Bail Observations, October-December 2018, by law students at City, University of London

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Courts covered: Taylor House, central London

Judges: Abebrese, Beech, Davey, Herbert, Kaler, O'Callahan

Total number of bail hearings observed: 34

Bail Observation Project questionnaire used? Yes

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We've been watching immigration bail hearings at Taylor House Immigration Tribunal in London every Monday since the end of October 2018. It's now the end of December, and we want to publish some initial observations from the hearings we saw over the course of the two months.

You will notice that the reflections vary significantly, in detail and style. This mirrors the differences in cases, judges, and observers. Similarly, there will be some repetitive material when the same things stood out to different observers.

We want this piece to be a first account of what we saw and learned, and have chosen not to draw out much analysis at this stage. We hope to produce a more analytic report in May 2019.

We have only seen a snapshot of the proceedings, and as such we don't know all the facts of the cases. Furthermore, as a group of predominantly first year law students, we do not claim to have full legal comprehension of the judicial process. Nevertheless we feel that we have gained important insights into the immigration bail system.

The Home Office Presenting Officer is abbreviated to HOPO throughout.

29th October

It's 9.55 am, and we are waiting in front of courtroom 25 of the Immigration Tribunal. The hearing is to start at 10 am, and we are readily awaiting our first bail observation, unsure what to expect. We are surrounded by barristers having, what seems like, the first ever conversations with their clients' sureties, 5 minutes prior to the hearing in the hallway. Other barristers are frantically running around, looking for their sureties.

“Are you the sureties for this hearing?” we are asked by one of these barristers. “No, just observing” we say, slightly baffled. And then, 10 minutes later, we are asked again, by the same barrister, “Are you by any chance the sureties for this hearing”? “Just observing” we reply, again. It is clear the barrister has never met, nor communicated with the sureties.

We enter the courtroom at 10:15 am, unacknowledged. The HOPO has set up his laptop and is well prepared and formally dressed. The barrister representing the applicant is dressed in casual boots and jeans, scanning through his notes, still trying to reach his sureties. The applicant has, at this point, already sat in his detention cell, visible to us through a TV screen, for the better part of the last hour. Alone. The HOPO and the applicant’s representative have a casual conversation across the courtroom prior to the arrival of the judge:

> HOPO: “You know what’s going to happen right?”
> Barrister: “No.. This is my first time doing bail”
> HOPO: “Don’t worry, it’s a very clean process, hopefully swift”

The conversation is very informal, a sort of conversation which might happen during a lunch break. Throughout this whole conversation, the applicant is not spoken to, in fact he is not even acknowledged. In the meantime, the applicant is sitting in his detention cell, looking down on his hands and then again at the courtroom, anxious.

As the judge enters, we all rise. The judge is the first person in the room to interact with the applicant. He repeatedly asks him to “sit down”. It is clear the applicant can either not hear him very well, or has issues understanding him. The sound and video quality are not addressed.

The judge then prompts the barrister to present the applicant’s case. After realising the barrister has little to no knowledge about the facts of the case, the judge starts leading the applicant’s case *for* the barrister. The judge’s statements are public policy based, not necessarily specific to the case. We learn that this applicant was detained whilst attending a regular appointment at the Home Office reporting centre. (In fact, a Guardian survey has found that if people are not already detained on arrival in the U.K., 15% are detained at a Home Office reporting centre during regular mandatory appointments and a further percentile through raids at home addresses.)

The judge finally rules that the applicant be released without sureties. However, the conditions of the release require the applicant to report to the Home Office once a month and provide a verified home address. Upon being asked if the applicant understands the judgement, the applicant says “Thank you”, to which the judge replies “I don’t want a thank you, just please state that you understand, say ‘I understand’”.

“I understand”, the applicant obliges.

But does the applicant in fact understand? He was barely acknowledged throughout the hearing. No questions were asked of him— it did not matter much whether he was in the room or not. Hearings seem to be held

whether the applicant is comprehending the process or not. In fact, we observe a hearing later that day, where an applicant is granted bail in absentia, clarifying that the applicant's presence or input does not seem to be particularly significant.

The more court hearings we attend, the more they feel like a formal and administrative process. It seems as if the immigration tribunal is rather a way of remedying prior decisions made by an immigration official. Throughout all the bail hearings we observe, we have one question persisting in our mind: **How is it possible that the government detains people without the process of a hearing and the right to representation, yet it requires those same people to apply for their release through a hearing?**

5th November

Today, the microphones and the video link have terrible feedback. One of the sureties is hard of hearing and has difficulty understanding the judge. We can't tell what it's like for the applicant, who is watching all this through a video screen.

