demonstrates an apparent inadequate knowledge and the correct understanding of my case. The manner in which he handled my case clearly suggests that he did not read a bit of my case before the hearing. His one clear mission is to intimidate me and then refuse my bail. As a judge he is picturesquely autocratic. This judge completely ignored the ethical requirement of the profession that gives no room for any partiality between the contending parties. He addresses me uncaring of the consequences of his utterances. The hatred he has for me was so manifest. He was blunt in his approach and he was openly prejudiced against me. I felt so humiliated by his actions! ...

The Home Office representative appeared to confirm my side of the story when she indicates that I have a judicial review pending. The judge then asked me to explain what my judicial review was about and the Home Office representative responded saying it was for unlawful detention. ...

The judge argued emphatically that my judicial review will be refused at the oral hearing. I asked him how he knew it would be refused, and he asserted: because I know it will be definitely refused. That is the only answer you will get! He concluded saying that he will not grant me bail because of my judicial review. ...

I left the video link room highly traumatised.

From complaint lodged by AA,
a detainee in Campsfield

Still a Travesty: Justice in Immigration Bail Hearings

Second report from the Bail Observation Project

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Foreword

In previous years I have represented many people in immigration detention. Their experience of detention was often very distressing and damaging to their mental health. It is not difficult to understand why. Being confined for any extended period for administrative purposes would, I expect, seem an affront to most of us. It is often not clear to those in detention why they are there, and it was often not clear to me either. The distress of detention is compounded by at least two key factors. Firstly, being confined with other distressed people is itself likely to be distressing. Secondly, detention is indefinite. Those detained often have no idea or control as to when their detention might end, and some among them are detained for several months or years.

The Home Office policy has long included the stipulation that: "Detention must be used sparingly, and for the shortest period necessary." Yet, many thousands are detained every year, some of whom the policy states to be generally unsuitable for detention by reason e.g. of their age, physical or mental health. Others experience repeated periods of detention following periods of release. The use of detention not only seems, but often is, chaotic. Against this background, I have been very pleased to support the Bail Observation Project by providing some introductory training to volunteers preparing to observe bail hearings for this and the previous report. This report highlights good and bad practice at bail hearings. However, while good practice is to be welcomed, we must remember that it is no more than what we ought to expect. Sadly, it is far from the norm. By highlighting bad and inconsistent practice the project has provided an important public service. By introducing a range of people, many without previous experience or knowledge, to how detention is used in the UK, the project has provided another.

Steve Symonds
Legal Officer at the Immigration Law Practitioners' Association,
November 2006 to September 2012

Summary

This is the second report from the Bail Observation Project, established in 2010 in response to concerns about the immigration bail process. The first report, Immigration Bail Hearings: A Travesty of Justice? Observations from the Public Gallery, was published in 2011. There have been further developments since then and new guidance has been issued for immigration judges. It therefore seemed timely to undertake a second systematic study of immigration bail hearings, to see whether there had been changes in practice and in particular to examine to what extent the new guidance was being followed, and with what results for those held in detention. As in the previous study, this is the work of volunteer lay observers.

Between February and October 2012, 24 volunteers carried out observations of 212 immigration bail hearings for 220 applicants in four different courts, under 44 different judges. Bail was granted in 76 cases, refused in 95 and 49 applications were withdrawn.

There was substantial variation in the conduct of the hearings and a disturbing lack of consistency in approach and process. There was much disparity between judges. A standard was set by those who maintained their independence, treated all the parties in court with respect and ensured that the process was understood, that interpreting was appropriate and comprehensive and who actively guided those applicants who had no legal representative. However, this was not a common standard. In many instances, the judge did not seem to act independently, but accepted the Home Office case as outlined in the bail summary without question, did not give adequate time for interpreting or help those applicants without legal representation. Some judges were described by observers variously as *hectoring* or even *ranting and rude*.

New guidance for First-Tier Tribunal Judges (formerly known as Immigration Judges) was published in July 2011 and revised in June 2012 but we found little evidence that issues addressed by the *Guidance*, such as the length of detention, were being taken into account as a matter of course. Detainees had been held for periods ranging from a few days to more than two years. Every detainee faces uncertainty and stress in this regard as detention has no fixed time limit.

One significant change since our last study is that hearings by video link have now become standard and out of 212 hearings observed 168 were by video link. The argument for the process is that video link hearings are cost effective. However, not only is it stressful for detainees but the figures suggest that it may be an obstacle to a fair hearing. Bail was granted to 21 out of 41 applicants appearing in person, but of 170 appearing by video link, only 54 applicants were granted bail.

The video link process distances the applicant from the court; the camera angle means it may not be possible for the detainee to see all the parties such as the sureties when present, and family in the public seats. Sometimes it seemed that the judge could not see the detainee well. All too frequently there were technical problems with poor sound, inadequate lighting or mechanical breakdown. There is a particular difficulty when interpreting is needed. Since our last report, interpreting services have been outsourced. A third (92) of applicants required an interpreter, and of these over a third (33) experienced difficulties which ranged from the wrong language or dialect to failure of the interpreters to turn up.

We concluded that there has been little substantive change since the report of our first study was published in 2011: there is still a lack of consistency in every aspect of the hearing process including the approach of different judges, treatment of sureties, and procedures when there was a lack of legal representation. However, we feel that our public presence in the courts has been noted and was welcomed by the families and friends of the applicants and by their sureties, and by some judges. In this wider sample we have found some cases of good practice which could set a benchmark. There is a great need for monitoring and accountability, and for public scrutiny, if justice is to be done and also seen to be done.

The report concludes by making a number of recommendations under the headings:

- Automatic judicial oversight of the decision to detain
- Independence of immigration judges
- Legal representation
- Appeal
- Adjournment
- Conduct of hearings
- Bail summary
- Video link hearings
- Accountability, scrutiny, monitoring
- Guidelines and training for immigration judges
- Public scrutiny of bail hearings

A snapshot of Detention

People held in detention solely under Immigration Act powers, at immigration removal centres, short-term holding facilities and 'pre-departure accommodation'.

In the year ending 31 December 2012,

28,909 people entered detention, an increase of 7% compared with the previous year (27,089).

Of those leaving detention during 2012 (28,538),

- 18,804 (66%) had been in detention for less than 29 days,
- 4,782 (17%) for between 29 days and two months and
- 3,046 (11%) for between two and four months.

Of the 1,906 (7%) remaining, 255 had been in detention for between one and two years and 67 for two years or longer.

On 31 December 2012,

2,685 people were in detention, 11% higher than the number recorded at the end of December 2011.

In the fourth quarter of 2012,

7,091 people entered detention, 3% higher than the same quarter of the previous year (6,887).

61 children entered detention. Of those, 29 were detained at Cedars 'pre-departure accommodation' near Gatwick airport, 27 at Tinsley House, two at Pennine House, two at Yarl's Wood and one at Brook House.

Note: Figures do not include the 300-600[1] people held in prisons under immigration act powers at any one time, or those held under such powers in police cells, or in 'short-term holding facilities' at ports and airports.

Source: http://www.homeoffice.gov.uk/publications/science-research-statistics/research-statistics/immigration-asylum-research/immigration-q4-2012/detention-q4-2012

1 In September 2012, there were 547 foreign nationals detained post-sentence by UKBA in prisons following completion of their custodial sentence. A further 919 foreign nationals were detained beyond the end of their sentence in immigration removal centres: written answer, House of Commons, Hansard, 8 January 2013.

INTRODUCTION

The organised and determined individual and collective protests by people held in immigration detention occasionally hit the headlines, only to be forgotten. For the 28,000 men and women who are denied the basic right to liberty each year under immigration law in the UK, the right to apply for bail offers a precious if very limited chance of regaining the freedom to live in the community with family or friends. It should be noted, however, in the words of the *Bail Guidance for Judges* (para 5),[2] that *bail is itself a restriction of liberty.*

Moreover, there are many obstacles to obtaining bail: the lack of legal representation, lack of people regarded as appropriate by the courts to stand surety, long delays in obtaining an address acceptable to the UK Border Agency, the lack of effective interpreting and the process itself, whereby in most cases the applicant appears by video link at a distance from all the other parties who are obliged to be present in the court.

In our study we also found bail applicants who, under the UK Border Agency's own *Enforcement Instructions and Guidance*[3] (Chapter 55.3.1) should not have been detained. Among non-governmental organisations (NGOs) concerned with asylum and immigration issues it is generally accepted that government is in breach of its own policy on the matter.

The challenges facing immigration detainees are not well understood and the bail hearing process itself is not widely known. Bail hearings are seldom attended by members of the public other than those with an interest in the outcome such as the family and friends of the applicant. There is a need for public scrutiny, to throw light on what remains a dark corner of the immigration system.

The first Bail Observation Project report

The Bail Observation Project (BOP) was established in 2010 out of concerns about the immigration bail process and anecdotal information pointing to serious flaws in it; there was also an absence of research and a need for evidence. Similar concerns led Bail for Immigration Detainees (BiD) to undertake research which was published in 2010 in the report *A Nice Judge on a Good Day: Immigration Bail and the Right to Liberty.*

Our project approached the issues from the perspective of ordinary members of the public. Trained volunteer lay observers undertook a systematic study of immigration bail hearings and the findings were documented in a report, *Immigration Bail Hearings: A Travesty of Justice? Observations from the Public Gallery*, published in 2011.

The report was launched in Oxford and at the House of Commons. Copies were sent to all new MPs, to the Home Affairs and Justice committees of the House of Commons and to the Parliamentary Joint Committee on Human Rights, and to the appropriate governmental, judicial, legal, inspectorate and other bodies listed at the end of this second report. Some of these we have directly lobbied. Other organisations to which the report was presented at meetings included human rights, women's, student, faith and academic groups. The project has also been represented at international meetings such as

2 Tribunals Judiciary, Immigration and Asylum Chamber, Mr Clements (2012), *Bail Guidance for Judges Presiding over Immigration and Asylum Hearings*, Presidential Guidance note no. 1 of 2012 (implemented on 11 June 2012).

3 http://www.ind.homeoffice.gov.uk/sitecontent/documents/policyandlaw/enforcement/detentionandremovals/chapter55.pdf?view=Binary

the general assembly of PICUM (Platform for International Co-operation on Undocumented Migrants) in Brussels, and the European Union's Fundamental Rights Agency conference in Warsaw in November 2011 on Dignity and Rights of Irregular Migrants.

We were disappointed at the almost total lack of media interest in the report. There are too few challenges to the views put forward by some politicians and in the populist press which scapegoat asylum seekers and migrants. There is hardly any political leadership offering an alternative position. The distorted vision dangerously devalues the human rights of migrants and asylum seekers and undermines society.

Michael Clements, at that time president designate of the First-Tier Tribunal Asylum and Immigration Chamber, made a substantial response to the report, commenting on some of what he described as the 'good points' raised and suggesting that we attend the tribunal's stakeholder meetings which take place twice a year. We accepted the offer and have attended three meetings. These were chaired jointly by Mr Clements and Mr Justice Blake, President, Upper Tribunal (Immigration and Asylum Chamber). The format of the meetings consisted largely of responses from the Chairs to requests, queries and comments from those attending. For people like ourselves, participating for the first time, there was a lack of transparency; we were unable to find out who some people were at the meetings as no list of attendees was available and the minutes only stated 'stakeholders present included' with a short list of some organisations. A more detailed account of the issues we raised and the responses we received is given in Chapter 3.4.

At a stakeholder meeting on 21 January 2013, we heard that a 'fundamental review' of the Immigration and Asylum Chamber (IAC) system for appeals is in progress; included in the list of topics to be covered is 'the possibility of bail hearings only being heard on the papers'.[4] We believe that such a procedure would not be fair or equitable.

This second Bail Observation Project report

One of our concerns in the original study had been that the bail guidance for immigration judges had lapsed and there was no clear benchmark against which to monitor the processes of bail hearings. New guidance was issued in July 2011 and we felt that it would be useful to undertake a second survey to see what changes might have occurred, and what difference they might have made. The guidance was revised again and published in June 2012.

As before, volunteers were sought and a well attended training day was held in January 2012 with professional input from Steve Symonds (at that time Legal Officer for the Immigration Law Practitioners Association). Twenty-four volunteers, from a wide range of backgrounds – academic and non academic – subsequently participated actively in the observation of bail hearings at four different centres (Newport, Birmingham, Hatton Cross, Taylor House). It was decided to aim for a larger sample than in the previous phase, and observations were made at a total of 212 hearings of applications from 220 individuals, heard by 44 judges.

The changing context

> *Immigration crackdown deterring foreign students, says universities chief*
>
> – front page headline in the *Guardian,* 9 January 2013

This study has taken place at a time when there is a further hardening of the political stance on immigration. The removal of the licence of London Metropolitan University sent a shiver through the institutes of higher education which rely on international students. Surveillance of overseas students is now routine in universities.[5]

4 Tribunals Judiciary, *Immigration and Asylum Chamber, Fundamental Review – Key Communications Messages, December 2012.*

5 http://www.ox.ac.uk/students/international_students/visaduring/legal/ 'The University must "Monitor your attendance and keep a record of it."'

Suspicion of overseas visitors and hostility towards migrants has hardened, according to the British Social Attitudes Survey of 2012. Overall opinion of the settlement of migrants is negative, with 60% of respondents rating the impact negatively, and only 24% holding a positive view.

There is a slightly different picture in regard to asylum seekers, with 47% of respondents agreeing that asylum seekers who have suffered persecution in their own country should be allowed to stay in Britain and a lower but still significant percentage (44%) saying that asylum seekers should be allowed to work while their claims are processed. In London that figure reaches 50%. It is disturbing that more than half the population holds such negative views, informed as they often are by myths.

Our observations included asylum seekers, those who had entered the country legally and overstayed the term in their visa, people who had entered irregularly and foreign nationals who had served a prison sentence and were being detained with a view to removal. In popular debate there is a tendency to make a dividing line between 'genuine asylum seekers' and 'economic migrants'. In reality the situation is not so clear cut. At its annual conference in 2011, the Churches Refugee Network made reference to *people who can be classed as 'survival migrants', not travelling simply for economic betterment but in desperation for themselves and their families.*[6]

In our view, there is a need for an integrated approach to asylum and migration, and immigration detention as a whole must be challenged. All immigration detainees in the UK face the stress of not knowing the potential duration of their time in detention.

Within the non-governmental sector there has been a movement to work together in an increasingly co-ordinated way to develop shared aims and messages in an agreed strategic approach to immigration detention. The Detention Forum brings together over 30 NGOs in a loose network, working, together *to build a momentum to question the legitimacy of immigration detention which has become such a normal part of the British immigration system.*[7] The Forum seeks to engage more politicians on the issue and hosts Parliamentary Network meetings on immigration detention issues twice a year. Members of the Bail Observation Project steering group attend the Forum's quarterly meetings and have participated in its working groups on indefinite detention and judicial oversight.

6 http://www.ctbi.org.uk/pdf_view.php?id=666 accessed 9 January 2013
7 http://detentionforum.wordpress.com/

Bail hearings and the immigration courts

1.1 **The bail process**

This section is condensed from a note prepared by Steve Symonds, legal officer at the Immigration Law Practitioners Association at the time, for a discussion with volunteers hosted by the Bail Observation Project on 21 January 2012. In these notes he explains the purpose of an immigration bail hearing, the issues of note in immigration detention, the role of the immigration judge and important matters for observers to consider. A questionnaire (see Appendix 2) designed to cover these points was discussed with the volunteers at the training day.

An immigration bail hearing is a court hearing before an immigration judge, where the issue is whether or not the person asking for bail should be released from immigration detention, and if so on what conditions.

1.2 **The power of immigration detention in the UK**

The UK Border Agency (UKBA) is empowered to detain non-British citizens – either to prevent a person's unlawful entry to the UK, or in order to remove from the UK a person not entitled to be in the UK.

This power is subject to UKBA policy and guidance, which includes:

- Detention must be for one of the two purposes identified above.
- Detention is a last resort. If it is not necessary to detain in order to achieve either of these purposes, a person should not be detained.
- Detention is to be for the shortest possible time. There is no fixed time limit on immigration detention in the UK. The key issue is not how long has a person been in detention, but how much longer may a person be detained in order to achieve either of the two purposes identified above. (However, length of detention may be important: the *Guidance* for immigration judges states (para 16): …*the judge must take into account the length of immigration detention because the period will be informative about why the person remains detained and whether they should continue to be* .)
- Someone who is detained should be given written reasons for their detention.
- A person's detention should be kept under review, and further written reasons should be supplied.

UKBA policy sets out factors that must be taken into account in considering whether to detain or whether to continue detention:

- What is the likelihood of the person being removed and, in what timescale?
- Is there evidence of previous absconding?
- Is there evidence of previous failure to comply with conditions of temporary release or bail?
- Has the applicant deliberately attempted to breach immigration law?
- Is there a previous history of complying with requirements of immigration control?
- What are the applicant's ties with the United Kingdom (close relatives and dependants)? Does anyone rely on the person for support? Does the person have a settled address/employment?
- Is there an outstanding appeal, or application for judicial review or representations which afford incentive to keep in touch?
- Is there a risk of offending or harm to the public?

UKBA policy states that certain people are normally considered unsuitable for detention[8]:

- Unaccompanied children
- The elderly
- Pregnant women
- Those suffering from serious medical conditions
- The mentally ill
- Torture survivors
- People with serious disabilities
- Victims of trafficking

Rule 35 of the *Detention Centre Rules 2001*,[9] which addresses these issues, has recently been revised (see page 49).

