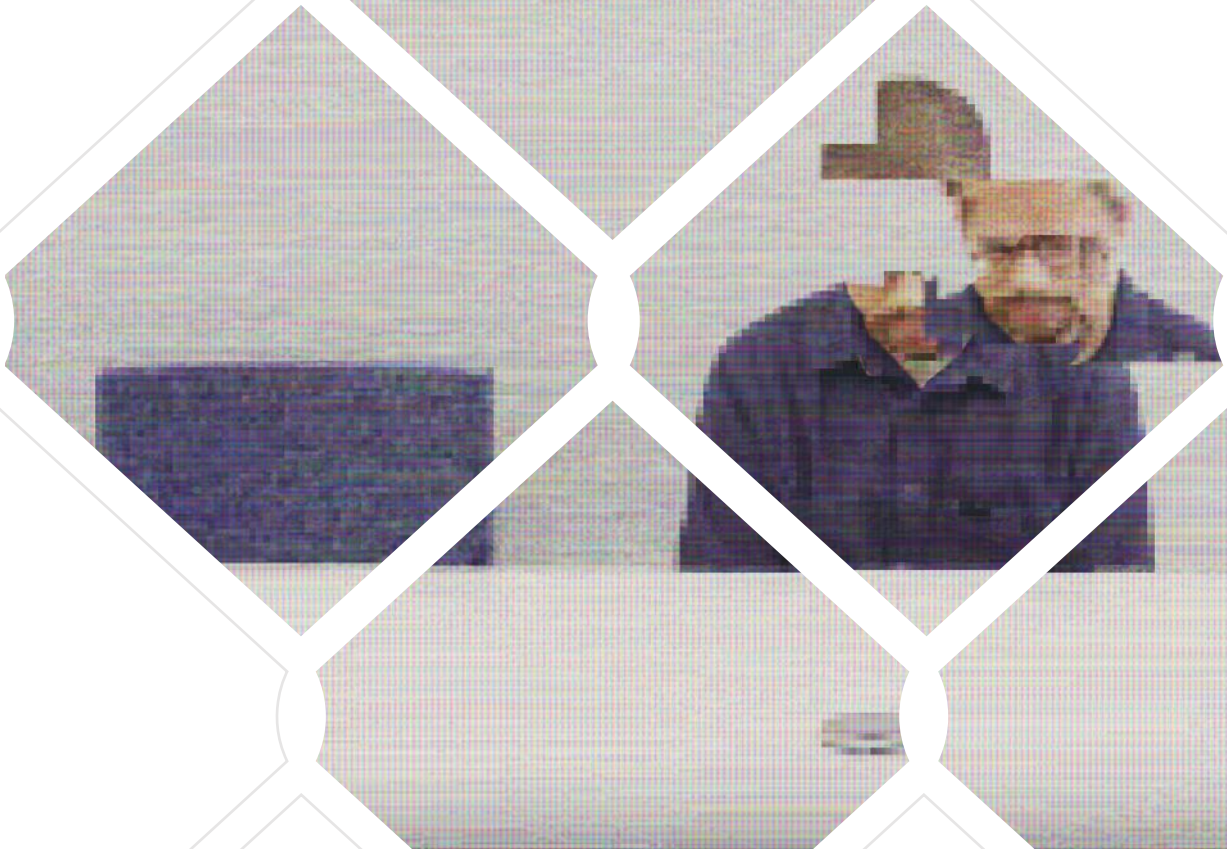