In the first case, the HOPO states that they are worried that if the applicant is released on bail, they might commit a further criminal offence. This sits uneasily with us. Immigration detainees whose immigration status has been called up for review after a criminal sentence has been served are no longer being detained for their criminal offence. If the applicant were a British citizen, with his sentence over, the question of reoffending would no longer be a barrier to his being allowed to return home. If the criminal justice system has deemed the sentence sufficient for a UK national, why should the Home Office get a second shot at extending time in detention?

The judge says to the applicant – "You have two young children whom you will be influencing. You should remember you are setting an example for them." We wonder that the judge doesn't rather consider the negative impact of their father's absence on their wellbeing.

This applicant is eventually released on bail. The deportation was not imminent and the sureties were accepted. In fact, although a higher value of surety is offered, this is rejected by the judge in favour of the original sums.

In the other hearings, we particularly notice the impact of the physical space and the court layout upon translators working in the courtroom. **Translators have great trouble with the video link.** They must face forwards to the judge and to the microphone whilst also turning around to look at the applicant on the screen behind them. Some translators simply have their back to the applicant the whole time. Others try to sit sideways. Only direct questions to the applicant are translated, so that for much of the proceedings, the applicant is simply present as an observer, unable to understand the content of what they are watching on the screen, with two sideways lawyers and the back of the translator. They can't see the sureties who are usually sat to one side which is not within the range of the video link camera.

12th November

The judge today starts every hearing by telling the applicant that there is a presumption he will grant bail.

He grants bail in 4 out of 6 cases, and the other two cases are withdrawn. In one of these cases, where the judge considers the applicant's case to be very poor (no address, no sureties, serious criminal record), he advises the solicitor to withdraw the application numerous times, in order to avoid the bail application being refused and to allow reapplication when the case is stronger. In the other, the judge advises the applicant to withdraw after his solicitor did not turn up.

All cases where bail is granted have sureties. It's not clear whether bail would have been granted without, although the amount in itself doesn't seem to be important: in one case the judge says that £50 would suffice as a gesture of trust. In another case, three sureties put down £500 each, one of whom has less than that amount in her bank account at the time, but all are accepted.

Sometimes, the HOPO barely seems to have a case against granting bail. In one case where removal is not imminent and the applicant still has appeal routes open, the HOPO seems happy for him to have bail. Despite this, the judge demands the surety of £1,500, to live at the property rented by his brother, he is not allowed to work, he must report to the immigration centre weekly and be electronically tagged all day.

In several cases the Bail Summary is challenged for inaccuracy. In one case, the applicant's solicitor describes it as having "glaring omissions". They made a submission in October 2017, which the Home Office said they would answer in 7-10 days, but they still haven't had an answer. There is also a judicial review pending which wasn't mentioned.

In another case the HOPO isn't going to oppose bail because she believes the applicant is still on licence for a criminal offence, but this is found to be inaccurate. In this case the correction works in the Home Office's favour and the application is withdrawn.

In conversation with the judge at the end of the day, we ask whether he thinks that video link makes any difference to the hearings. He says no, he thinks it rests entirely on the adequacy of the representation. He says that video link makes him feel safer, referencing a recent incident in Taylor House where an applicant smashed all the glass in the room when he was denied bail.

19th November

Today, we leave the tribunal with the impression that there is a heavy presumption in favour of the Home Office and the refusal of bail.

Applicants have to fulfil certain criteria (such as having a bail address and sureties) in order to persuade the judge to grant bail, rather than the HOPO having to provide concrete and convincing justifications for the continued detention of applicants.

Prior failure to report to the Home Office factors heavily into the judge's decision in each case, indicating that compliance with reporting and other restrictions have a cumulative impact on the applicant's likelihood of being granted bail. As such, there is little space for changes in the applicant's circumstances to be taken into account, in terms of both the length of time they are discussed, and the weight afforded to them by the judge in the decision-making process.

The apparent presumption in favour of the Home Office, the formulaic character of the hearing, and the dehumanising impact of the video link (discussed below), mean that we feel ourselves, even as critical observers, settling into the warped logic of the bail hearing system.

Nonetheless, the following issues strike us as noteworthy:

Pending claims

It is questioned whether pending asylum claims, submissions and applications for judicial review are barriers to removal. In one hearing the judge acknowledges in their decision that a judicial review is outstanding, but says that there is no evidence that there will be an injunction or bar to removal as a result of the review.

In another hearing, the fact that the applicant has submitted a fresh asylum claim only eleven days earlier was taken by the judge as evidence that the claim was not serious and would not succeed. **The implicit assumption that outstanding claims and judicial reviews would fail allows the judge to infer that removal is imminent, and that detention is therefore legitimate.**

We wonder about the Home Office's use of expedition of judicial review decisions and reports into the likelihood of applications succeeding as a rationale for keeping people detained. In one hearing, the HOPO refers to an OSCU (Operational Support and Certification Unit) report on an application for judicial review, suggesting that it indicates that removal could be imminent.