UKBA policy on detention is set out in http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/enforcement/

1.3 Immigration bail

An immigration detainee may be released on bail by either the UKBA (a chief immigration officer) or an immigration judge. Immigration bail is subject to conditions which may include:

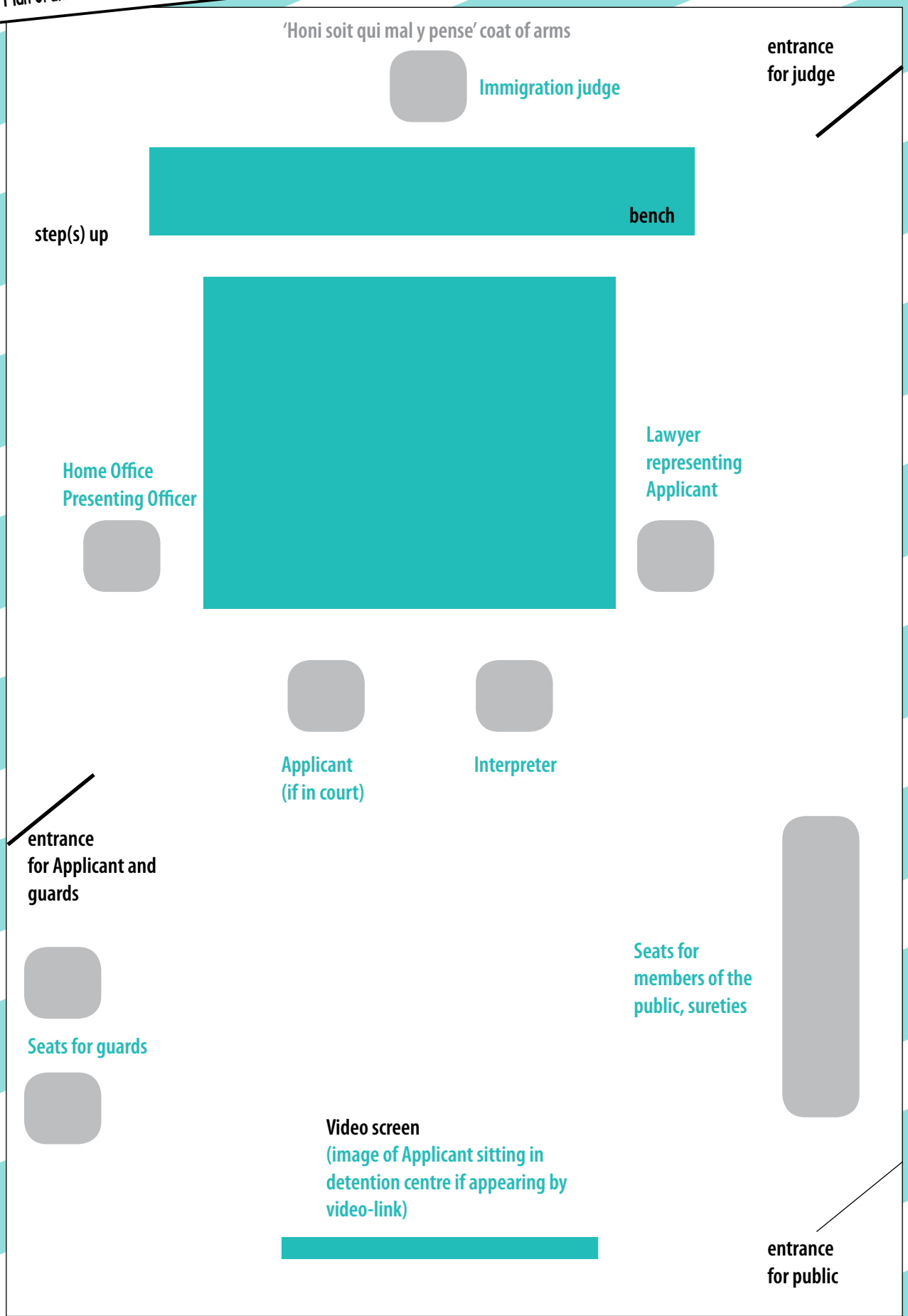
- the person resides at a specified address
- the person reports regularly (e.g. to an immigration officer)
- the person comes back before an immigration judge after a fixed period of time
- the person gives a recognizance (money that he/she may forfeit on breach of a condition of bail)
- another person/other persons stand surety (money they may forfeit if the person breaches a condition of bail)

A court room at Taylor House, London

8 In 2010, the UK Border Agency amended the policy such that certain of these categories became qualified by the phrase "which cannot be satisfactorily managed within detention" relating to care needs, illness and disability.

9 http://www.legislation.gov.uk/uksi/2001/238/contents/made

Plan of an immigration court (Columbus House, Newport)



1.4 An immigration bail hearing

A person in immigration detention may apply to an immigration judge for bail. To do so, he or she must fill out and send a bail application form. A date will then be set for the bail hearing to be listed.

Before the hearing, the UK Border Agency should supply, by 2 p.m. the day before, a bail summary – a document setting out why the UK Border Agency opposes bail. If the bail summary does not justify continued detention, then it should normally follow that bail is granted (*It is for the immigration authorities to justify the need for detention*. – para 11 of the *Guidance* to immigration judges).

A person applying for bail may be legally represented, though many people applying for bail are not represented. The person may not appear in person, but 'attend' the hearing via video link from the centre where he or she is detained. Those held in prison under immigration rules are brought to the hearing by escorts.

At the bail hearing will be: the applicant (possibly appearing via video link), the immigration judge, court clerk, Home Office presenting officer (HOPO), and possibly a legal representative (for the applicant), interpreter, sureties, families and friends of the applicant, members of the public (we observed none of the latter, apart from ourselves as observers).

1.5 The role of the immigration judge

In deciding whether or not to grant bail the immigration judge is meant to ensure that the applicant receives a fair hearing. The *Guidance* for immigration judges on bail hearings[10] is not binding, but *Immigration Judges should have regard to this guidance when considering bail applications and may need to give reasons if it cannot be applied in a particular situation* (para 3).

If the applicant is not represented, the judge's role may need to be more proactive, and to take positive steps to ensure fairness. As well as the points listed under 'What should be apparent' below, the judge, may need, if there are sureties, to establish how the surety knows the applicant and why the surety considers the applicant will abide by any conditions if bail is granted.

The judge will give the presenting officer (HOPO) an opportunity to speak and allow him/her to ask questions of anyone who has given evidence (including the applicant). The judge should ensure that the applicant hears and understands what the presenting officer says; and has an opportunity to answer any of the points the presenting officer makes.

Immigration judges sometimes divide bail hearings into two parts, first considering whether bail should be granted or refused in principle, and second, if in principle bail may be granted and a surety is required by the judge, asking questions of any surety to see whether the surety is satisfactory.

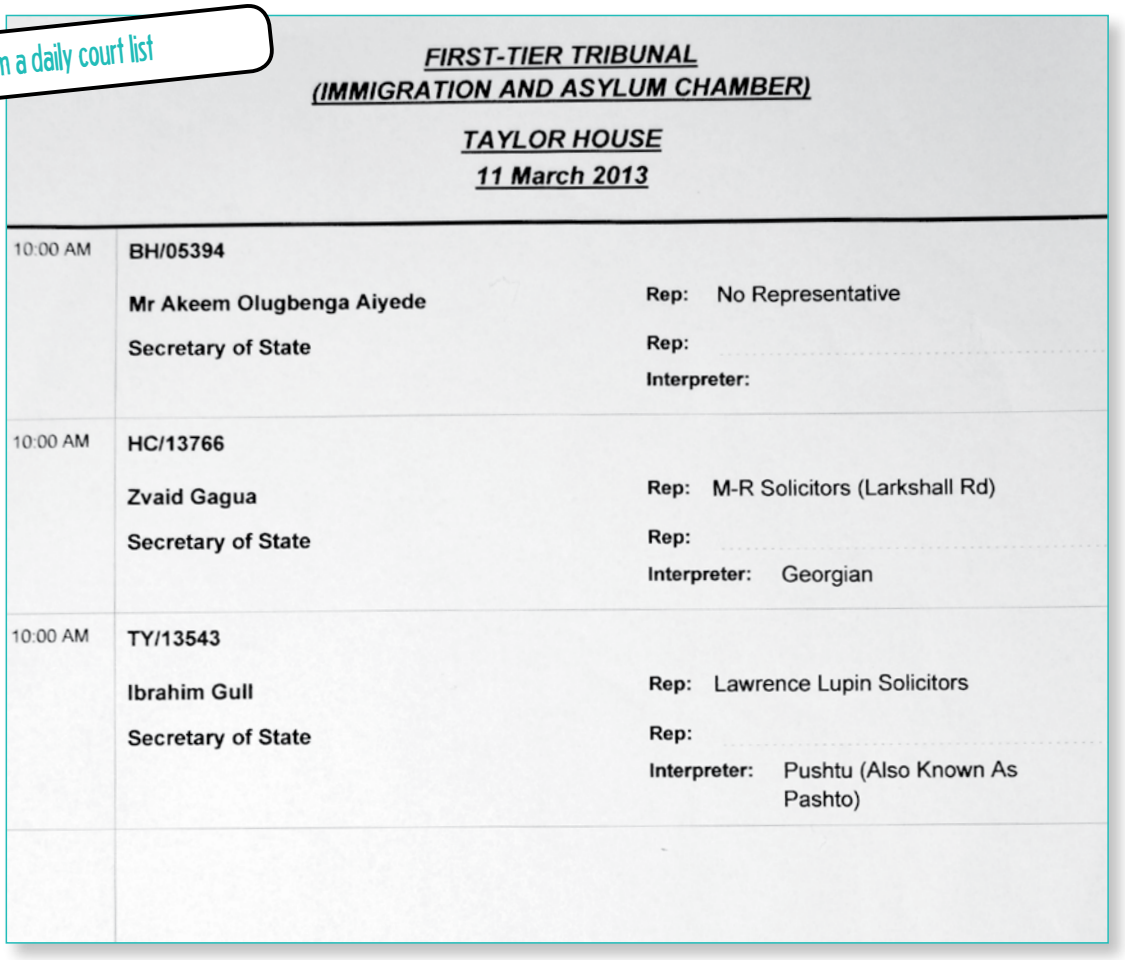
1.6 What should be apparent in a fairly conducted bail hearing

- The bail summary has been made available to the applicant (and legal representative if any) by the day before the hearing.
- The applicant and legal representative have had sufficient time to talk before the hearing.
- The applicant can hear and understand what is said and what is happening throughout.
- The applicant (or legal representative) is given sufficient opportunity to explain why bail should be granted and to challenge points in the bail summary and others made by the HOPO.

10 Available at: http://www.justice.gov.uk/downloads/guidance/courts-and-tribunals/tribunals/immigration-and-asylum/lower/bail-guidance-for-immigration-judges.pdf

- Before the hearing the immigration judge explains the procedure that will be followed and, later, any departures from it.
- If the immigration judge refuses bail, he/she explains why.
- The immigration judge ensures that the hearing is conducted in a clear and courteous manner.
- The immigration judge ensures that the applicant, if without a lawyer, has a proper opportunity to make the case why he/she should be granted bail.

A page from a daily court list



FIRST-TIER TRIBUNAL
(IMMIGRATION AND ASYLUM CHAMBER)

TAYLOR HOUSE
11 March 2013

10:00 AM	BH/05394 Mr Akeem Olugbenga Aiyede Secretary of State	Rep: No Representative Rep: Interpreter:
10:00 AM	HC/13766 Zvaid Gagua Secretary of State	Rep: M-R Solicitors (Larkshall Rd) Rep: Interpreter: Georgian
10:00 AM	TY/13543 Ibrahim Gull Secretary of State	Rep: Lawrence Lupin Solicitors Rep: Interpreter: Pushtu (Also Known As Pashto)

These lists are available on the Home Office website – http://www.tribunals.gov.uk/ImmigrationAsylum/DailyCourtLists/dailyCourtLists.htm after 2 p.m. the day before a hearing.

The cases referenced with two letters (indicating detention centre where the applicant was first held), a slash, and five digits, like these, are the bail applications to be heard on that day. BH = Brook House, HC = Short term holding centre, TY = Tinsley (House)

The lists posted in the court house / hearing centre on the morning of the hearings give the number of the court room in which the applications will be heard and the name of the judge.

CHAPTER 2

What we observed

> *The right to liberty is a fundamental right enjoyed by all people in the United Kingdom, whether British citizens or subject to immigration control. It is a right established in common law as well as protected by the European Convention on Human Rights*

This powerful affirmation of fundamental freedoms forms the opening paragraph of the *Bail Guidance* for judges.[11] It is followed, however, by a caveat:

> *There are occasions where a person may be legitimately deprived of their liberty including when the immigration authorities are investigating whether a person who is not a citizen is entitled to enter or stay in the United Kingdom or where a decision has been made to remove a person from the country.*

This chapter gives the findings from our survey and compares what we observed in the courts with the *Guidance* provided. We look at the role and responsibilities of the judges, their relationships with others in the court including the Home Office presenting officer (HOPO), the bail applicants and their sureties. We also comment on the bail process and the key factors that, in our view, enable or impede a fair hearing.

To give a rounded picture, we have not just concentrated on variations in use of the new *Guidance* between judges; in truth in some instances it seemed not to have been followed. We have tried, instead, to give a picture of each stage and each 'player' in the process, drawing on our 212 hearings. The picture that emerges from these observations then allows us in a limited way to comment on the impact of the new *Guidance*, which we do in our conclusions and recommendations.

Immigration judges are now known formally as First Tier Tribunal Judges. However, since their responsibilities and roles have not changed and, to distinguish them from First Tier Tribunal Judges not presiding over Immigration and Asylum hearings, we refer to them as immigration judges, or simply 'judges', in this report .

2.1 The judges

> *The primary function of a First-tier Tribunal Judge at a bail hearing is to undertake a risk assessment to decide whether bail is appropriate. A First-tier Tribunal Judge will consider all the evidence provided in order to decide whether maintaining detention is proportionate in the applicant's circumstances. (para 27 of the Bail Guidance for Judges)*

11 Tribunals Judiciary, Immigration and Asylum Chamber, Mr Clements (2012), *Bail Guidance for Judges Presiding over Immigration and Asylum Hearings*, Presidential Guidance note no. 1 of 2012 (implemented on Monday 11th June 2012), page 2.

Forty-four judges were observed overall in 212 hearings involving 220 people (179 men and 39 women, from the 218 applications where we knew the sex of the applicant). There was startling variation in the judges' approach, and no apparent common standard. Observers commented on some judges who set a standard: they were polite to all the parties in the court, meticulous in explaining the process and in dealing with the paperwork (e.g. T51, T62, T67, T72, H19, H36). One judge ensured at regular intervals that the applicant understood what was going on and explained why there was a pause/silence so that a document could be read or copied (N25). Such hearings did not necessarily result in granting of bail, but to the lay eye the applicant had received a fair hearing.

One volunteer commented on two judges she had observed who were both *very active in the hearings; both of them addressing the applicants directly, rather than talking only to their representatives. Both of them despatched their cases efficiently … Judge … had read all the papers and documents submitted and summarised the essential issues...they asked questions of both HOPO and applicant/ representatives and sureties..to get all relevant last minute information and arguments, and then announced their decisions.* This volunteer is very familiar with bail hearings and described this experience as *unusual* rather than the norm. (Hatton Cross bail hearings, 27 June 2012)

However, there were also many judges who were not so prepared, spent little time on the hearing and fell short of the standard described above. The same judge might also behave differently with different applicants, for reasons that were unclear to observers. One observer commented on this in regard to a judge who had questioned the bail summaries and also the length of detention in the first two hearings but asked no such questions in the third (H7). Sometimes the time of day seemed to make a difference. In one case the observer commented that the last case on a Friday evening did not receive the same care and attention from the judge as the first of the day (N5). Perhaps the comment of one observer should be noted *This judge can be irritable and testy. However, he is also very fair* (T25).

Table 1: What judges did

Did the judge … ?	*Yes*	*No*
Explain clearly to all parties present how the hearing will proceed *[n=183]*	115	68
Introduce all parties to the applicant *[n=166]*	128	38
Ensure that all parties had the same documentation to refer to *[n=168]*	116	52
Appear to listen to the applicant/legal representative *[n=184]*	173	7
Allow the applicant/legal rep time to present the case *[n=176]*	161	15
Guide the applicant in presenting the case when not represented *[n=77]*	35	42
Allow the applicant to give evidence freely *[n=165]*	100	65
Appear to listen to the HOPO's representations *[n=166]*	159	7
Ensure at regular intervals that the applicant understood what was happening *[n=166]*	57	112
State in simple language and give clear reasons for granting or refusing bail *[n=167]*	133	34

Reasons for refusal of bail

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Reasons For Decision

Bail is refused.
The (A) has a history of overstaying, working illegally and using false documents which resulted in a prison sentence of 15 months and deportation proceedings.

The (A) unsuccessfully appealed the Deportation 2 years ago and is now seeking relief in the Asylum Tribunal.

It is entirely probable ~~that he never~~ removal will be served in detention as because if unsuccessful and also the (A) history shows he is unreliable.

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179x

02-11-11;12:10PM;

Reasons For Decision

① Bail refused on 27/9/11

② No material change in the circumstances since then

③ Highly likely to abscond if granted bail.

The statistics do not reveal the nuances in a situation. It is difficult to quantify the manner in which the business of the court is conducted, and in which the approach of the judge plays a key role. In a case where the applicant had been picked up in an Indian restaurant, the judge commented that Bristol had excellent Indian restaurants and went on to say that the English Defence League had marched there the previous weekend, and said perhaps they had sent for a curry afterwards. The interpreter dutifully translated the comments (N22).

In a case where it is recorded that the judge listened to the legal representative, it was the observer's opinion that, despite doing so, the judge *appeared to have made up her mind* (S12) in advance. In half of all hearings the judges did not ensure that the applicant understood what was happening throughout the process. Sometimes interpretation was non-existent, poor or patchy. Sometimes judges focused entirely on the representations made by the Home Office presenting officer or the applicant's lawyer. Sometimes the applicant was just ignored until the bail decision was announced.

2.1.1 Attitudes to risk

> *A bail hearing takes the form of a risk assessment.* (Guidance, para 28)
>
> *It would be a bold judge indeed who would release you.* (S25)
>
> *You are a terrible bail risk but I'll grant bail today. I hope you'll prove my pessimism wrong.* (H6)

Different judges had different approaches to risk, as can be seen in the quotations above. In the second case, the applicant, a Kurd from Iraq, had been detained for 10 months and there seemed little immediate prospect of deportation. He was one of the few applicants who was granted bail without sureties. One judge decided that the applicant's health concerns outweighed the risk of his absconding while out on bail (T17).

It seemed to us that attitudes to risk were demonstrated in the questioning of sureties. This could be lengthy and involved detailed cross-examination. In one case the judge wanted to know the precise distance between the home of the surety and the applicant. *We're talking about five minutes on foot are we [or by bus]?* (T58)

In a case where the applicant had been convicted of a minor offence, the legal representative quoted from the *Guidance* (para 11), which states that a person cannot be subject to immigration detention simply because there is a risk of re-offending. Bail was granted (H66).

In a similar case, the judge referred to the many offences for which the applicant had been convicted but concluded: *I can't keep someone in custody just because he might commit an offence. We could all be in custody on those grounds* (T25).

2.1.2 Approaches to flexibility

The discretion open to judges could be exercised to negative or positive effect . In a very difficult family situation with political dimensions, the judge made a variation of bail conditions for one day to resolve the issue. The observer felt that the judge *behaved impeccably ... listening to all parties* (S36). It should be noted that this was a hearing where the applicant was present in person, so there was more opportunity for personal connection than is possible with video link. One judge had a flexible approach to sureties in a case that was described as *very knife edge* (T18).

Two observers commented that they found one judge rather inflexible, applying a restrictive view of the judge's function even when he was basically sympathetic to the situations of the bail applicants.

Reasons for refusal of bail

25-11-12;04:41PM; # 3/

Reasons For Decision

(i) It is common ground between A & R that A. has entered the UK illegally on 3 occasions and has been removed to Italy pursuant to the Dublin Convention. A has demonstrated a disregard for the UK's immigration laws and controls.

(iii) A must regret that Italy accept A has been made ; an outcome is expected in 2 weeks. There is no reason to believe Italy will not, on this occasion, accept him. There is currently no stay on removal to Italy. A could be removed to Italy within a reasonable period of Italy according to the UK's legal. A's removal from the UK is therefore quite likely to be imminent.