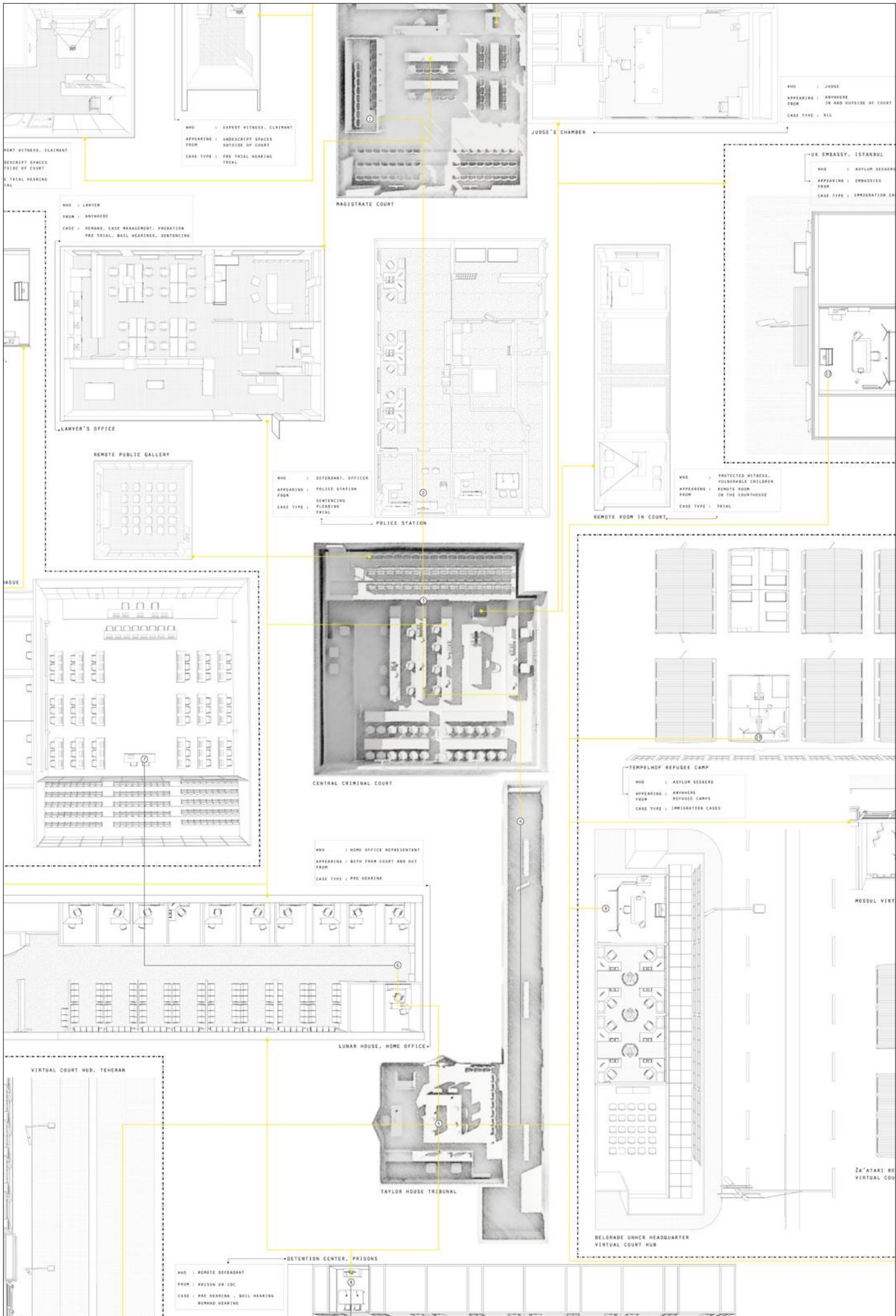