Moreover, it becomes apparent that neither the applicants' representatives nor the HOPO are aware of the exact character of the various applications and submissions. The fact that only the existence of the applications, rather than their actual substance, was raised at the hearings, seemed reflective of a broader failure (or refusal) to take wider contexts into account at bail hearings.

Home Office bail accommodation

One applicant has made two applications to the Home Office for bail accommodation (five weeks prior to the hearing, and again three days before the hearing), but received no response to either. The HOPO simply says that they had no record of these applications. Even though the applicant has been in detention for four months and has previously been detained for eight months, he is not granted bail. His lack of a bail address is listed by the judge as a reason for this decision. It seemed counterintuitive that the HOPO can deny the Home Office's awareness of the applications, even though the onus is presumably on the Home Office at this stage to provide a response. We wonder how this situation relates to the Home Office's decision to stop routinely providing bail addresses to people in detention earlier this year.

Immigration advice

One applicant has not complied with reporting conditions previously. His friend (who is also acting as a surety) says that while she advised him to comply with the conditions imposed by the Home office, his solicitors advised him not to report on the basis that he could be detained and deported on reporting. This is particularly upsetting, as the judge uses his failure to report as evidence of the high risk of absconding, which is the primary reason for the decision to refuse bail. It is clear that the applicant has been the victim of rogue immigration advice.

Medical conditions

Two of the applicants whose hearings we observe have health problems with apparently severe impacts on their quality of life.

The first applicant has had an earlier application for bail withdrawn due to a medical emergency, and his representative claimed that his failure to comply with emergency travel document procedures was due to medical reasons. Neither the judge nor the HOPO followed up on these issues or asked about their severity, and the applicant is refused bail.

The second applicant's representative makes reference to a medical report on the chronic neck, limb and hand pain he suffered due to a road traffic accident, which made it 'less tolerable' for the applicant to be detained. He is granted bail, but his medical condition is not listed by the judge as a factor informing the decision. It only becomes apparent when the hearing ends that the applicant relied on crutches to aid his mobility.

Given that Home Office policy dictates that those with serious medical conditions may fall into the category of 'adults at risk' for whom detention is unsuitable, it is surprising and concerning that the applicants' medical conditions do not factor into the decision to grant or refuse bail.

Sureties

This judge places a high degree of importance on the commitment and financial situations of the sureties. The HOPO is permitted (sometimes backed by the judge) to ask often invasive questions about the sureties' financial obligations and security.

One set of sureties seems to be stuck in a lose-lose situation. They have offered a large amount of £1000 – enough to carry a risk and show serious commitment – but the Home Office and the judge do not think based on their income that they can really afford £1000. Their friend is denied bail. In another hearing, the applicant doesn't have any sureties present, and this is listed by the judge as a factor contributing to the decision to refuse bail. **The need for financially secure sureties seems to be part of a formulaic, tick-box style process.**

Video link and the presumption of refusal of bail

The effect of the video link is dehumanising. Most of the proceedings take place as though the person detained is not there. They do not participate in any meaningful way. One applicant who has been detained for the first time is crying, but this is not acknowledged by anyone in the hearing room. His friend and surety

say he is very scared in detention. The contrast with the formal, mundane workings of the hearing in the room is striking.

26th November

The Judge starts off all hearings by introducing everyone in the room to the applicant, and checks at times throughout the hearing that they understand. He explains to the applicants that they should be granted bail unless the Home Office identify good reasons not to do so. Despite this, bail is only granted in one case, while it is withdrawn in two and refused once.

It's granted in a case where the applicant has been in detention since August, despite the fact that there is no removal date or process set in place. The HOPO says this is because there's an application for Judicial Review in place – but the applicant's counsel points out that a JR application was only made in October, at which point the applicant had already been detained without removal date for several months. The applicant is a victim of human trafficking, but the Home Office are seeking to deny him leave to remain now on the basis that he is no longer at risk from the Taliban. This is despite the fact that he's been in the country since 2008, when he was 16, and no longer has connections in Afghanistan.

Bail is refused in a case where there is deemed to be a risk of reoffending, and no address has been granted by the Home Office, even though there is no removal date set.

In one case, the prison services van has failed to bring the applicant to the required place for his hearing – we weren't sure if this was the court itself or a detention centre with video link facilities. The judge advises the solicitor to withdraw the case, saying it will be unlikely to succeed without the applicant present – the surety is sent home, disappointed.

In another case, the applicant is advised to withdraw the application because his surety is injured and can't come. He asks the judge, via his translator – how can I make an application? What should I do? He is clearly bewildered by the process and the lack of language provisions in the detention centre.