Signed [redacted] Immigration Judge

Date: 29 November, 2012

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Page 2

TY/13937

Many judges were neither sympathetic nor flexible. An applicant asked if the hearing could be postponed until later in the day as his surety had a long journey and appeared to be delayed. This was denied (H26). In another case, the applicant had not received the bail summary in advance and had only heard, when he was woken at 6.30 a.m., that the hearing was to be held that day. He was refused permission to phone his surety (T28).

In one case (S42), where bail was refused, the observer felt that the case had been predecided, the sureties were not invited in, and letters of support were ignored.

One HOPO, commenting on the flexibility allowed to judges in court procedure said privately to the observer that unlike in appeal hearings where there is a strict procedure to follow, *In bail hearings judges do what they like.*

One judge described the hearing process as *an art rather than a science* (H29). The observer commented that this judge had ignored UKBA policy on not detaining children and people with mental health issues. In the observer's view, it would have been preferable if the judge *had been obliged to stick to some rules.*

2.1.3 Bail in principle

> *Where a First-Tier Tribunal Judge would grant bail and order release but for the fact that a relevant document is not available, the judge may grant bail in principle and order that release should be delayed for 48 hours for the document to be produced. If the document is produced to the Tribunal within the set period, and is satisfactory, the order for release can be completed without any further hearing.* (Guidance, para 48)

One judge referred to this flexibility in the *Guidance* and made use of it to grant bail, pending the receipt of an agency letter (T19). Another judge used this provision, indicating that bail would be granted if suitable bank statements were submitted within a 48-hour period (T11). It is possible that this flexibility is not used very frequently as the observer of this hearing, who has substantial experience of bail hearings, described this as *unusual* and *creative.*

In another case, where the bank accounts of the sureties were overdrawn, the legal representative suggested that bail in principle could be granted giving time for the sureties to come back with acceptable statements of account. The judge said *I know the guidelines say this but we have no bail summary, so I can't give bail in principle.* In fact the *Guidance* states that *the absence of a bail summary is not of itself a reason to grant or refuse bail or to invite withdrawal of the application* (para 6). However, in this case the representative decided to withdraw the application (T13).

Generally, judges followed a two-stage process in which bail was decided in principle and, if agreed, this was followed by further checks on the same day – sometimes involving phone calls and the production of documents – and the cross-examination of the sureties.

There was one judge who did not follow this usual pattern, preferring instead to look at the case *in the round* before making a decision (T68).

Some judges allowed for no flexibility, demanding up-to-the-minute bank statements which had to have been obtained that day. One judge adjourned the hearing so that the surety could obtain a current balance from an ATM machine and, referring to a statement that was two weeks old, said *You might have spent it* (H39). Later that day, in another case (H41), the same judge was challenged by the legal representative, who quoted the *Guidance* (para 43), and the judge then accepted that a two-week-old statement was acceptable.

2.1.4 Adjournment

The flexibility offered by the provision of bail in principle does not extend to enabling a case to be adjourned. One judge commented : *Unfortunately there is no provision in the guidelines to adjourn a hearing* (T65). This judge advised that the bail application be withdrawn, to avoid a negative record, and arranged to be in court for the next hearing of this applicant when issues over the bail address had been resolved. The HOPO had said he had no objection to bail but the proposed accommodation address had not been visited and approved by the probation officer. Without this, the applicant, if released on bail, would be in breach of the licence conditions.

It was suggested by one barrister to whom we spoke that a provision for adjournment could reduce costs and improve efficiency. However, at the Stakeholder meeting on 21 January 2013, it was argued by Mr Clements that it is cheaper and quicker to withdraw and then re-apply.

2.2 The Home Office presenting officer (HOPO)

> Applicant: *Home Office, judge: they are working together. (H 67)*

The judges' relationship with the Home Office presenting officer varied a great deal. In many instances, the HOPO said very little, or even nothing, pointing to the Home Office case as presented in the bail summary, and they were not asked to provide evidence for the statements contained in the bail summary. In the majority of cases (142), judges appeared to accept the case presented by the HOPO without question. In the words of one observer, judges often seemed to be doing the Home Office's work for them. *The judge was totally partial to the HOPO and protected (the) Home Office, e.g. over not knowing the recorded delivery letter had not been served and ignoring the effect of this on the case* (S32). In this case the observer was *appalled at the lack of courtesy* from the judge to both applicant and sureties.

Often the HOPO cast doubt on the credibility of the applicant. For example, in a family case, the HOPO argued that the applicant was not the father of a young daughter as the applicant and the child's mother claimed. In the same hearing the judge said *I see that you have never lived with the mother and child.* It was pointed out that the applicant had been in detention throughout this time, thus preventing him from living with them (H50). There was a complete lack of understanding of tragic family circumstances in another case. The HOPO argued that the applicant had failed to comply because he said he did not know where he was born or the names of his parents and siblings. They, it emerged, had all been killed when he was very young, and he was brought to the UK when he was eight by his aunt, whom he called mother. When she died a year later he and his cousin were treated as siblings by Social Services, who took them into care (T49).

Not all judges accepted the Home Office case. In just over 10% of cases (25) the judges were explicit about the flaws in the Home Office paperwork or the HOPO's presentation of the case. Documentation was inadequate, contained inaccuracies and was not in good order. Several judges expressed irritation at the poor paperwork produced by the Home Office (N6, S45). One judge called the Home Office documents *a dog's breakfast* (H30). Another judge was described as being very angry about the inaccuracies in the bail summary and said to the HOPO: *Please speak to whoever wrote the bail summary. It is totally misleading, and a waste of public money*. The HOPO spoke frankly to the observer later saying: *He's right about wasting money because they took him to the airport, and there was a judicial review to stop him being deported. It all costs money and is not at all necessary if they had written the truth* (T22).

There were several occasions when the judge corrected the HOPO (T20), criticised the HOPO (T33), or, in the words of one observer *gave the HOPO a ticking off* (T38). In response to a HOPO who had said that a decision would be made in a week, one judge commented: *If we'd asked last week that's what they would have said* and added that he had done this work so long that he was cynical about the Home Office (N1). The same judge, at a different hearing, demanded to know of the HOPO: *What on*

*earth is going on? a*nd commented that there had been a *persistent failure by UKBA to review the case* (N4). The result of this delay was that the detainee had been held in detention for nearly six months after having completed a prison sentence and the judge commented that it was unfair to detain him longer. In another case, the legal representative pointed out that a serious conviction had been quashed and the judge asked the HOPO why this had not been picked up or mentioned in the bail summary. This was not, he said, *an exercise in cherry picking* (N6).

One applicant denied the Home Office claim that he had been served with removal directions and the judge pointed out that the date of the alleged removal directions was prior to the case having been considered. The HOPO left to take instructions and returned 20 minutes later saying that she still didn't understand. She agreed that there were no current removal directions (T20). In one instance, the HOPO arrived an hour late (H45) and in another was absent altogether. The lack of a bail summary for one applicant was attributed to an office move by UKBA (T13).

Sometimes the HOPO was seen to be interpreting the information in a manner prejudicial to the applicant's case and was challenged by the judge:

> HOPO: *You didn't tell the authorities when you overstayed your visa.*
> Judge: *No, he asked for entry outside the rules and was refused...removal is not imminent.*
> HOPO: *We don't have a date but his history suggests he won't comply (with bail conditions).*
> Judge: *He did comply. (T18)*

Sometimes the HOPO was tenacious in pursuing the argument for detention. In one case, the applicant had been granted bail and then, three weeks later, detained again. The HOPO argued for continued detention, but the judge did not accept the reasons given, said there was no risk of absconding and pointed out that the applicant had complied with bail conditions (T48).

The issue of fingerprints arose in three cases. In one case, the Home Office alleged that the applicant had claimed asylum in France and subsequently damaged his fingerprints so that he would not be recognised, and sent back there. The applicant, who did not have a legal representative, denied this and the matter was still under consideration with the French authorities. The applicant did not know why he had been detained. *Is it to put me under surveillance? I want to seek asylum.* According to an independent medical report, he was a torture survivor, but was still refused bail (N20). In another case, it was stated in the bail summary that the applicant had deliberately damaged his fingerprints. Neither the judge nor the applicant's lawyer was satisfied with the Home Office response (H4) and bail was granted. The question that never seems to be asked is what dreadful circumstances lead people to inflict such pain on themselves.

In some cases the HOPO did not oppose bail (H12 , T7, T70 T21). In one striking instance, the HOPO not only agreed to bail but spoke in support of the applicant (T70): *Although officially I have to oppose bail, if you look at the bail summary he has been behaving well … we have no relations with Iran and therefore deportation is not imminent. It will be a long time before he is documented. He has a wife and children and his crime was embezzlement, so not strictly speaking a threat.* The judge pointed out that it must have been a serious fraud since the applicant had served a four-year prison term. To this the HOPO replied: *Yes, but he has served his sentence.* Of one HOPO, the observer said: *the HOPO doesn't fight when thinks the Home Office is wrong* (T25). On occasion, the HOPO was implicitly critical of the Home Office (T22). Throughout the hearings there was a sense that Home Office processes were dysfunctional and a few HOPOs were uncomfortable with their role.

2.2.1 The bail summary

The bail summary is the document which outlines the Home Office case for opposing bail. The deadline for the applicant to receive the bail summary is 2.00 p.m. of the day before the hearing. However, in 11 cases we observed, the applicants or their lawyers had not received the summary in advance of

the hearing.

In five cases there was no bail summary at all. The 2003 *Guidance* made provision for the automatic right to bail in the absence of bail summary. This seems to have been removed, but the current *Guidance* appears contradictory. Paragraph 6 states: *where the bail summary is absent the judge may be able to infer the reasons for detention from other available information. Absence of the bail summary is not of itself a reason to grant or refuse bail or to invite withdrawal of the application.* In a note[12] on the guidelines issued in 2011, we commented: *It is not clear what this information is likely to be, or its source. In such a case it would appear that the applicant would not have the opportunity to see the information in advance of the hearing. This is a cause for concern.*

However, paragraph 10 of the *Guidance* appears to contradict paragraph 6, stating that *the failure of the Secretary of State to file and serve a bail summary will be taken seriously and on the basis that the application may be regarded as unopposed.*

In our first report, we recommended that in the absence of a lawyer to represent the applicant, the judge should question the bail summary. The *Guidance* does not address this.

One applicant said he had not seen the bail summary (H49), to which the judge responded : *I find that hard to believe ,* and asked the HOPO to obtain confirmation from the detention centre that the bail summary had been received. No such confirmation was forthcoming from the phone call, thus vindicating the applicant, but also illustrating the culture of disbelief which pervades the asylum and immigration system.

An example illustrative of inaccuracies in the bail summary was a case where the bail summary stated that the applicant's working holiday visa had been for six months only. In fact it had been for two years and, when challenged, the HOPO agreed that such visas were always for two years (T72).

There was one example of a positive reason for the lack of a bail summary; the HOPO explained that this was because UKBA was not opposing bail (T21).

A third of applicants required an interpreter during the hearing. It might be thought, therefore, that the bail summary would have been translated in advance, but judges did not ask if the summary had been translated for non-English speakers, so we have no findings to report. A member of the group with substantial experience of preparing applicants for bail hearings had never come across a situation where the bail summary had been officially translated in advance. Anecdotal evidence suggests that there is an informal 'internal market' within detention centres where detainees translate documents for one another for a fee. This is the subject of our Recommendation R7.5.

In the majority of cases (138), applicants or their legal representatives were allowed time to question the HOPO, and in 93 out of 172 cases the bail summary was challenged for inaccuracy or false statements. However, in only a very small number of cases (26) did the judge require the Home Office to produce evidence to support statements made in the bail summary. In the majority of cases (142 out of 168 for which the information was recorded), the judge allowed the bail summary to go unchallenged and did not require the Home Office to provide evidence for the statements made (such as those in the table below). Some reasons put forward by the Home Office for refusing bail are given in Table 2.

12 *The new Bail Guidance for Immigration Judges: Will it make any difference? – A Note from the Bail Observation Project, September 2011*, reproduced in Campsfield Monitor, November 2011. http://closecampsfield.files.wordpress.com/2011/03/ccc-monitor-nov-2011-for-website.pdf

Table 2: Reasons put forward by HOPO for refusing bail (n=102)

Removal imminent	53
Likelihood of absconding	68
Likelihood of reoffending	38
Danger to the British public	14
Travel documents could be produced shortly	40
Unwilling to cooperate with removal	37
Other	4

Note: More than one reason may be put forward by the HOPO, so the total number of reasons is greater than 102.

No timescale was given when it was claimed that removal was imminent. Indeed, in one case, the HOPO admitted: *I always have to say that removal is imminent.* (T25) In another instance, the legal representative referred to Lord Justice Richards' finding that if removal was not likely to be effected within two weeks, it was not imminent. (S9) One judge said: *If you can't tell me when there is any possibility for him going shortly, I will grant bail.* (N30)

2.3 The applicant

Most of the applicants we observed were being held in eight different detention centres. Twenty were being detained in prison. There were 179 men and 39 women (n=218) and seven applications were held in absentia – the applicant was not in court.

Applicants came from over 40 countries. They included asylum seekers, those who had entered the country legally and overstayed their visas, those who had entered irregularly, and foreign national ex-offenders who had served a prison sentence and were being held pending deportation. More than a third (92) of all applicants required an interpreter. A quarter of applicants (56) came from the South Asian countries of Bangladesh, India, Pakistan and Sri Lanka, and a further 10 applicants came from Afghanistan. It was not possible to ascertain the nationality of some applicants. One European Union national should not have been in detention at all (T37).

Applicants were frequently described in the bail summary as having a *poor immigration history* (S1, S9, S24 are three examples of many others). This could mean that they had entered the country irregularly (S24), had used false documentation (S1), or had entered legally and then overstayed (S2). In some cases, it seemed to the observer that the judge was giving a verdict on the immigration case rather than the case for bail.

The gap in understanding of the immigration rules can be seen in the following example. The applicant had entered the country legally, decided *I am loving this place* and found a job. So he went to the Home Office in Croydon to regularise his position, was told he had overstayed and was detained on the spot. On being asked by the judge what he would say to the Home Office charges that he had no regard for the immigration laws the applicant replied: *I have committed no crimes* (H11).

Another applicant, who had been in detention for nine months, said: *I'm 49, not a youngster, with a family* (H68). In one case, the bail summary referred to a *poor immigration history*; a report from the Poppy Project, which supports victims of trafficking, explained that the applicant had been a victim of trafficking (S40).

A number of applicants had an outstanding application under Article 8 of the European Convention on Human Rights, or an outstanding application for judicial review of a deportation decision. These are rights they are entitled to exercise by law. In more than one instance this was described by the Home Office as *frustrating removal* (S1, H4).

2.3.1 The voice of the applicant: A culture of silence and disbelief?

> *An institutional emphasis on truthfulness exists alongside an endemic image of asylum seekers as liars and opportunistic cheats. Chronic suspicion of asylum seekers is described as a 'culture of disbelief'.*[13]

Somali applicant: *I was not given the opportunity to say anything for myself. (N18)*

Judge, interrupting applicant: *Stop – you listen to me. (N5)*

Judge to applicant: *I don't believe one word of what you say. (T2)*

One of the key things to consider in examining the conduct of a bail hearing is to see whether at all times the immigration judge ensures that the hearing is conducted in a clear and courteous manner. The applicants' ability to participate is entirely determined by the judge. Some judges did ensure that applicants were aware of what was happening throughout the proceedings, but more than half did not. Where applicants have no legal representation, it is the responsibility of the judge to guide them through the process and some judges did so courteously and comprehensively (e.g. T62, S26), although in a majority of the recorded cases, they did not do so. Others were not asked to speak, and so did not, some were told not to interrupt (e.g. N29). Some judges were discourteous, calling the applicant a liar, using a hectoring tone or even shouting. In one case the applicant was quite literally silenced by the switching off of the video link (H35). One represented applicant was not permitted to speak, although she asked to several times (S26).

The credibility of the applicant was frequently called into doubt. For example, one HOPO claimed not to believe a woman who suffered domestic abuse and who feared she would be in danger from her husband's family if she returned to her home country following the failure of her marriage (S10).

One case shocked the observer. The judge did not ask if there was a bail summary, the HOPO said nothing throughout the hearing, the applicant had no legal representation but said he did not want to go home, had lived in the UK for 10 years, did not have a criminal record and wanted to claim the right to stay under the Human Rights Act. This was not pursued. Refusing bail the judge said: *This bail application is dismissed for reasons I am writing down and which you will receive*. The hearing was over in under ten minutes (T34).

13 Melanie Griffiths: ' "Vile liars and truth distorters": Truth, trust and the asylum system', *Anthropology Today*, vol. 28, no.5, October 2012.

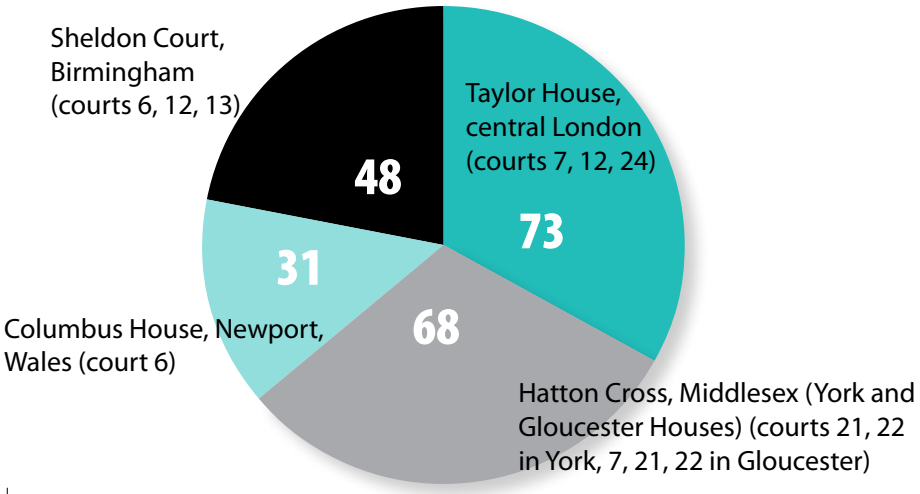
The bail hearings in numbers

The observations

220 bail hearings observed
41 days on which hearings were observed
4 hearing centres where hearings were observed
12 courtrooms
24 trained observers
10 months over which observations were made

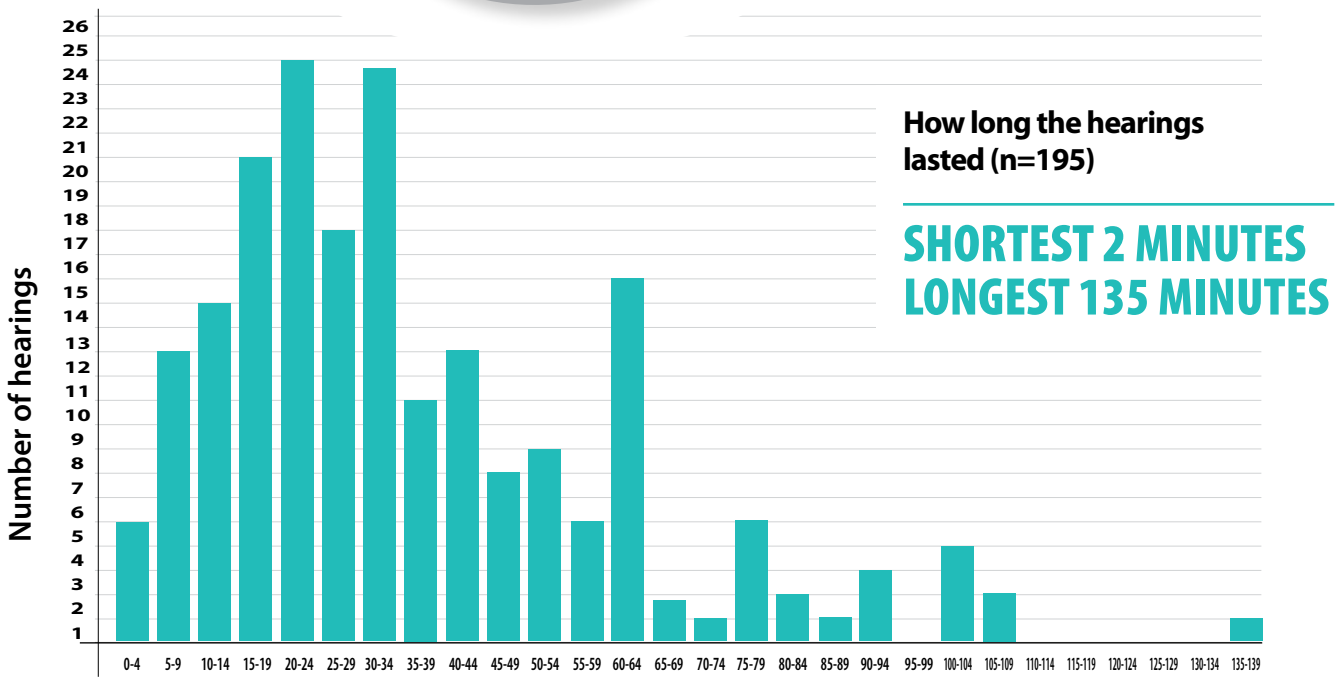
NOTE: At a small number of hearings, several applicants (usually members of the same family) were heard together; the number total of applications was 220, but the actual number of hearings observed was 212.

Where the hearings were observed (n = 220)



How long the hearings lasted (n=195)

SHORTEST 2 MINUTES
LONGEST 135 MINUTES

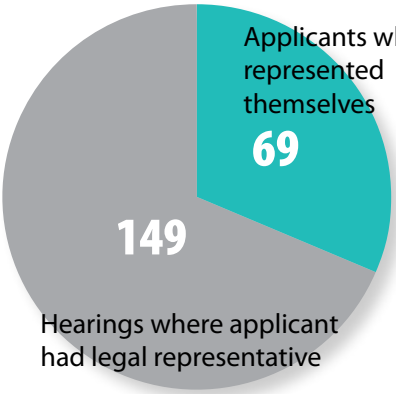


The bail hearings in numbers

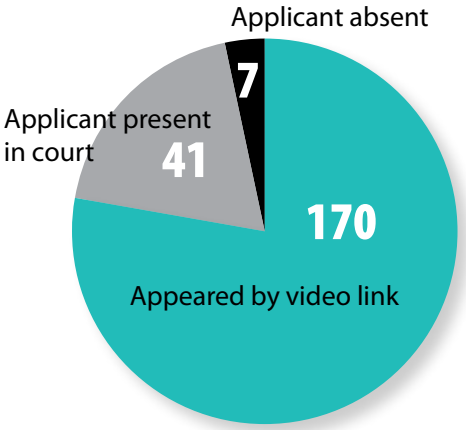
Who was in court and who wasn't

41 detainees present in person
41 hearings with escort guards present
170 detainees appearing by video link
7 not present at all
44 different immigration judges
12 different clerks/ushers for the 12 different courtrooms
149 hearings where a legal representative was present
69 detainees representing themselves
7 detainees not present at their own bail application
220 hearings (all) with Home Office presenting officer (HOPO)
92 applications with interpreter(s) present
3 plainclothes police officers
24 BOP observers
0 official monitors, journalists, or other members of the public
Applicant's sureties (when admitted), family/friends

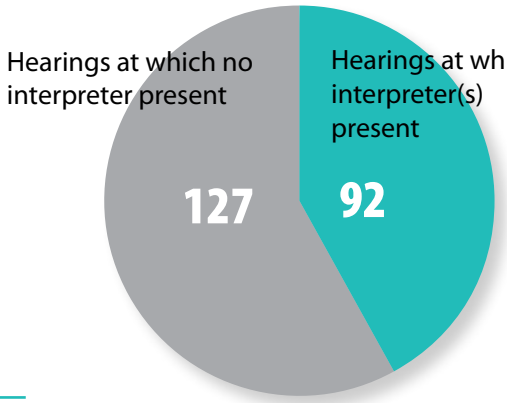
Legal representation (n=218)



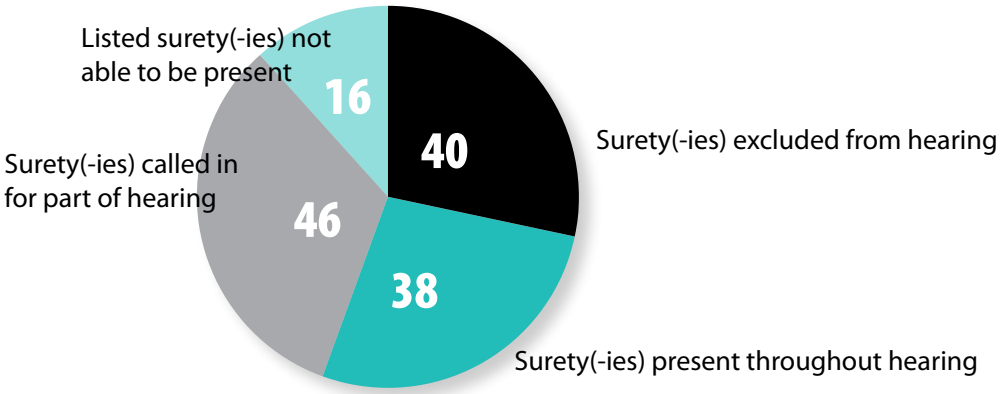
Attendance of applicant at hearings (n=218)



Presence of one or more interpreters in court (n=219)



Hearings at which surety(-ties) present (n=140)



About those seeking bail

Place of detention (n=141)

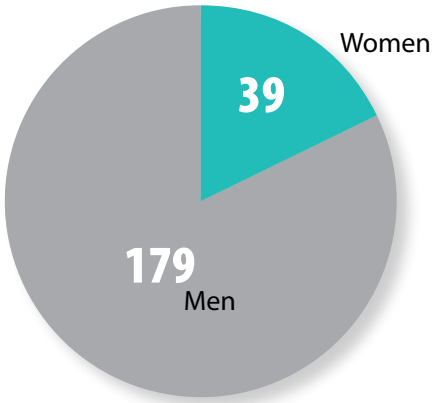
Detention centres
31 Campsfield
31 Yarl's Wood
28 Harmondsworth
17 Brook
11 Tinsley
2 each from Dover and Haslar

Prisons
5 Canterbury
2 each from Belmarsh and Dover
1 each from Bristol, Gloucester, Huntercombe, Pentonville, Wandsworth
8 in other prisons

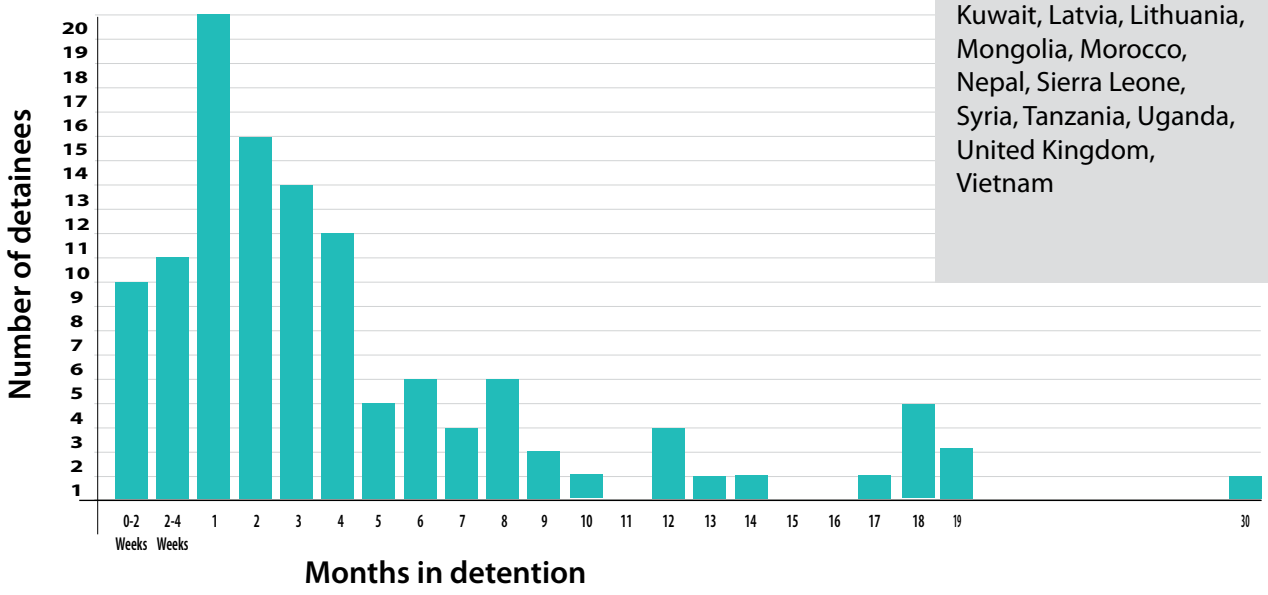
Nationality of applicant (n=181)

26 Indian
18 Nigeria
16 Pakistan
10 Afghanistan
10 Jamaica
9 Bangladesh
7 Algeria
7 Gambia
7Somalia
7 Sri Lanka
5 Albania
5 DRC
5 Ghana
5 Turkey
4 Kenya
3 Iran
3 Morocco
3 Sudan
3 Zimbabwe
2 China
2 Iraq
2 Poland
2 Portugal
2 Philippines
2 South Africa
1 each Cameroon, Chad, Cote d'Ivoire, Ethiopia, Kuwait, Latvia, Lithuania, Mongolia, Morocco, Nepal, Sierra Leone, Syria, Tanzania, Uganda, United Kingdom, Vietnam

Men and women applicants (n=218)



How long applicant had been in immigration detention (n=111)



The bail hearings in numbers

What happened at the hearing

Bail summary challenges (n=172)

79 HEARINGS WHEN BAIL SUMMARY NOT CHALLENGED
93 HEARINGS WHEN IT WAS CHALLENGED

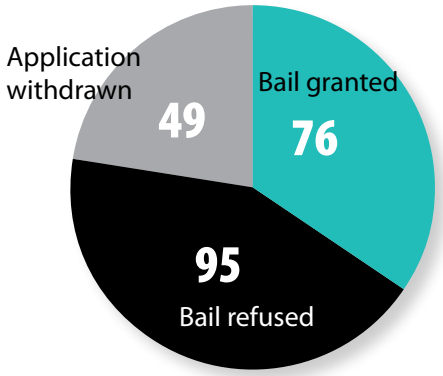
Bail summary available before hearing? (n=174)

163 HEARINGS WHEN IT WAS
11 HEARINGS WHEN IT WASN'T

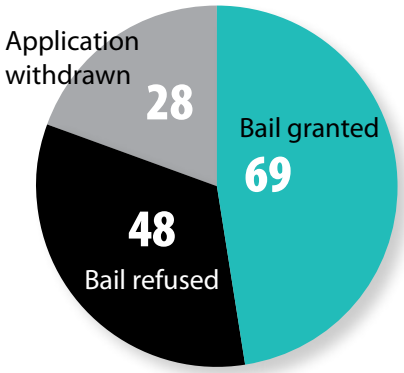
Hearings that went ahead (n=171)

95 BAIL REFUSED
76 BAIL GRANTED

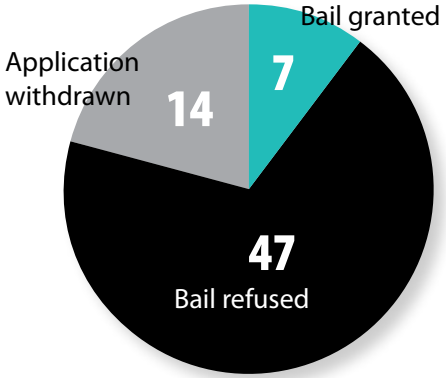
Outcome of hearing (n=220)



Where the applicant had legal representation (n=145)

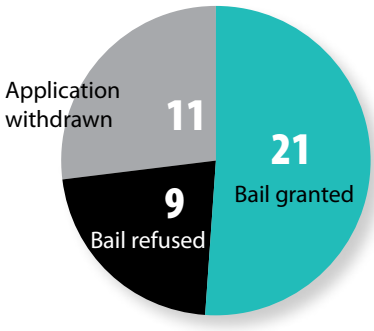


Where applicant represented himself/herself (n=68)

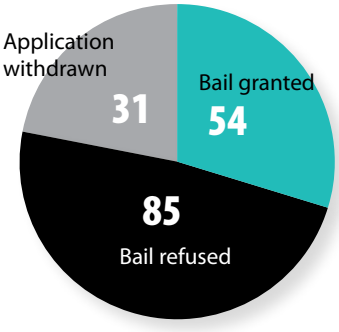


Outcome where presence of applicant known (n=218)

Where applicant was present in person (n=41)



Where applicant appeared by video link (n=170)



Where applicant absent (n=7)

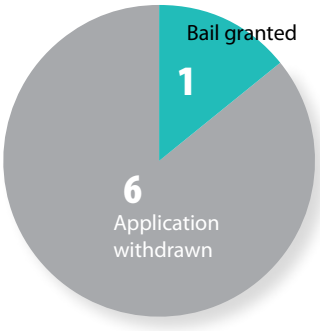


Table 3: Outcomes of bail hearings observed December 2011-September 2012, by hearing centre

	Total applications	Application withdrawn (% of total applications)	Bail refused	Bail granted	Success rate of applications listed in court (% of previous 3 columns)	Success rate of applications that were not withdrawn
Hatton Cross	68	14 (21%)	36 (53%)	18 (26%)	26%	33%
Newport	31	0 (–)	18 (58%)	13 (42%)	24%	24%
Sheldon Court	48	11 (23%)	19 (40%)	18 (37%)	38%	49%
Taylor House	73	24 (33%)	22 (30%)	27 (37%)	37%	55%
	220	**49 (22%)**	**95 (43%)**	**76 (35%)**	**35%**	**44%**

*Table 4: Outcomes of all bail hearings at those hearing centres, April 2011 to March 2012**

	Total bail applications received	Bail application hearings [figure in brackets is total of next 3 columns)	Bail granted	Bail refused	Application withdrawn /abandoned	Success rate if applications listed in court (% of previous 3 columns)	Success rate of applications that were not withdrawn
Hatton Cross	3369	3154 [3355]	597	1565	1193	18%	28%
Newport	720	585 [701]	180	331	190	26%	35%
Sheldon Court	1263	1103 [1253]	312	399	542	21%	44%
Taylor House	3651	3338 [3657]	869	1530	1258	24%	36%
Total of above	**9003**	**8290 [8967]**	**1959**	**3825**	**3183**	**24%**	**34%**
Total all hearing centres**	**11 459**	**10 470 [11 509]**	**2450**	**5065**	**3994**	**23%**	**33%**

*Percentage figures and the figures in square brackets are by the authors. All others as received from HM Courts and Tribunals Service in a reply on 24 July 2012 to a Freedom of Information request. In a covering letter, the Courts and Tribunals Service wrote, 'The sum of the allowed, dismissed and withdrawn cases will not equal the total number of applications because some of the decisions are made in a different time period from when applications are originally received.'

In order to provide a comparison with the % success rate of bail applications in the hearings we observed (shown in the previous table), we have calculated a new figure [shown in square brackets] for total bail application hearings which is the total of the three Granted, Refused, and Withdrawn/Abandoned figures. From this a % success rate has been calculated for Applications that proceeded to court. This may be a more meaningful percentage statistic.

** The other courts listed on the daily court lists web page http://www.tribunals.gov.uk/ImmigrationAsylum/DailyCourtLists/dailyCourtLists.htm are: Belfast, Bradford, Brentford, Dorking, Glasgow, Harmondsworth, Liverpool, Manchester, North Shields, Nottingham, Stoke on Trent, Walsall, Yarl's Wood.

2.3.2 Joint hearings

Although we documented 220 bail applications, we observed only 212 hearings. This was because, on a number of occasions, the judge decided to hear more than one application simultaneously.

A total of 16 applications were heard jointly with one or more others. In all cases, the applicants were of the same family, usually husband and wife, on one occasion a couple and the wife's sister. On two occasions, three applications were heard at once, on five occasions two at once.

Seven of these applications were successful, five were refused. Two were withdrawn because of problems with the accommodation address; on this occasion only the husband appeared by video link; his wife, the other applicant, did not appear on the video link. Two applications were marked down as 'withdrawn', although the reason the hearing did not proceed was that the couple had been released on temporary admission the day before.

All the applicants offered sureties, and all but three had a legal representative.

At one joint hearing, all three applicants spoke, as well as having a representative. Otherwise, only the man spoke. This meant that some voices – all women's – were not heard. As one observer said, *It was supposed to be a hearing for two people, but only one was given the opportunity to speak in court.*

Also of concern was the time allowed for legal consultation in joint hearings by video link: *The legal representative was told by the clerk that he could have a total of 10 minutes with his clients. He pointed out that he would normally have 10 minutes with each client. He was told the judge was waiting and that was all he could have.* This time allowance would be even more inadequate in joint hearings where interpreting was needed (S13, S14).

Despite these problems, observers seemed to think that on the whole it made sense and was not otherwise to the detriment to the applicants that these particular applications were heard together.

2.3.3 Foreign national ex-offenders

> Judge: *Because you have been so long in detention and before that expiating your crime I am granting you bail. (H23)*

A significant number, perhaps a quarter, of bail applicants were foreign nationals who were being detained after serving a prison term for a criminal offence. (Twenty-four people in our survey were definitely known to be foreign national ex-offenders, but actual numbers may well have been double that.) They are thus subject to double punishment. In addition, when served with a deportation order, they will lose refugee status or indefinite leave to remain. People can be stripped of their British citizenship by the Secretary of State if they have dual nationality.[14]

Deportation is now automatic for those who have served a sentence of one year or more, even though the ex-offender may have been in Britain for many years. Preparations should be made for deportation when offenders are reaching the end of their prison sentence, but there were several cases where the Home Office was still processing cases. The applicant in the case quoted at the top of this paragraph had been held in detention for two and a half years after completing a prison sentence. Another applicant had been held in detention for six months, and in granting bail the judge said that it was unfair to detain him longer as he had served his sentence (N30).