We note some really problematic aspects of using the video link. In one case, the image is frozen for the entire proceeding, and the hearing goes ahead with just the voice of the applicant present. It's as if the applicant is really nothing to do with what is going on.

Applicants can't interact with their solicitor or their interpreter or anyone in the hearing process at all until when/if the judge decides to ask them a question or designate them time to speak. **It almost seems like a formality to give some semblance of an applicant's involvement in their own hearing, when practically speaking, an applicant (especially if they have an interpreter/don't speak English) via video link is not really 'present' or 'involved' at all. They are rather watching the hearing unfold as if on TV.**

Using video link also makes life really hard for interpreters. While the interpreter is in the courtroom and the applicant is on a video link, the interpreter is only really able to translate when/if the judge specifically makes

time for it. The interpreter must choose whether to face the applicant or the judge, and also factor in the microphone.

3rd December

We are particularly struck by two things today: the problems relating to language and translation; and the dehumanising impact of the video link system.

Translation is an issue across the majority of the six cases. Only one applicant has an interpreter, while in two other hearings the applicant's understanding of English is too poor for the hearing to continue and the judge recommends that the application be withdrawn. On both of these occasions the applicant doesn't understand the judge's instruction to get up and find the guard in the detention centre and simply sits there on the screen.

While we are glad to note that the judge makes sure to check whether the applicant can understand what he is saying and suggests withdrawing the application when appropriate, we are also aware that conditions in detention and the difficulties facing applicants mean that simply asking them to come back later is not an adequate solution.

We've read about video linking before: that it is dehumanising and that it allows the judge to act as if the applicant is not present has been written about extensively already. Witnessing this process in person confirms our initial thoughts; the applicant appears tiny on the screen and the image and sound quality is poor. The applicant's view of the court through the video is also surely intimidating; they see a large desk with the judge above it, while sureties, who might offer some comfort, are obscured to the side of the room. **The presence of sureties makes an important difference to the atmosphere of the hearing, seeming to remind the judge of the applicant's humanity.**

An afternoon hearing raises an interesting issue regarding accommodation. This case involves an applicant who has been detained for 5 months while applying for asylum. The Home Office has not yet provided him with accommodation. Despite this, the judge grants bail on the condition that the Home Office provide the application with accommodation within two weeks. Otherwise the applicant will remain in detention. This seems a strange result, given that the Home Office has not previously provided accommodation and is unlikely to have any particular impetus to do so now.

17th December

The cases today are marked by confusion and inefficiency on the part of the Home Office and some of the representatives for the applicants.

In the first case, there is a problem with the bail summary - there's an issue of mistaken identity. The representative for the applicant explains that the first three applications in the case folder are nothing to do with the applicant at all, but rather belong to another person of Pakistani origin with a similar name. Only the

applications from 2013 onwards were made by the applicant. The Judge brushes aside this mistake, wanting to focus on the “risk assessment for bail” and not “get into the ins and outs of the case”.

In the second case, the applicant and his brother were detained together while reporting to the Home Office. His brother was placed in a different detention centre, and is due to have his bail hearing in the same court in the afternoon. The solicitor has listed a separate surety for each case, but the barrister asked that they both be used in both cases. The judge assents. The HOPO questions one of the sureties regarding a fraud conviction when in fact it is the other who has been convicted.

Despite these issues, the Judge is satisfied that the sureties would be capable of paying the amount offered (£5,000 from one brother and £2,000 from the other) if the applicant absconded.

The third applicant is a young Albanian man. An interpreter is present for this hearing. Unlike other interpreters we and our team have seen, he interprets when not directly asked to do so, so the applicant has an idea of what is going on throughout the hearing. However, due to the layout of the room and the video link, he sits with his back to the applicant for the duration of the hearing.

The last hearing of the morning involves an applicant who is classified as an ‘adult at risk’ due to his medical conditions. The Home Office has sent two letters to his solicitors giving contradictory information and it is unclear whether removal is imminent or not. The HOPO continues to state that the applicant’s applications for remaining in the country have been refused, despite the fact that his solicitors have not received this refusal letter. They both leave the room for several minutes to try and clarify the matter over the phone, while the applicant sits and watches the silent courtroom.

The judge concludes that whilst the documents are unclear and the applicant has a poor immigration history, he has nevertheless complied with the regulations for the past 10 years and removal appears not to be imminent. Moreover, while some financial concerns have been raised regarding the one of the sureties (a cousin), the other surety (his wife) works as a cleaner at two different hospitals for 14 hours every day and is therefore capable of paying the required sum. Based on these facts, the judge grants him bail.

Although bail is granted, we leave this case feeling sad and frustrated on behalf of the applicant and his family. It was a humiliating process for them all.