An article in the *Guardian*[15] reported that there are now more than 10,000 foreign nationals in British prisons – a number that has doubled between 2000 and 2010. It further stated that from April 2013, *it will*

14 http://www.guardian.co.uk/uk/2011/aug/15/home-office-law-dual-citizenship

15 Jon Robins in the *Guardian*, 12 October 2012, 'Foreign National Prisoners do not deserve blanket judgments', accessed 8 November2012 http://www.guardian.co.uk/law/2012/oct/12/foreign-national-prisoners-blanket-judgments

be impossible for foreign national prisoners who wish to challenge deportation proceedings to get legal advice from a solicitor unless they are able to pay for it themselves. The director of the Detention Advice Service, Nigel Caleb, is quoted as saying: *It is not right to subject someone to a serious sanction of deportation without giving them the means to understand the situation and to assert the rights provided for them by law,*

In the same article, Steve Symonds of the Immigration Law Practitioners' Association was quoted as having made the case for scrapping the automatic deportation provisions. He called it *a stupid policy position which does not give any more power to deport anybody, but which prevents sensible consideration of the circumstances of every individual rather than just the homogenous mass.*

Of the 17 people in our survey who were definitely known to be foreign national ex-offenders *and* for which we had all the following information,

- 9 had both legal representative and sureties, and of these 7 got bail, 1 was refused and 1 withdrew.
- 4 had a legal representative only, and of these 1 got bail, 1 was refused and 2 withdrew.
- 4 had a surety/sureties only, and of these similarly, 1 got bail, 1 was refused and 2 withdrew. After April 2013 people in this category will not be entitled to legal representation.

2.4 Legal representation

Good legal representation is key to a successful bail hearing. 68 applicants had no lawyer to present their case and of these only 7 (10.3 %) were granted bail. 47 (69%) were refused, and 14 withdrew their application. This compares with a success rate for those with legal representation of 48% (69 of 145). For full details see Table 5.

Table 5: Outcomes of bail hearings observed, according to presence or absence in court of the detainee, a legal representative for the detainee, and of sureties (n=218)

	Bail granted	Bail refused	Application withdrawn	Total
Applicant present in person				
+ legal rep + sureties	17	1	3	21
+ legal rep	2	2	3	7
+ sureties	2	2	3	7
On own	0	4	2	6
Subtotal	**21**	**9**	**11**	**41**
Applicant appearing by video link				
+ legal rep + sureties	44	33	12	89
+ legal rep	5	9	9	23
+ sureties	1	19	5	25
On own	4	24	5	33
Subtotal	**54**	**85**	**31**	**170**
Applicant absent	1	0	6	7
Total	**76**	**94**	**48**	**218**

Under the *Guidance*, applicants appearing by video link are permitted only 10 minutes consultation with their lawyer in advance of the hearing. The legal representative is usually a barrister with no prior knowledge of the applicant other than what they may have had time to read in documents from the solicitor. The time available may not be adequate in a number of circumstances, for example when an interpreter is needed, or when the bail summary, outlining the Home Office case for opposing bail, is delivered late or has not been translated for the detainee.

Some legal representatives challenged the court on the basis of the *Guidance* to judges. On one occasion (H41) this was about how up-to-date or recent a bank statement of a surety's account needed to be. On several occasions the duration of detention was referred to with reference to the remarks on the subject in the guidelines (e.g. H41, S22). One representative referred to guidance that sureties might not be necessary, depending on the applicant's circumstances (T14). In H66, the representative drew attention to the *Guidance*, paragraph 11: *risk of reoffending … is not a sufficient reason for detention*. In T47, the representative referred to guidance about the effects of continued detention on children of the detainee. In S22, the representative quoted the guidelines: *A parent with dependent minors is unlikely to abscond.* And there was a reference by one legal representative to the 48-hour provision in the *Guidance*.

In the absence of a legal representative, some judges gave the applicant advice, e.g.: *If you had a lawyer to speak for you, they could have told you that there are grounds for an appeal* ***inside*** *the country, e.g. that you have established a private life here. You said you have cousins here. My advice is that you get them to get you legal advice* (H 11). In another case, the judge suggested how the applicant might challenge removal, also saying that *you need a lawyer to do that.* (H10) Accessing legal advice and representation is not easy and one judge gave clear, simple but detailed instructions to an unrepresented applicant on what to do in re-applying for bail before advising that the current application be withdrawn (T67).

However, while legal representation is important, there were several cases where lawyers were poorly prepared, and instances where the judge commented critically on the quality of legal advice given to the applicant. Comments from observers included: *The barrister was poor* (N19); *The applicant's representative seemed to be inadequately prepared for the hearing. He was given ample opportunity to make submissions, but did not seem to be very familiar with the applicant's case, and did not adequately counter the HOPO's submissions* (S19). The legal representative of one applicant commented that the firm who had represented the applicant previously *should have applied for bail months ago* (T52).

2.5 Sureties

> *An immigration judge may require an applicant for bail to produce sureties. This should not be an automatic requirement and the Judge must have due regard to the fact that people recently arrived in the country may have nobody to whom they could expect to stand surety for them.*
> *(Guidelines, para 39)*

> *It is unusual to grant bail without sureties but . . . you came as a minor . . . you have a case before the High Court.* *(H28)*

> *The judge says that he never grants bail without a surety. . . the applicant withdrew.* *(T1)*

Although, in principle, bail may be granted without sureties, this is unlikely to happen in practice. Sureties play a key role in risk assessment providing a guarantee that the applicant will comply with bail conditions and not disappear. Bail was granted in only 12 out of 77 cases where applicants didn't have sureties and there were instances where the application for bail was withdrawn when it became evident that the sureties were not present (e.g. T9). In one instance where three sureties were listed on the application and one was not able to be present, the judge said that it was not possible to

change the number of sureties from three to two and as a result the application was withdrawn (T29). In another case, the surety was unable to attend. He had sent a doctor's note to say that he was unfit to work. The judge commented that this did not mean that the surety was unfit to attend court (S12).

Other judges showed more flexibility. For example, where one of two sureties turned out not have enough money the judge settled for one surety and did not ask that surety to increase the amount of recognizance offered (T18). In another instance where funds were an issue, the judge reduced the recognizance of the third surety from £1000 to £200. Bail was granted (T45).

Table 6: The sureties

	Yes	No
Did Applicant have sureties? *(n=216)*	144	72
Did Judge require Sureties to grant bail? *(n=125)*	100	25
Did Judge treat the Sureties with courtesy/Were matters explained to Sureties? *(n=109)*	90	19
Was amount of recognizance an issue for granting bail? *(n=100)*	36	64
Were the sureties offered acceptable? *(n=91)*	68	23

Different judges had different approaches to sureties. One judge invited sureties into the court for the full duration of the hearing. He pointed out that he was not required to do this, but regarded it as *a matter of courtesy* because they had travelled a long way (N1). In other cases, the sureties were only invited into the court at the point where bail was approved in principle, and were then questioned about the extent of their familiarity with and influence over the detainee.

On numerous occasions, sureties were asked, either by the HOPO or the judge, the same two questions:

1) If X absconded what would you do?
In one case, the detainee's fiancé responded that he would go and look for her. This was deemed to be an unsuitable response. He had not been briefed as to the acceptable reply. (*I would immediately inform the UKBA.*)

2) If the Home Office has decided that X must go back to their country, what will you do?
(A reply that might be accepted: *I would try to persuade them to return.)*

In either case, it would be very hard for a spouse (or a friend, if the surety) to honestly give 'acceptable' answers.

It seemed to some observers who had taken part in our first survey that the treatment of sureties by judges and HOPOs, had deteriorated.

In a case where the applicant had absconded while his surety was on holiday, the HOPO asked the surety if he had informed the Home Office that he was going away (H66).

Observers felt that, in the course of trying to establish the sureties' relationship with the applicant and the influence they could exercise, the questioning could be inconsiderate, bullying (H42), or embarrassingly intrusive and prurient.

One HOPO in pursuing the veracity of a claimed relationship, wanted to know when intimacy had commenced (S10.) The judge in another court allowed similarly intrusive questioning and made asides himself which the observer deemed out of order. The HOPO implied that the applicant might have a family in Africa which his fiancée did not know about. The applicant's British fiancée was reduced to tears, but asserted *I love him to bits. I know his history so I trust him* (N8). Bail was granted on severe conditions: curfew from 7.00 p.m. to 7.00 a.m. and daily reporting Monday to Friday.

There were some cases where bail was refused and sureties were invited into court to hear the decision. Several judges were described as considerate in their approach to the sureties (T38) and one, on refusing bail, said to the applicant's partner and surety *I am very sorry* (T41). One judge thanked the sureties and explained that it was not because of them that bail had been refused (T32). One judge cleared the court after a negative decision so that the detainee had some private time to speak over the video link with family and friends (T68).

In other cases, where bail had been refused, the family and sureties were left outside the court, and were not informed of the outcome (T12). Workers from the Poppy Project, which supports victims of trafficking, had travelled a long distance to support a woman detained in Yarl's Wood. They were not admitted to the court and did not get the opportunity to speak to the applicant at all (S40).

Table 7: Were sureties present in the hearing … (n=147)

All of the time?	38
Part of the time?	48
Kept waiting outside?	42
Not able to be present?	19

The appearance of sureties and the loyalty shown by partners of the applicant could carry weight (S2). The judge commented on the suitability of two sureties dressed in business suits and looking professional. One was from Cameroon and a financial adviser at Lloyds, the other an actuarial consultant from Zimbabwe (T40). To this may be added that some church ministers seemed to carry weight, and the bank accounts of white middle-class sureties appeared not to be subjected to the same scrutiny as the financial arrangements of many sureties from different class and ethnic backgrounds. In some cases, the judge made explicit comments, e.g. *What a lovely lady his wife was* (N6).

Sometimes sureties were not regarded as acceptable. The following example presents a double bind. The judge said of the applicant's girlfriend: *If she knew that M. was an overstayer for five years, and did nothing about it, this would disqualify her as a surety. If, on the other hand, she did know, it would indicate that she did not have much influence on him* (H21). The legal representative withdrew the application and the judge called this a *wise decision.* One observer commented, however: *I have also heard at least one judge state this kind of thing with deep irony and dismiss it from their consideration of the suitability of the surety.*

In another case where the surety was asked if he knew about the applicant's situation, he replied that he knew he was waiting for a Home Office decision and that he had applied to the High Court but, *You don't always ask your friends these questions.* Bail was granted (H18).

2.5.1 Recognizances

Since the previous Bail Observation Project, it appeared to observers that the amounts of recognizance offered had increased. If there was a surety, then they always offered a recognizance, be it ever so small. Of the 113 recognizances recorded by observers, three were for £100 or less, 37 were for sums in the hundreds, and 73 for sums in the thousands of pounds. The lowest offered was £20 and the highest £37,000: in both cases the applicant had a lawyer and was successful in obtaining bail.

2.6 Withdrawals

Forty-nine (22%) of the 220 applications were withdrawn; 24 of these were withdrawn at Taylor House, none at Newport. 'Withdrawn' (a category used by the Tribunals) covers a variety of contingencies, as the following table, drawn up from the observers' notes, shows. (Reasons for withdrawal are not known for 12 of the 49 withdrawn applications.)

Table 8: Reasons for withdrawal of application (n=37)

One or more sureties not present	11
Accommodation unsatisfactory	11
Problem with documentation	3
Surety/ies not in sufficient funds	2
Applicant moved to another detention centre	2
Applicant released on temporary admission	2
No legal representative present	2
Applicant on remand, not an immigration detainee	1
Medical issue to be resolved	1
Applicant happier in detention centre than in prison	1
Applicant had received removal directions	1
Total	**37**

On several occasions, the applicant said the reason sureties were not in court was that he thought the court would inform them of the hearing (e.g.T35); this is indeed the court's task, but whether the applicant supplied insufficient information (address) to the court, or the court failed in its duty, we could not tell.

Sometimes the application was withdrawn before proceedings began in court. Quite often, however, the application was withdrawn only after some exchanges in court, usually involving the judge spelling out why s/he would refuse bail if the application proceeded.

> *Withdrawn after judge had spoken at some length about the reasons he would refuse bail – basically lack of documentation of applicant's partner's residing at the stated address, as well as doubts about applicant's credibility. (T16)*

Sometimes a judge urged withdrawal in what s/he saw as the applicant's interest:

> *In offering a 'lifeline' to the applicant and suggesting withdrawal when he discovered that the surety, at whose address he was to be bailed, was not able to be in court, the judge revealed that he thought he was definitely doing the applicant a favour to get a 'withdrawn' disposal rather than a refusal on the record. (T33)*

Sometimes it was the judge's inflexibility that resulted in an application being withdrawn. For example, the judge in this instance could have been more accommodating:

> *Because 3 sureties were listed in the application and the third was not able to be present, the judge said he could not change the number of sureties from 3 to 2 because 3 were on the application. (T29)*

Sometimes a judge's requirement that there should be surety *(not* a requirement in the *Guidance*) would induce a withdrawal: *judge says he never grants bail without a surety* (T1).

Some 'withdrawals' resulted from inefficiencies of the UKBA:

> *Withdrawn because applicant had been moved to another detention centre with which there was no video link from Hatton Cross. The judge asked the representative if he wanted to go ahead with the hearing in the absence of the applicant. The rep (from BiD) said no. The judge 'disposed of' the case as 'Withdrawn'. (H48)*

In at least two hearings (T8, T65) an application was withdrawn because the probation officer had not inspected and approved the proposed accommodation address. In T65 the probation officer had failed to do this even though asked to do so months earlier; meantime the detainee was held (in Belmarsh top security prison!). The judge directed the HOPO to telephone the probation officer to insist he get on the case, and said he would consider an application in 13 days' time when he expected to see the same HOPO in court.

2.7 Bail conditions

Bail conditions may vary depending on the particular circumstances of each case. There were some noticeable variations between the practice of different judges. On occasion, judges set conditions that seemed very restrictive, with daily reporting, curfew and tagging. It was sometimes difficult to understand the severity of some bail conditions. In two hearings the same conditions were imposed – report Monday to Friday between 10.00 a.m. and noon and curfew between 7.00 p.m. and 7.00 a.m., stay at bail address (N7, N8).

Tagging was an uncommon condition of bail. Of one judge an observer said *I have not seen this judge ever use a tag* (T45). Another judge said explicitly to the HOPO: *You know my views on tagging* (N4). In one hearing (T58), the judge raised the issue of a tag which had been listed in the bail summary as a condition requested by the Home Office in the event of bail being granted. The HOPO said: *We only raised this pro forma,* did not press the issue and no tag was imposed. In another hearing which lasted only 15 minutes, the judge granted bail with a tag, but only if this was arranged within 48 hours, otherwise the applicant should be released without a tag (H23). In our first report[16] we noted that setting up a tag was taking longer than 48 hours. This recent experience suggests that there are still potential delays in the procedure.

2.8 The record

One of the recommendations of our first report was that there should be a written record of all proceedings at bail and other hearings in immigration courts available to the public/interested parties.

The 2012 *Guidance* (para 68) states:

> *First-tier Tribunal Judges will keep a clear record of proceedings. Where bail is granted, it is good practice to identify the key reasons for that decision in the record of proceedings. Where bail is*

16 Campaign to Close Campsfield (2011), *Immigration Bail Hearimngs: A Travesty of Justice?: Observations rom the Public Gallery.*.

> *refused in addition to the record of proceedings, the reasons for refusal of bail should be set out in writing and with sufficient detail so that the applicant knows why they have not been granted bail.*

One judge in conversation with an observer after the hearings said that he used a laptop to record proceedings but estimated only 10% of judges followed that example. He noted: *The courts were still receiving files from the Home Office that were not typed* (T8). This judge was very open to talking about the cases and said he welcomed public presence and interest.

The conduct of hearings, and of judges, cannot be monitored effectively, and the judges' decisions cannot always be effectively challenged, without a record, accessible to all interested parties, of the entire proceedings of the hearing. Whether this record should be in writing or, as in Crown Courts in England and Wales, audio, is matter for discussion. At present, the judge's notes are not automatically available to the applicant and may be provided in certain circumstances. They will, necessarily, be selective and incomplete.

For similar reasons, we regard it as essential that the judge's reasons for refusal should not be handwritten but typed. They are nearly always handwritten and frequently illegible, certainly to an applicant who is not in complete command of the English language. If they are not typed, then the standard form on which the reasons are written should include in bold type the statement: *If you are unable to read this, you may request it in typed format*.

Both these concerns about the written record were the subject of recommendations in our first report. They are discussed in the present report in section 3.3 on Stakeholder meetings and are the subject of our recommendations R9.1 and R9.2.

2.9 Video link

> *Video Conferencing is a cost-effective way of dealing with hearings. By utilising this technology the Applicant does not have to be produced at the Hearing Centre. There are currently eighteen First Tier Tribunal (IAC) Hearing Centres, 12 of which have video conferencing equipment.*
> *(Guidance Notes, Annexe 6)*

> Observer: *The technological and physical distance of the video link seemed to affect how real the person was felt to be by the judge. (T42)*

Video link is now standard for the reasons given above. At Taylor House, hearings were by video link in courtrooms 7 and 24 and in person in courtroom 12. At Sheldon Court in Birmingham, hearings were by video link in courtrooms 12 and 13 and in person in courtroom 6. In the two court buildings at Hatton Cross, West London, in York House cases were by video link in courtrooms 21 and 22 and in person in courtroom 7, while at Gloucester House, we observed only video link hearings and these were in courtrooms 21 and 22. At Columbus House in Newport, both video link and in-person applications were observed in courtroom 6. Most applicants appearing in person had been brought from prison, from where there was no video link to the court. Only in exceptional cases is an applicant held in an immigration detention centre able to obtain an in-person hearing.

In our 2011 report we listed a number of flaws in the video link system and concluded that video link hearings clearly produced more refusals than hearings where the applicant was present in the court. There was a human cost. The findings from the present study confirm this conclusion. There are several reasons why video link can affect the bail hearing process. At the most basic level, there are often technical difficulties, with the machinery breaking down (H18, H21, H44, H45). In one particularly striking case, the observer described the *incessant breakdown* of the

Drawing of Applicant in video link room and what he/she sees on the screen

video link, with 11 lapses during one hearing (T19). There were constant sound problems with feedback and delay – this even merits a mention in the *Guidance*: *Please allow for the fact that there may be a time delay in voice transmission and allowance may need to be made for people to finish what they are saying*. There are practical details such as the positioning of a light making it difficult to distinguish the features of detainees with dark skin (H63, S32). The *Guidance* stipulates that all parties when participating in the hearing need to be within the view of the applicant. This should be checked. In one case a camera angle had to be adjusted so that the applicant could see the interpreter (H58).

It sometimes appeared that the judge could not see the applicant clearly (S15, S22). An observer commented: *She [the applicant] put up her hand to speak but the judge may not have seen her* (S9). There is a further practical difficulty arising from the fact that not everyone involved is in the same room. For example, in one case, an applicant was unable to hand documents over to the judge (H22).

A third of the applicants in the sample required interpreting. This had its own problems (see page 42) but was also a challenge for the video link process. The *Guidance* states that *Extra time may be needed by the interpreter to translate to the applicant*. We would suggest that extra time will always be needed. An attempt by one interpreter to provide simultaneous translation foundered on the challenge of speakers unfamiliar with the process and machinery not equipped for the purpose.

In video link hearings, the legal representative gets only 10 minutes to talk to the applicant at 10 a.m. or at 2 p.m. before the listed hearings start. By contrast, the representative of an 'in-person' applicant can talk to them at any time in the cells for as long as they need. This is not equal treatment.

Video link may be effective when the judge enables the applicant to participate actively in the process, when interpreting is not needed and when the machinery functions efficiently. But it is not usual for the judge to act in this way, and on far too many occasions the technology was defective, with poor lighting, noisy feedback, sound distortion and mechanical breakdown.

Our major criticism of the video link process, however, concerns the impact on applicants. They are at a distance from the court, and all those in it. Unless they are directly engaged by the judge they may have no opportunity to speak, and unless the judge ensures that there is full interpreting for those who need it, they may miss much of the substance of the hearing.

It could be argued that video link does not constitute a hearing in the judicial sense, unless it can be demonstrated that there is no detrimental effect for the applicant.

2.10 In-person hearings

There were 41 of these (excluding the bail variation application, see page 19). Four applicants had been brought to court from an immigration removal centre (IRC) – two from Harmondsworth, and two from Tinsley House. One of these applications was granted, two refused and one was withdrawn.

Twenty-two of the 41 applicants who appeared in person were known to have been brought from prison as opposed to a detention centre. Of these, 14 had a lawyer, and 15 had sureties, 11 (50%) obtained bail, 5 were refused and 6 withdrew. Of the successful applicants, 8 had both a lawyer and sureties.

For 15 in-person applicants we were unable to find the place of detention. Of these, 7 (32%) obtained bail. Totalling all three groups of in-person applicant, 21 (46%) obtained bail, 9 (24%) were refused, and 11 (29%) withdrew. The comparable success rate of those appearing by video link was 33%, which strongly suggests that it is an advantage to appear in person.

However, applicants also face difficulties with in-person hearings. One problem is the amount of time that applicants spend in vans being driven around collecting people from other prisons and IRCs. They may be travel sick and hungry.

Another is the very late arrival of applicants at the court because the security companies prioritise getting people to the criminal courts, where the judges are not at all tolerant of late arrival. By contrast, immigration judges seem to accept such delays. One observer commented that in-person applicants never appeared before 11.30 at Taylor House. Court staff at Newport also suggested late starts were often due to late arrival of applicants brought by security escorts.

2.11 Interpreting

Judge to interpreter: *Make sure you interpret as we go along. (T31)*

Interpreter to judge: *I want to translate everything. (T26)*

Interpreting services in the courts have been a live issue since early 2012, when the Ministry of Justice awarded a contract to a private company Applied Language Solutions (ALS) for interpreting services in all courts in England and Wales. In an article in the *Guardian*[17] recording evidence to the Justice Select Committee, it was reported that 90% of magistrates felt that the new contract *did not work well*. Most experienced court interpreters have boycotted the company because of poor pay and conditions of service. In the blunt words of one interpreter talking to an observer after the hearing: *They are exploiters.*

In February 2013, the Justice Select Committee of the House of Commons published a highly critical report of the outsourcing of court interpreter services. The chair of the committee, Sir Alan Beith MP, said:

> *The Ministry of Justice's handling of the outsourcing of court interpreting services has been nothing short of shambolic. It did not have an adequate understanding of the needs of courts, it failed to heed warnings from the professionals concerned, and it did not put sufficient safeguards in place to prevent interruptions in the provision of quality interpreting services to courts.*[18]

Our observations provide further evidence to support the findings of the report.

One firm of solicitors told an observer that they employ their own interpreter particularly for the consultation between the applicant and the legal representative; they said that it would not be possible to rely on the court interpreter. A legal representative commented that there had been complaints about the quality of the translation of one particular interpreter (H 52). At one hearing, there was an independent interpreter who was critical of the agency with the contract and said that interpreters have set up their own website to track the agency's record. On another occasion, there was discussion of the impact of budget cuts and contracting out of interpreting services to a private agency. The cost of interpreting was mentioned by one judge (T36). ALS was bought out by Capita, which brought a new management team in to run the business in the summer of 2012. The experiences described in this study cover the period from February to October 2012.

Table 9: Provision of interpreters and handling of interpreting

	Yes	No
Was an interpreter provided in the correct language/dialect where needed? *(n=219)*	92	127 (not needed)
Was the Applicant asked by the Immigration Judge if he/she could understand the interpreter *(n=86)*	79	7
Was the Applicant/Lawyer happy the interpreter was satisfactory? *(n=61)*	59	2
Was the interpreter given enough time to translate? *(n=81)*	47	34
Did the interpreter translate all the proceedings to the Applicant? *(n=81)*	41	37

17 Bowcott, Owen: Suspects 'denied fair trial' by shortage of court interpreters Guardian 23/10/2012 http://www.guardian.co.uk/law/2012/oct/23/suspects-remanded-shortage-court-interpreters?CMP=email

18 http://www.parliament.uk/business/committees/committees-a-z/commons-select/justice-committee/news/interpreters-and-als-report/

Interpreting was required in just over a third of cases (92) cases, usually for the applicants, but on occasion for their sureties. There were difficulties in a significant number of cases (33). In two instances in two different courts (S39, N23), there was no interpreter available but the hearings went ahead nevertheless. In other cases (H54, H55), there was a mixup. Sometimes the interpreter spoke the wrong dialect (H 29), or a different though related language (S20/S21). In this case, the applicants were Dari-speaking Afghans and the interpreter a Farsi-speaking Iranian. The parties agreed that the languages were close enough for mutual understanding. More disturbing was the interpreter's initial question *What is a bail application?*

Judges did not enquire whether the bail summary had been translated in advance of the hearing.

Often the proceedings were not interpreted in full. This could be very confusing for the applicant. An observer commented that, although there was interpreting, it was infrequent and *it was very hard for the applicant to know what was going on* (H16). In one disturbing incident (H3), the observer wrote: *The interpreter translated the beginning explanations and questions of the immigration judge, but then stopped translating completely. At the end of the hearing, when the judge addressed the applicant directly to tell him that bail was denied, the interpreter did not translate at all. We don't think that the judge gave her enough time, but also that she, being inattentive, missed the fact that the judge was addressing the applicant.* The observer thought that the applicant did not even know that the hearing was finished This was a graphic example of incompetence on the part of the interpreter compounded by the judge's failure to oversee the process.

In another case, the judge felt that interpreting would take too long and asked the applicant's legal representative, who was a Punjabi speaker, to explain at the end of the hearing (H59). An interpreter present in court to translate into Tagalog for a Filipino applicant in fact translated only the bail conditions at the end of the hearing (H41).

One observer commented that there seemed to be a lack of understanding on the part of some judges about the requirements of interpreting. No pauses were made, and this often led to cross-talk. A raised voice and exaggerated enunciation, as practised by one judge (H52), are not the most appropriate forms of speech for communication. There was no standard approach for interpreters. In one court where two interpreters were present (one for the applicant and one for a surety), their approaches were quite different. The first attempted simultaneous translation. This was only partially successful because the speakers did not adopt an appropriate pace or make pauses. The second interpreter spoke only at the beginning and end of the hearing (H45). In one hearing where the applicant had a legal representative, most of the questioning was directed at the lawyer, there was no interpreting and the applicant did not know what was happening until the bail decision was interpreted (H39).

There were some examples of good practice. In one set of hearings, the judge expressly insisted that the proceedings were interpreted in full (N24, N25). In another case the judge made sure that everyone was clear about what was happening in court and this included full interpreting of the proceedings (T25). These examples should not be exceptional but rather provide a standard common throughout the courts

The *Guidance* notes have little to say about interpreting services. In Appendix A it is directed that the applicant's representative, when lodging the application, must confirm to the tribunal whether an interpreter is required and if so in what language. In Appendix B the point is made that time *be given to the interpreter to translate if required.* We observed problems in relation to both these issues.

2.12 The public and the courts

Judge A: *You are welcome*
Judge B : *You are welcome if I know who you are*

Hearings were observed in 12 courtrooms at four different hearing centres and practice varied. Our observers were the only ones to occupy the public seats except when sureties, and family and friends of the applicant were allowed into the court. Two exceptions to this were observed: on both occasions, they were plain-clothes police officers.

The reception varied. One observer commented that some judges appeared to pretend that the observers (the public) were not present in court.

Other judges were prepared to engage with observers :

> *Hello, how are you? I have seen you before. You must enjoy these hearings! (T35)*

> *The judge asked if we were doing a PhD on bail hearings, and said he would have thought that watching Loose Women was more interesting. (N3)*

> *The judge asked me who I was and why I was there. He didn't accept that I was just a member of the public. He asked if I was writing a thesis or undertaking research or interested in working in the area. He invited me to ask him and the HOPO questions at the end of the afternoon hearings. (H26)*

> *After the hearing, the judge said it was really good that members of the public came to observe and asked us if we had any questions. (H36)*

One judge talked to the observer at the end of the morning sesson and asked her whether she found the hearings interesting. At the end of the day he asked if she had further comments to make, and responded with an explanation of how he had reached decisions. The observer noted : *I was treated in an open, friendly, even educative manner which I have never experienced before.*

On occasion, the welcome was conditional on the observer providing a lot more information than that they were a member of the public: *You are welcome as long as I know where you come from* (H30). This did not seem appropriate in a public court.

One judge appeared to challenge the idea of hers being a court open to the public :

> *This judge does not like to have anybody in her court at all. I had mentioned to the clerk that I wanted to observe. The judge asked me and 2 men who were friends of the sureties who we were. When I said I was a member of the public doing research, she asked 'counsel' (the legal rep) who had greeted and welcomed me before the judge arrived if it was OK I stayed. She said that she finds it 'calmer' if there is no one in court. . . . Last year a family member became violent and the police had to be called and there was damage to the courtroom and so she prefers to have nobody. She also told the applicant that his family and friends were outside, that I (whom the applicant couldn't see) was a researcher and that otherwise the hearing was 'private'. At the end of the hearing, she became very chatty. (T72)*

Overall, we can say that all those in court showed a greater degree of acceptance of the presence of members of the public than we had observed in our first round of observations in 2010.

Public seating in court was an issue raised by observers. Provision is inconsistent, and inadequate in some courts.

There are 8 seats in court 22 for the public and sureties. However, only from 4 of them can the sitter see the applicant on the video screen. (H52)

There were 4 seats available at the side of the court. There wasn't much room for sureties and members of the public. In this case there were 2 sureties and their young daughter and 2 members of the public (us), so there was just enough room but only when the one of the sureties continued after questioning to sit at the witness chair at the table. (S3)

There are not enough seats in court (Sheldon 13). Only three for public and sureties. And why are there locked doors in this court when all hearings are by video link? (S20-21)

CHAPTER 3

Weighing it up

3.1 The judges and the *Guidance*: How did they do?

Since publication of our first report, *Immigration Bail Hearings: A Travesty of Justice?* and the publication in 2011 of new *Guidance* to immigration judges on bail hearings, there have been some changes.

However, the failure to implement any of the recommendations in our first report (apart from the issuing of *Guidelines* after a gap of six years) means that scope for change for the better is extremely limited.

The success rate of bail applications going ahead in court (i.e. excluding withdrawals) we observed in 2012 in the four centres was 44%. This was greater than the success rate (34%) for all bail applications in the same centres over the same period (see tables on page 31). Comparable figures from 2009-10 quoted in our first report were 35% and 26%, so in these four centres, where some 78% of all bail applications are heard, the proportion of successful applications for bail has increased.

In the hearings we observed, some immigration judges gave bail more often than others. There were some interesting Grant/Refusal scores for individual judges, e.g. 8/2, 6/4, 18/19, 11/7, 13/15, 5/3. On the other hand, eight judges heard a total of 24 cases and didn't give bail once.

The conduct of many immigration judges still leaves a lot to be desired. A few appeared to act as well as possible within the set limits.

In the pages above we have quoted the *Guidance* where relevant and attempted to show how immigration judges have followed or ignored it. Observations of how closely immigration judges followed the *Guidance* in particular areas are tabulated in Table 1 'What judges did' on page 17. Shortcomings apparent there include the judges' conduct in hearings where the applicant has no lawyer, and also failure to ensure that the applicant is able to follow what is happening throughout the proceedings. The handling of interpreting is another area where we found judges could usefully devote more attention.

Given that the *Guidance* specifically advises immigration judges to give particular attention to the length of an applicant's time in detention, it is of great concern that, of 50 hearings where the applicant had been held in detention for 3 or more months and for which the observers were able to record this item of information, the judge mentioned length of detention in court in only 10 of them.

Our larger sample of 220 hearings provided some evidence of good practice which is noted in the preceding pages. However, there continues to be wide variation in practice, also noted above, which is of concern.

Some things, such as the attitude towards sureties and the amount of recognizances, appear to have deteriorated since 2011. The outsourcing of interpreting services appears to be causing problems. Worst of all, video link has become all-but the rule for people held in detention centres (but not for applicants held in prisons).

One area in which we observed an improvement was in the attitude towards members of the public (we observers) demonstrated by security staff, clerks and immigration judges. There are the beginnings of acceptance that it is normal for members of the public to be present in court

(*Receptionist, clerk and judge all welcoming*, H59). Some immigration judges were positively welcoming. An exception is mentioned on page 44.

The figures for success rates suggest that the presence of observers may influence judges to grant bail. Or, the figures may be a statistical anomaly without significance.

3.2 The human cost

3.2.1 Length of detention

> *The senior courts have been reluctant to specify a period of time after which the length of detention will be deemed excessive and as a result that bail should be granted. Each case turns on its own facts and must be decided in light of its particular circumstances. However, it is generally accepted that detention for three months would be considered a substantial period of time and six months a long period. Imperative considerations of public safety may be necessary to justify detention in excess of six months. (Bail Guidelines, para 19)*

> Judge: *I'm not having anyone mouldering in detention if there's no point. (N1)*

Since the *Guidance* specifically mentions three and six months, it is a matter of concern that judges only raised the issue of length of detention in relatively few cases.

In an interview with Radio Oxford on 23 November 2012, a Home Office representative said that in the majority of cases people were held in detention for less than two months. Our figures suggest that two-thirds of those applying for bail had been in detention for more than two months (72 of 111 for which we were able to record the information).

The guidance on length of detention was quoted on a number of occasions by the legal representative (S22, T12), although this was not always taken into account (T31).

The failure of judges to mention the length of detention in cases where the applicant had been held for 3 months or more is discussed in the previous section. This is the most important point to be made on this subject.

However, some judges were explicit in taking the length of detention into consideration (e.g. T42). A judge, describing the potential length of time likely to be involved in reaching a conclusion to one case, granted bail with the analogy *In this case we are on the nursery slopes of the procedure leading to removal* (H41). Another judge described the new *Guidance* as *an extra burden laid on us* (N4). He checked the length of time that applicants had been held in detention and, in refusing bail to one applicant whose removal was said to be imminent, advised him that he had the right to make a further bail application if time dragged on and he was not removed within reasonable time.

The length of detention is a pressing issue for ex-offenders who have already served a prison term and then, in effect are being punished a second time by being detained for a further indefinite period pending appeal decisions or attempts to obtain travel documents for deportation (H23).

The *Guidance* states (para 7) that: *The judge will be considering whether in totality the reasons given are proportionate to the need to continue to detain*. There were a number of occasions where the judge commented on whether the length of detention was reasonable and proportionate. A woman who had been held for nine and a half months in Yarl's Wood was granted bail with the comment from the judge that detention was *not reasonable and proportionate* (S22). In a similar case, however, the judge came to a different conclusion, saying that although the applicant had been in detention for a very considerable

length of time (19 months), continued detention was proportionate because of the risk of relapse into the applicant's previous alcoholism and crimes (H37). We thought that the concept of proportionality deserved closer attention from the judges.

Readers are referred to the publication in November 2012 by Bail for Immigration Detainees (BiD) of *The Liberty Deficit: Long-term Detention and Bail Decision-making.*[19]

3.2.2 Who should not be detained by UKBA rules

The UKBA's *Enforcement Instructions and Guidance* (Chapter 55.3.1[20]) sets out categories of people for whom detention is not appropriate: the elderly, pregnant women, those suffering from serious medical conditions, the mentally ill, torture survivors, people with serious disabilities and the victims of trafficking.

In our survey a wheelchair user with a spinal injury was refused bail (H61). A detainee who was a diabetic in poor health and very distressed was also refused bail (H58).

One observer wrote:

> *I have heard judges state categorically that the Applicant is better off in detention where their health needs can be properly met, rather than in the community, even when the medical arrangements that have been made are manifestly more than adequate. Judges make these statements without knowing anything about the health provision in immigration removal centres.*

This seemed to be the case where the judge told the applicant *If you have medical problems you need to get on to the doctors at the centre* (T26). It was also the case with an applicant who was a minor with a mental disorder. Despite evidence from Medical Justice , a care plan which included a named adult from the Children's Panel at the Refugee Council, and the applicant's own wishes, the judge did not accept the barrister's arguments for bail, and in the words of the observer, *the judge seemed to think that detention was in A's best interests* (H29).

Some judges seemed not to care when applicants had missed important hospital appointments. The legal representative for one applicant showed that his medical appointments were not being kept although there was a letter from a kidney specialist saying that he needed three consultants to manage his HIV complications. The judge's response, in refusing bail, was to say that if the applicant was not receiving proper medical treatment his representative should go to the High Court and seek a judicial review (T32).

Sometimes health issues were mentioned but effectively ignored thereafter (T32). This was also the case with an applicant who had been detained for nine months and appeared without legal representation, and spoke of an operation and ongoing health issues (N11). In one case where the applicant was said to be ill, the judge ignored legal representations. Bail was refused and the applicant was to be sent 'home' with a medical escort. She had been in the UK for 14 years in legal paid employment and had an outstanding claim under Article 8 (S12).

A case was heard in absentia as the applicant was ill and being held in isolation in the detention centre's infirmary. A letter from a senior consultant stated that she should not be kept in isolation, let alone detained. It was unclear why she had been detained. There were no sureties, she was following a master's degree for which she had paid £19,000 a year, there was an outstanding appeal and the Home Office did not oppose bail (S38).

19 http://www.biduk.org/817/news/new-bid-research-report-on-bail-deciion-making-andlongter-detention-the-librty-deficit-longterm-detention-and-bail-decisionmakin.html

20 http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/enforcement/detentionandremovals/

Another disturbing case concerned an applicant who was deemed unfit to travel by Yarl's Wood, where she was being detained. She had a medical appointment three days after the bail hearing to examine a breast lump. If the lump proved malignant, removal would be suspended to enable her to undergo treatment; if it did not, she was to be removed with all possible speed. The judge appeared indifferent to this tragic situation and to the fact that one of her sureties, her fiancé, had a very respectable background working at the Home Office as an interpreter (S41).

One of our observers was familiar with two of the cases where Medical Justice had produced independent reports. She commented that in one case where the applicant had been a victim of torture (N20) there was no reference in court to the medical report. In another Medical Justice case bail was refused (N18). Another torture survivor, who was said to be suffering from severe post traumatic stress, had been in detention for a month. No interpreter was available but her legal representative decided to go ahead with the hearing as a matter of urgency. This applicant wanted to be reunited with her children in Rwanda but the Home Office proposed to send her to Uganda. She was released on bail. The reasons given were that removal was not imminent, she would be living in the house of her pastor and her sureties were good men. Much of the hearing was spent on questioning the sureties and they were vital to her release. Health issues were not referred to (S39). However, in the case of another torture survivor who was granted bail, the judge did give weight to health concerns, disagreed with the HOPO who had argued that medication would be more effectively administered in the prison where the applicant was held, and concluded that, although there was some risk of the applicant not complying with bail conditions or absconding, *having read the psychiatric report those risks are outweighed by your psychological problems … detention is not the right place for you* (T17).

Our observations about the system's mistreatment of vulnerable people in detention are borne out elsewhere. Section 55.8A of the UKBA's *Enforcement Instructions and Guidance* states: *The purpose of Rule 35 is to ensure that particularly vulnerable detainees are brought to the attention of those with direct responsibility for authorising, maintaining and reviewing detention*, and spells out that *particularly vulnerable* means detainees with poor health, who are suicidal or who are victims of torture. Between 24 January and 30 September 2012, there were 983 Rule 35[21] reports by medical practitioners in detention centres, which resulted in 909 people continuing to be detained and only 74 being released.[22] The numbers speak for themselves. In addition to these 983 people who had Rule 35 reports forwarded, there are many detainees for whom a legitimate report is never sent to the UKBA, although one should be according to the UKBA's own rules.

In a report[23] on immigration detention casework the Prisons Inspectorate and the Independent Chief Inspector of Borders and Immigration noted:

> *The Rule 35 process did not provide the necessary safeguards for vulnerable detainees. In our sample, a torture survivor had been detained without a clear indication of the exceptional circumstances that had led to his detention. . . . There was inconsistent adherence by case owners to the Hardial Singh principles that removal of detained people must occur within a 'reasonable period'. Many monthly progress reports appeared to have been provided as a matter of bureaucratic procedure rather than as a genuine summary of progress.*

Revisions to Rule 35 were published in early February 2013.[24] The Home Office has rejected the report's call for an independent panel to be set up, to review all cases of long-term detention.[25]

21 Rule 35 of the *Detention Centre Rules 2001* sets out when the medical practitioner at an immigration detention centre shall report to the manager in the case of certain vulnerable detainees. http://www.legislation.gov.uk/uksi/2001/238/contents/made

22 Answer to written question from Bridget Phillipson MP by Mr Harper, Immigration Minister, Hansards, 24 January 2013.

23 The Effectiveness and Impact of Immigration Detention Casework: A Joint Thematic Review, 2012 http://icinspector.independent.gov.uk/wp-content/uploads/2012/12/Immigration-detention-casework-2012-FINAL.pdf

24 http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumprocessguidance/detention/guidance/rule35reports.pdf?view=Binary

25 UK Border Agency (2012), *Response to the joint HM Inspectorate of Prisons / Independent Chief Inspector of Borders and Immigration report – thematic review of immigration detention casework:* http://www.ukba.homeoffice.gov.uk/sitecontent/documents/aboutus/workingwithus/chief-insp/inspection-detention

3.2.3 Mental torture

Detainee: *I have been tortured so long (by being in detention).* *(H 64)*

Detainee: *No decision, no deportation, nothing. It's doing my head in.* *(H68)*

There are well-known negative and at times serious physical and psychological consequences for asylum-seekers in detention. *– Adrian Edwards, UNHCR spokesperson*

We would argue that indefinite arbitrary immigration detention without judicial oversight amounts to 'inhumane and degrading treatment', which is part of the remit of the Council of Europe's Committee for the Prevention of Torture, Inhumane or Degrading Treatment, and we have submitted evidence to the CPT to that effect.[26]

In their report *Prison in the Mind*[27] the Gatwick Detainees Welfare Group looked at the mental health implications of detention in Brook House IRC. Commenting on the symptoms presented by some detainees they say: *It may be inappropriate to label these symptoms as mental health problems and instead could be seen as a normal reaction to the circumstances that long term detainees find themselves in.*

Similarly Dr Christina Pougourides and colleagues found that *these [symptoms of distress] are normal reactions to an abnormal situation, not signs of mental health problems.*[28]

In a *Guardian* article on foreign national ex-offenders Martin Kettle, policy lead on foreign national prisoners at the HM Inspectorate of Prisons, is quoted as speaking of *the damage of uncertainty: If you walk into an immigration removal centre you can feel it in the air.*[29]

Detention in itself is stressful[30] and the bail process brings additional anxiety which is hard for many detainees to contain. There are repeated comments from observers on the visible distress of the applicant, e.g. *the applicant was very distressed* (H26); *close to tears and very agitated… on suicide watch* (H2); *she wept and prayed* (S9). There is anecdotal evidence that some applicants refused bail do not feel able to go through the ordeal of a hearing for a second time.

In 16 hearings observed, the applicants were weeping openly. On the whole this was ignored. An applicant who appeared in person wept loudly as he said *It's not nice being locked up. I have no criminal record. I need to be free* (T63). He was comforted by the escort who put an arm round him. Even such minimal comfort is not available to the applicant facing a screen alone in a room in the detention centre.

One applicant said, through an interpreter, that prison was mentally exhausting him (H13). Another applicant, who had been detained for some months after serving a prison sentence, described the experience as *torture*. He wanted to go home but was still waiting for travel documents (H64). He was not the only one. Another detainee, also waiting for travel documents, said: *I'm not going to abscond. I trust myself not to. This place [the detention centre] is getting into me. Home Office can't get travel documents. I beg you. I bow down, please let me out of here* (H51).

26 Barbed Wire Britain Network to End Refugee and Migrant Detention (2008), *Causing Mental Illness is Cruel and Inhuman Treatment*, submission to Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

27 http://www.gdwg.org.uk/downloads/GDWG-PrisonInTheMind.pdf

28 Pourgourides, C.K., Sashidharan, S.P., Bracken, P.J. (1996), *A Second Exile: The Mental Health Implications of Detention of Asylum-seekers in the United Kingdom*, Northern Birmingham Mental Health Trust

29 Jon Robins in the *Guardian*, 12 October 2012, 'Foreign National Prisoners do not deserve blanket judgments', accessed 8 November 2012: http://www.guardian.co.uk/law/2012/oct/12/foreign-national-prisoners-blanket-judgments

30 See *Detained Lives*, 2009 at http://detentionaction.org.uk/wordpress/wp-content/uploads/2011/10/Detained-Lives-report1.pdf

A woman, without legal representation, wept so much that the hearing was adjourned to allow her time to compose herself. Her answers to questions were described as bizarre by the observer and the judge asked for her to be referred to a doctor. She was not, however, granted bail (S31).

The stress and strain of detention is not confined to the applicant alone. Their relationships are also affected by their detention. In one case (H50), the detrimental effect on the applicant's partner and child was mentioned explicitly. In another instance, the distress was obvious as both applicant and family present were all in tears (S36). One judge, recognised the impact on families and in granting bail, specifically excluded tagging in the bail conditions because it was *not good for children to see tagging* (T18). In another case, the judge allowed the sureties to bring very young children into the courtroom. The observer commented: *There were two babies in buggies tended by relatives. Remarkably, they slept and made not a sound! In Hatton Cross there is a sign saying children are not allowed in the court room*. However, not all family circumstances were treated so sympathetically. In a case where the applicant had already been detained for three months after serving a prison sentence the representative referred to the *Guidance* notes which advise that *the impact on the children's welfare must be carefully considered*. The applicant's partner had explained how with three very young children she could not afford the train fare to visit or manage the twins' double buggy once the applicant had been transferred from Pentonville to Kent. She missed her partner who had helped with care of the children and shopping before his imprisonment. As the judge was writing at the end of the hearing one of the children was brought to the window in the door in the passage and was smiling and waving. The judge expressed annoyance, saying *Stop that at once. Guard, go and tell them to move away from the door.* The observer commented that this seemed very hard when the children had not seen their father since he was moved nine months earlier (T47). Bail was refused.

Judges responded differently to displays of emotion, with some seeming discomfited, irritated, or even angered.

3.3 The financial cost: A moral issue?

> Immigration judge: *It costs so much to keep them in detention, I let them out whenever I can. (T45)*

> *There are of course fundamental moral issues about*
> *1) a commercial agency being paid to incarcerate others and*
> *2) an elected government betraying its duty by transferring its responsibilities to others. I note that in the Chairman's report (of Mitie) the public sector is a 'client rather than an employer or manager, so one is able to hide behind the other. . . .* – *personal communication from Michael Doe, Preacher to Gray's Inn, Assistant Bishop in the Diocese of Southwark, 3 April 2012*

Financial savings are not the most important reason for reducing immigration detention and for people to be granted bail. But they are a valid argument.

It costs £110 per day or over £40,000 a year[31] to keep someone in detention.[32] The annual immigration detention bill in the UK approaches £200 million.

One economic analysis of alternatives to long-term detention argues that *an improved risk assessment [resulting in earlier release of detainees] could produce cost savings of £377.4 million over a 5-year period.*[33]

31 Hansard, 26 April 2011.
32 The figure given in answer to parlimentary questions is going down, from £130 (14/1/09) to £120 (4/2/10) to £110 (26/4/11).
33 Kevin Marsh, Meena Vengkatachalam, Kunal Samanta (2012), *An Economic Analysis of Alternatives of Long-term Detention*, Matrix Evidence.

That private companies have been instrumental in promoting, and greatly benefited from, the great increase in immigration in the UK has been argued elsewhere.[34] The same business interest can be at seen at work in the provision of a much wider range of services in the UK related to immigration detention (to say nothing of surveillance, deportations, and other related activities that directly encroach on human liberties), extending into the realm of immigration bail hearings.

As well as an additional *financial* cost, there is also a moral one of *a decrease in accountability*. The policy of using private contractors, usually big multinational companies, allows the government to duck its responsibilities by extending the use of private companies to: run detention centres; provide guards to accompany detainees going from centres to other centres, to courts and to airports; provide tags; provide interpreters; and provide video link between centres and courts.

The questionnaire completed by our observers had no questions on the activity of private companies, but some such information was given by observers in additional notes. Failures by private companies we observed in the immigration courts included the regular late arrivals of detainees in court due to failure by the escort company, problems in interpreting services, and inadequacies in the video link provision.

A source of relevant research findings into the activities of private companies in this area is CorporateWatch. They have recently published on the failures of Capita, a) under a £30 million contract to trace alleged 'overstayers' (thousands of migrants received threatening text messages over the Christmas holiday telling them they did not have the right to be in the UK, when many of them reportedly had valid visas, leave to remain or even British passports), and b) provision of court interpreters (a matter discussed in this report).[35]

A thorough and open audit of these contracts and of how they are monitored, and where appropriate their cancellation and bringing services back into the public sphere, is one of our recommendations.

3.4 Stakeholder meetings

The following provides further detail to the account of the Asylum and Immigration Chamber stakeholder meetings given on page 9.

The Asylum and Immigration Chamber consulted interested parties over the new *Guidelines* on bail hearings issued in 2011. A document was circulated containing the submissions received in response. However, the revised *Guidelines* which were eventually published in June 2012 did not appear to incorporate any of the suggestions made. However, other changes *had* been made. We asked who had proposed these changes and how decisions were made. We were told four judges had gone through the submissions in detail, but not where the additional proposals had come from.

In response to our submission that there should be a written record of proceedings and that the judge's reasons for refusal should be typewritten, we were told that in England and Wales, unlike Scotland, a written record was not possible, and that the judge's notes (the only record there is of what happens in the hearing) were not subject to Freedom of Information requests.

As regards typewritten reasons for a refusal of bail, we were told that there were technical difficultties. However, if there was a legibility problem in an individual case, then a typewritten version could be provided.

34 Christine Bacon (2005), *The evolution of immigration detention in the UK: The involvement of private prison companies*, Oxford: Refugee Studies Centre working paper 27.
35 http://www.corporatewatch.org.uk/?lid=4644

Any concerns about a refusal of bail or about conduct of a hearing should, we were told, be brought to the attention of the chair of the First Tier. Alternatively, a complaint could be made through the procedure outlined on the Tribunals Service website. (The lack of a right to appeal is addressed in our Recommendations.)

Training of immigration judges, we were told, did not include observing bail hearings.

We asked for the outcomes of bail applications to be published, broken down by hearing centre and by judge. As regards the former, we were told that there was no intention to do this but that a Freedom of Infomation Request could be made. We wonder why, in that case, such figures could not be published automatically.

With regard to publishing outcomes by judges making the decision (we had said that some judges we had observed appeared never to give bail), we were told that such statistics were not kept, but that some judges always gave bail. (This we have not observed.)

With regard to the Fundamental Review of the Immigration and Asylum Chamber (IAC) system for appeals announced at the stakeholder meeting on 21 January 2013 and *the possibility of bail hearings only being heard on the papers*, we note that there is a High Court judgement which says that *before any court makes a decision as to bail … it must give to that person or his advocate a fair opportunity to make submissions* [Rojas 08/12/2011]. This appears to rule out hearings heard on the papers. In any case, as stated on page 9, we believe that such a process is untenable in terms of upholding the rights of all the parties.

3.5 The UK and UNHCR guidelines on detention

In September 2012, the United Nations High Commissioner for Refugees published revised *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention* (http://www.unhcr.org/refworld/docid/503489533b8.html).

This is to be welcomed, as the guidelines indicate several areas where UK policy and practice are unsatisfactory in respect to immigration detention and bail hearings. What the guidelines say about detention of asylum seekers applies equally to other immigration detainees. Certain of the UNHCR's recommendations are included in the recommendations R1.1-3 below.

On page 27 of the UNHCR guidelines we find:

> *Decisions to detain or to extend detention must be subject to minimum procedural safeguards*
>
> *47. If faced with the prospect of being detained, as well as during detention, asylum-seekers are entitled to the following minimum procedural guarantees:*
>
> *… (iii) to be brought promptly before a judicial or other independent authority to have the detention decision reviewed. This review should ideally be automatic, and take place in the first instance within 24-48 hours of the initial decision to hold the asylum-seeker. The reviewing body must be independent of the initial detaining authority, and possess the power to order release or to vary any conditions of release.*
>
> *(iv) following the initial review of detention, regular periodic reviews of the necessity for the continuation of detention before a court or an independent body must be in place, which the asylum-seeker and his/her representative would have the right to attend. Good practice indicates that following*

an initial judicial confirmation of the right to detain, review would take place every seven days until the one month mark and thereafter every month until the maximum period set by law is reached.

(v) irrespective of the reviews in (iii) and (iv), either personally or through a representative, the right to challenge the lawfulness of detention before a court of law at any time needs to be respected. The burden of proof to establish the lawfulness of the detention rests on the authorities in question. As highlighted in Guideline 4, the authorities need to establish that there is a legal basis for the detention in question, that the detention is justified according to the principles of necessity, reasonableness and proportionality, and that other, less intrusive means of achieving the same objectives have been considered in the individual case.

In the UK, the detainee is not brought before *a judicial or other independent authority* to have the detention decision reviewed, either *promptly* or *within 24-48 hours*.

Nor are there *regular periodic reviews of the necessity for the continuation of detention before a court or an independent body must be in place, which the asylum-seeker and his/her representative would have the right to attend*, let alone are there such reviews *every seven days*.

Despite reference by some immigration judges to 'proportionality', observers would not recognise that in most cases decisions were made based on a conviction that detention was *justified according to the principles of necessity, reasonableness and proportionality.*

On the duration of detention, the guidelines note:

44. The length of detention can render an otherwise lawful decision to detain disproportionate and, therefore, arbitrary. Indefinite detention for immigration purposes is arbitrary as a matter of international human rights law.

This clause focuses attention on the need for judges to take into consideration the length of detention in bail applications, and should highlight concern about the failure in some instances of judges to do so.

Most important is the statement that *Indefinite detention for immigration purposes is arbitrary as a matter of international human rights law.*

The UNHCR's concerns were summarised in its press release accompanying publication of the guidelines:

UNHCR is particularly concerned that detention is in growing use in a number of countries. Our research shows that irregular migration is not deterred even by stringent detention practices, and that practical alternatives to detention do exist. In addition, there are well-known negative and at times serious physical and psychological consequences for asylum-seekers in detention.
– Adrian Edwards, UNHCR spokesperson.

Our recommendations for change

We are opposed to immigration detention, so there is plenty of room for change, starting with repeal of the powers of detention in the 1971 Immigration Act and their extension in the 2002 Nationality, Immigration and Asylum Act. We know of no UK government to date that has seriously looked at the alternatives to the present mass use of arbitrary internment without trial of migrants including those seeking asylum.

We are concerned that in this report we have to repeat the recommendations made in our first report in 2011. We earnestly advise the Tribunals Service to give consideration to all the recommendations below relating to bail.

Most of our recommendations are restricted to the operation of immigration courts under the law as it is at present. An exception is R1.1 – R1.3 calling for changes in the law to give effect to the principles laid down by in the UNHCR *Guidelines* regarding detention of people seeking asylum, which we believe should be extended to all those held in immigration detention.

R1 Automatic judicial oversight of the decision to detain

R1.1 A person faced with the prospect of being detained, or in detention, should be brought promptly before a judicial or other independent authority to have the detention decision reviewed. This review should be automatic, and take place within 24-48 hours of the initial decision. The reviewing body must possess the power to order release or to vary any conditions of release.

R1.2 Following an initial judicial confirmation of the right to detain an individual, regular periodic reviews of decision before a court or an independent body must be in place, which the person detained and his/her representative have the right to attend, every seven days for the first four weeks, then every month until a maximum period set by law is reached.

R1.3 The right to challenge the lawfulness of detention before a court of law at any time needs to be respected. The burden of proof to establish the lawfulness of the detention according to the principles of necessity, reasonableness and proportionality, and to show that alternatives to detention have been considered in the individual case, rests on the detaining authority.

Immigration bail hearings

When, as at present, people are held without time limit and/or without being charged, it is crucial that the stopgap safeguard of the right to apply for bail should work. We are in support of the recommendations made by Bail for Immigration Detainees (BiD) in its report *The Liberty Deficit: Long-term Detention and Bail Decision Making, A Study of Immigration Bail Hearings in the First Tier Tribunal*.[36]

It appeared to us, as lay observers, that in bail hearings justice was often not done even within the limits of the courts' powers. There are recurrent areas of concern where there needs to be change, and we make recommendations below on these. We reaffirm below the recommendations[37] made in our first report *Immigration Bail Hearings: A Travesty of Justice?* and make *further recommendations (printed below in italic)*.

36 http://www.biduk.org/817/news/new-bid-research-report-on-bail-deciion-making-andlongter-detention-the-librty-deficit-longterm-detention-and-bail-decisionmakin.html

37 With the exception of our recommendation on the need for new guidelines for immigration judges (these have been published).

R2 Independence of immigration judges

R2.1 We observed that some immigration judges interacted with Home Office Presenting Officers (HOPOs) in a partial manner. This is inappropriate and must stop. Immigration courts should be seen to be independent of government. Judges must be consistent in not showing bias in favour of the representative of the state, the HOPO.

R2.2 The immigration judge should demonstrate that he/she is approaching each bail hearing with a presumption of liberty, where the burden of proof lies with the Home Office to provide evidence of the absolute necessity for detention.

R2.3 We observed that in some cases applicants were not treated with respect. The immigration judge should show proper human respect to all parties, particularly the applicant, who is in a vulnerable position. The applicant must be given sufficient time to speak and to be listened to, and accorded proper dignity.

R3 Legal representation

R3.1 Many applicants did not have a legal representative. There should be an automatic right to free legal representation in bail applications.

R3.2 An unrepresented applicant, whether appearing in person or by video link, should have the right to be accompanied by a Mackenzie Friend, sitting at his/her side.

R3.3 Applicants appearing by video link are entitled to as much time with their lawyer as applicants appearing in person. Ten minutes is not sufficient time for lawyers to consult with their clients before the start of a hearing by video link. This is even more the case if interpreting is required or prior to a joint hearing.

R4 Appeal

R4.1 There should be a right of appeal against a refusal of bail that is easily exercised in practice.

R5 Adjournment

R5.1 *Judges should make more frequent use of the provision in the Bail Guidelines for them to make a decision on bail in principle, pending the production of documents required within 48 hours of the end of the hearing.*

R5.2 *There should be provision for the adjournment of a hearing, decided by the immigration judge, whether or not it has been requested by the applicant or Home Office. This will save time and resources*.

R6 Conduct of hearings

R6.1 Sureties who came to the bail hearings were often not admitted. Sureties should be admitted from the beginning of all bail hearings.

R6.2 *Since our first set of observations, we observed a more aggressive and intrusive line of questioning of sureties by some HOPOs and some immigration judges. This is disrespectful and unnecessary and the tendency should be reversed.*

R6.3 The public should be admitted to all bail hearings without questioning.

R6.4 Some applicants did not have appropriate interpreters. Appropriate interpreters should always be available.

R6.5 *Interpreters should interpret the entire proceedings.*

R6.6 Sufficient time must be made available for the interpreter to carry out this task.

R6.7 *The interpreting service should be subject to more stringent quality control.*

R6.8 *More attention should be paid by immigration judges to the issue of length of time the applicant has been in detention, and the detrimental effects of continued detention on the applicant and any family or dependents.*

R6.9 There should be a practice direction, putting the burden of proof on the Home Office to demonstrate, with evidence, imminence of removal, and to show that alternatives to detention are not adequate (i.e. to show detention is 'necessary').

T6.10 Sometimes the Home Office failed to carry out what was directed by an immigration judge at a previous hearing. Failure to take steps necessary to progress the case of a detainee should normally be sufficient reason for granting bail.

R7 Bail summary

R7.1 *Guidance should revert to the indication that failure to produce the bail summary by 2pm on the day before a hearing should automatically result in the granting of bail.*

R7.2 In the absence of a lawyer to represent the applicant, the judge should question the HOPO on the bail summary.

R7.3 The Home Office should be required by the judge, even if it is not challenged by the applicant or his/her lawyer, to provide evidence for statements made in the bail summary.

R7.4 Home Office statements about the likelihood of absconding should not be part of the bail summary unless there is evidence to back them up.

R7.5 Provision should be made where the applicant does not have command of the English language, particularly where the applicant is not represented, for the bail summary to be translated into the language of the applicant, before the beginning of the bail hearing.

R8 Video link hearings

R8.1 Video link hearings should be discontinued as our observations show that they are not able to deliver a fair hearing.

R8.2 *Until such time, detainees should be able to choose, as a matter of course and not as an exception, between a hearing in person and one by video link.*

R8.3 *Until such time, technical improvements needed include:*

- *A facility for the applicant to see the other main participants in the hearing in close up (see facial expressions) not as 'stick figures' in the distance.*
- *Lighting should be sufficient for the applicant's facial expression to be seen clearly.*

R9 Accountability, scrutiny, monitoring

R9.1 Immigration judges' decisions on bail applications should be typed and include the reason for the refusal, or granting, of bail, taking into account what was said in the hearing.

R9.2 There should be written *or audio* record of the *entire* proceedings at bail and other hearings in immigration courts, available to interested parties.

R9.3 Statistics on bail hearings should be gathered, collated and regularly published*, including break down by hearing centre and immigration* judge. They should be publicly available. They are an essential part of monitoring the system.

R9.4 There should be an accessible and transparent mechanism for complaints about the conduct of immigration judges.

R9.5 *A transparent audit of services provided by profit-orientated private companies should be carried out with a view to regulating, reducing and/or ending such provision.*

R10 Guidance and training for immigration judges

R10.1 *We were glad new guidelines were published. However, consultation on revised for immigration judges on bail hearings should be transparent, including the publication of all proposed changes and their source.*

R10.2 In many cases, imminent removal was used as the reason for the applicant to remain in detention. We find it unacceptable that removal can apparently remain imminent for many months, and believe this should not be accepted as a reason to keep someone in detention. What constitutes 'imminent removal' should be clearly defined in guidance notes to immigration judges.

R10.3 The training of immigration judges should be reviewed to ensure that more weight is given than is currently often the case to

- Independent (including medical) evidence
- The effects of detention on the mental health of detainees and the well being of their families and dependents and the consequent undesirability of prolonging detention
- Ongoing familiarisation with current conditions in the country of origin of bail applicants
- Monitoring of performance should be routine to ensure standards are maintained.
- *Observation of bail hearings before hearing bail applications*
- *Facilitating a fair hearing for unrepresented applicants*
- *Ensuring the appropriate use of interpreting services.*
- *Awareness, through visits, of healthcare provision and general conditions in detention centres.*

R11 Public scrutiny of bail hearings

R11.1 In the belief that justice needs to be seen in order for it to be done, we would urge the public, journalists, lawyers, jurists and their organisations, and elected representatives, to go and observe First-tier immigration bail hearings.

We call on the following bodies to act to carry out the above recommendations:

The Senior President of Tribunals
President of the First-Tier Tribunal (Immigration and Asylum Court)
The Home Office and UK Border Agency

Copies of this report have been sent for information and possible action to, among others:
The Independent Chief Inspector of Borders and Immigration
HM Inspectorate of Prisons
Independent Monitoring Boards
Bar Council and Bar Standards Board
Solicitors Regulation Authority
Private contracting companies
Amnesty International
Churches Together for Racial Justice
Home Affairs Committee of the House of Commons
Joint Council for the Welfare of Immigrants
Joint Committee for Human Rights, UK Parliament
Liberty
National Union of Journalists
Refugee Council

APPENDICES

APPENDIX 1

List of First Tier Tribunal Judges observed

Judge Andrew
Judge Andrews
Judge Appleyard
Judge Astle
Judge Bailey
Judge Bartlett
Judge Bennett
Judge Blandy
Judge Cameron
Judge Clayton
Judge Cox
Judge Chohan
Judge Colvin
Judge Denison
Judge Dineen
Judge Elvidge
Judge Ford
Judge Gibb
Judge Gillespie
Judge Grant
Judge Hanratty
Judge Hart
Judge Keane
Judge Kimmell
Judge Lloyd
Judge Lobo
Judge Martins
Judge Molloy
Judge Neyman
Judge Nightingale
Judge Osborne
Judge Osmond
Judge Page
Judge Parker
Judge Scott-Baker
Judge Sharp
Judge Summerville
Judge Taylor
Judge Vaudin d'Imecourt
Judge Warner
Judge Wellesley Cole
Judge Wilson
Judge Williams
Judge Woodhouse

2

APPENDIX 2

Bail Questionnaire

Section 1 – Information to be taken from court list posted in the waiting area

1.1 Date of hearing:
1.2 Hearing centre and court room no:
1.3 Applicant's initials:
1.4 Bail reference first two initials:
1.5 Name of Immigration Judge:
1.6 Name of HOPO (Home Office Presenting Officer):
1.7 Any legal reps (Y yes / N no – please circle which)
If yes name of firm/organization:

Section 2 – General information to be taken in the court room

2.1 Scheduled time of hearing:
- Time it started:
- Time it finished : – Duration of hearing:

2.2 Type of hearing: Video link / In person / In absentia (please circle which).
2.3 Detention centre where Applicant held if known:
2.4 Length of detention if known:
2.5 Sex of Applicant (M / F – please circle which)
2.6 Nationality:
1.7 If the bail application was withdrawn at any stage please state here who requested withdrawal and for what reason.
2.8 Were you asked by a court official about your affiliations/why you wished to attend, as opposed to simply being admitted to an open court as a member of the public? (Y/N – plus a few words of explanation if you wish):

Section 3 - Interpreters

3.1 Was there an interpreter provided in the correct language/dialect where needed? (Y / N / not needed)
3.2 Was the Applicant asked by the Immigration Judge if he/she could understand the interpreter provided by the court? (Y / N)
3.3 Was the Applicant/Lawyer happy that the interpreter provided was satisfactory? (Y / N / Unknown)
3.4 Was the interpreter given enough time to translate? (Y / N)
3.5 Did the interpreter translate all the proceedings to the Applicant? (Y / N)

Section 4 – Bail Summary

4.1 Was there a Bail Summary? (Y / N)
4.2 Was the Bail Summary made available to the applicant/his or her lawyer in advance of the hearing – it should be by noon on the day before.
(Y / N / Unknown)
4.3 Was the Bail Summary challenged for inaccuracy or false statements? (Y / N)

By whom?

4.4 Were the applicant or rep. allowed time to challenge/question the Home Office presenting officer (HOPO)? (Y / N)

4.5 Did the Judge require the HOPO to provide evidence to support statements made in the Bail Summary? (Y / N)

4.6 Indicate on this list where that applied:-
"Removal imminent" (Y / N)
"Likelihood of absconding" (Y / N)
"Likelihood of re-offending" (Y / N)
"Danger to the British public" (Y / N)
"Travel documents could be produced shortly" (Y / N)
"Unwilling to co-operate with own removal" (Y / N)
Other – explain here.

4.7 If there was no Bail Summary were other forms of information used? Where did they come from?

4.8 Was the issue of the applicant's credibility raised? (Y / N)
Give details.

Section 5 – The Immigration Judge

Did he/she:

5.1 Explain clearly to all parties present how the hearing will proceed? (Y / N)
Introduce all parties to the Applicant? (Y / N)

5.2 Ensure that all parties had the same documentation to refer to? (Y / N)

5.3 Appear to listen to the Applicant/Legal representative? (Y / N)

5.4 Allow the Applicant or legal rep. time to present his/her case? (Y / N)

5.5 Guide the Applicant in presenting his/her case if the Applicant was not represented? (Y / N)

5.6 Allow the Applicant to give evidence freely? (Y / N)

5.7 Appear to listen to Home Office presenting officer's representations? (Y / N)

5.8 Ensure at regular intervals that the Applicant understood what was happening? (Y / N)

5.9 Adjourn the hearing in order to obtain expert opinion and evidence regarding the vulnerability, safety, age, health etc. of the Applicant if this was disputed? (Y / N)
Your comment if any.

5.10 Consider the length of detention of 3months as 'substantial', or of 6months as 'long' as referred to in the guidelines? (Y / N)

5.11 Comment on length of detention at all? (Y / N)

Section 6 – Sureties.

6.1 Did the Applicant have sureties? (Y / N)

6.2 Did the judge require there to be sureties in order for him to grant bail? (Y / N)

6.3 Were sureties present in the hearing?
(All of the time / Part of the time / Kept waiting outside / Not able to be present) (please circle which)

6.4 Did the judge treat the sureties with courtesy? (Y / N)
Were matters explained to the sureties? (Y / N)

6.5 Recognizance offered by sureties (amount in £):

6.6 Was the amount of recognizance an issue for granting bail? (Y / N)

6.7 Were the sureties offered acceptable? (Y / N)
Reasons given if No:

Section 7 – Decision

7.1 Was bail granted? (Y / N)
7.2 Did the Judge state in simple language and give clear reasons for granting or refusing bail? (Y / N)
7.3 If so what were they?

If bail was granted:
7.4 What reporting requirements were imposed as condition of bail?:
7.5 Was electronic tagging part of the conditions of bail? (Y/N)
7.6 Other restrictions imposed as a condition of grant of bail:

If bail was refused:
7.7 Did the Judge make any recommendations or issue directions (Y/N)
– If so what?:

Section 8 – overall comments

8.1 What impact did the video link have on the conduct of the hearing, in your opinion?
8.2 Whether the Judge was impartial in your view between the Applicant and the Home Office representative(s)
8.3 Add any personal comments/opinions about any particular or general aspects of the conduct of the hearing.

Section 9 – Signing off

9.1 Volunteer's name: Date.:
9.2 Telephone no: Email address:
Please return form to:-

APPENDIX 3

Glossary

Appellant
Legal term for a person appealing to a higher court (in bail hearings the appeal is against the Home Office decision to detain).

Applicant
The person applying for something (in this instance, bail).

Bail
Release from custody usually on the strength of the usually financial security (the bail) given.

Bail summary
Document in which the Home Office gives reasons for continuing to detain a person.

Home Office presenting officer (HOPO)
The person in an immigration court who represents the Home Office; the respondent in the case.

Immigration judge
A person with a legal background (solicitor, barrister or legal academic) appointed by the Lord Chancellor to preside over, and make decisions at hearings in, immigration courts.

Judicial review
A procedure by which a judicial body reviews a decision made by another body such as the government or a court of law.

McKenzie Friend
A person who attends court with am unrepresented litigant in person to render assistance in presenting the case, but is not qualified to address the court (*Chambers Dictionary*, 2003).

Recognizance
A legal obligation entered into before a judge to undertake a particular course of action; money pledged against the performance of that course of action.

Removal directions
An order made by the UK Border Agency and served on an individual that s/he must leave the UK.

Respondent
The person in a legal case who is answering a case put by the appellant (in immigration bail applications, the Home Office or UKBA).

Surety
A person who offers to take responsibility for another person (in this case the detainee applying for bail) meeting a condition of bail such as reporting regularly to the police.

Video link
Technology that allows a hearing to take place while a person (in this case the detainee applying for bail) is in another place (a detention centre), not in the court room.

APPENDIX 4

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The Campaign to Close Campsfield

The campaign was established in 1993 in opposition to the detention centre of that name opened near Oxford that year.

The aims of the Campaign to Close Campsfield are:

• Stop immigration detentions and imprisonment;
• Close Campsfield, other detention centres, and detention wings in prisons;
• Stop racist deportations;
• Repeal immigration laws which reinforce racism.

Put simply, the rationale for the campaign is that it is wrong to lock up people who have not been convicted of a crime (or who have completed a prison sentence following conviction for a crime). The problem is compounded by the lack of time limit and proper judicial oversight. The underlying legal problem is current law that provides for the administrative detention of migrants. So, on the narrow basis of opposition to arbitrary detention of migrants, a primary aim is Repeal of the 1971 Immigration Act Section 11.1 and Schedule II, which provide for detention of migrants.

Since 1993 the campaign has played a leading role in the movement against immigration detention. It has:

- organised monthly demonstrations at Campsfield and monthly campaign meetings in Oxford;
- worked closely with detainees protesting at their detention;
- worked closely with local trade union, student and human rights organisiations;
- worked nationally with other bodies and helped set up the Barbed Wire Britain anti detention network and more recently the Detention Forum;
- helped establish the Campsfield Nine, Yarl's Wood 13 and Hamondsworth Four defence campaigns in the show trials of protesting detainees;
- published the bulletin Campsfield Monitor;
- organised a conference on immigration detention in Europe attended in 2000 by over 120 people from over 20 countries;
- helped establish the Migreurop network and initiate the European Days of Action against detention and deportation, and supported actions and meetings for migrants rights in other countries, NoBorders camps etc.;
- submitted evidence about the harmful effects and injustice of immigration detention to national and international parliamentary, European, and human rights organisations.

Financial support is from individuals and small affiliation fees. Grants have assisted publication of this report and the organisation of the European conference in 2000.

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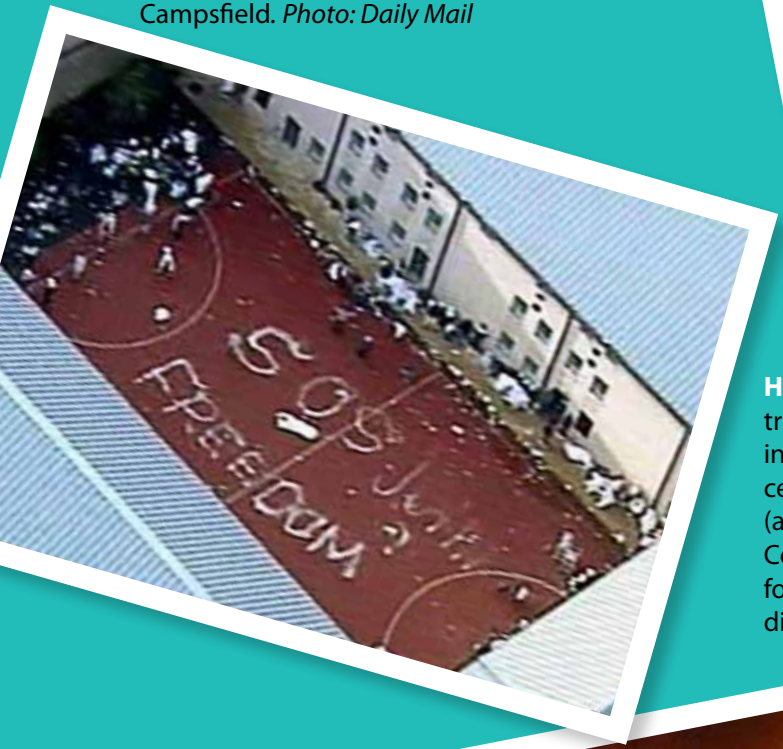
Campsfield, 14 March 2007
Detainees protest after guards in riot gear remove an elderly Algerian man in the middle of the night. In August, 28 detainees escape during another protest. After a mass protest in 1998, 9 detainees charged with riot were found not guilty at Oxford Crown Court after Group 4 and Home Office prosecution witnesses were discredited. Mitie now profits from running Campsfield. *Photo: Daily Mail*



Harmondsworth, 28 November, 2006 Mass protest triggered by guard switching off TV news of prison inspector's report critical of the centre. Much of the centre was destroyed and it was temporarily closed (as it was after a protest in 2004). At Southwark Crown Court 14 months later, the 'Harmondsworth 4', were found not guilty of conspiracy to commit violent disorder. The centre is run by GEO. *Photo: BBC*

Yarl's Wood, 14 February 2002
Half of what was then Europe's biggest detention centre is destroyed by fire after a protest triggered by guards sitting on a 56-year-old woman detainee. In a subsequent trial at Harrow Crown Court, 13 detainees were acquitted on charges of arson. Run by GSL in 2002, Yarl's Wood is now a profit centre for Serco.
Photo: John O'Reilly/Daily Mail