Systematic failure:
Immigration Bail Hearings 2019,
the view from Taylor House





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Contents

Introduction	4
Videolink: An architectural perspective	8
The Interpreter	14
No representation	18
Representation	19
The Home Office Presenting Officer	20
The Judge	22
Getting Bail: Accommodation	30
Recommendations	34

Introduction

Gallery Viewpoint



The greatest punishment issued by courts in this country is deprivation of liberty, even for the most serious crimes. Yet this is the fate of those who have fallen foul of the immigration system while waiting for the Home Office to make a decision on their case.

The aim of immigration detention is to ensure that a person doesn't abscond before the Home Office can remove him from the country. But, in order to get out on bail, he needs to show not only that he is not likely to abscond, but also that he is not a threat to public security. For example, if he has served a prison sentence for a violent offence, he may be less likely to be let out on bail. Yet if the same person had been a British citizen, he would have been released from prison and participating in society under the supervision of a Probation Officer. Moreover, those who have been convicted of minor

offences are often deemed a threat to public security, justifying their continued detention.

If an applicant can show that he is not likely to abscond and is not a threat to the public, he must also show that the Home Office will not be likely to make any efforts to remove him in the near future. He might have submitted a legal claim, such as an asylum application, which will act as a barrier to removal.

According to Home Office Policy, "Detention must be used sparingly, and for the shortest period necessary"¹

The UK is the only country in Europe without a time limit on detention for immigration purposes, despite pressure from numerous campaigns, including #Time4aTimeLimit. The burden is therefore on the applicant to show why he should be allowed out on bail while his immigration

case is under consideration and not on the Home Office to try and process his case fast. Although the introduction of automatic bail trials after four months detention has gone some way in redressing this, it has not gone far enough. While the number of people detained has fallen since its highest point in 2015, in 2018 24,700 people (including 63 children) were detained under immigration powers.²

For people in detention, applying for a bail hearing in court is the only opportunity to have the decision of the Home Office to detain them scrutinised by an independent tribunal - the judge. It is of paramount importance that the hearings are conducted fairly. The Bail Observation Project (BOP) was set up to scrutinise the scrutiniser. We seek to continue this in our report, six years after the last large-scale BOP report.

Methodology

This report is the result of a collective project. Twelve law students watched 55 hearings over six months, and wrote this report together. All hearings analysed in the report took place at Taylor House Tribunal Hearing Centre in London, where bail hearings for people from Tinsley House and Brook House are heard, as well as from some prisons.

With the guidance and support of Bill MacKeith, a member of the initial BOP steering group, we conducted a pilot study based around a questionnaire which had been used by a previous BOP study. We attended Taylor House in pairs approximately once a week for six weeks between October and December 2018, and wrote an initial report of our observations, published in January 2019.

The key themes highlighted by the pilot study were:

- The variety of judicial attitudes – some judges seemed pro-detention and some seemed pro-granting bail
- The attitudes of the Home Office presenting officers
- Interpretation issues – many hearings were withdrawn because an interpreter was not present or proceeded with difficulty
- The impact of videolink
- Medical issues
- Multiple issues surrounding accommodation – we observed several hearings where bail would have been granted but for lack of an address

We wrote a new questionnaire centred on these themes, having decided to capitalise on the resources available to us by conducting a wide-ranging study which would address all the themes identified in the pilot study.

In writing the videolink section, we were assisted with the collaboration of Lola Conte, an architecture student, drawing on her larger research project investigating the "dematerialization" of justice in the UK brought forth by the Ministry of Justice modernization plan and particularly in the use of virtual links for defendants or detainees appearing remotely from prisons, police stations and detention centre. Her research involved weekly visits to Courts and Tribunals from October to December 2018 and bi-monthly visits to foreign nationals in detention centres and prisons between April and June 2019. These included interviewing detainees and prisoners. These visits were not included in the statistical data we gathered, nor in the rest of the report.

¹ UK. UK Visas and Immigration. *Enforcement Instructions and Guidance*. April 27, 2016. Paragraph 55.1.3. Accessed

² "Immigration Detention in the UK." The Migration Observatory. May 29, 2019. Accessed August 2, 2019. <https://migrationobservatory.ox.ac.uk/resources/briefings/immigration-detention-in-the-uk/>.

³ Munro Kerr, M., N. Meyer, G. Benton, N. Rath, N. Krishna, A. Rowe, G. Bhanu, A. Twose, N. Quille, T. Thompson, and C. Makower. *Bail Observations*. October-December 2018, by Law Students at City, University of London. The Bail Observation Project. December 2018. Accessed August 8, 2019. <https://bailobs.org/resources/submitted-reports/>.

Research Methods

Questionnaires

Over the course of the study we attended 55 hearings on 24 days. The questionnaire was split into sections and included questions which tackled the issues identified during the pilot study. It was necessary to note down a large quantity of information throughout the hearing, so the questionnaire mainly multiple choice questions. While this made data easier to collect and to analyse, responses were limited to a set of predetermined answers so the scope of data collected was limited. However, we were able to triangulate this data with anecdotal accounts in order to achieve a broader perspective. The larger quantity of questionnaires improved reliability and meant that we were able to clearly identify trends and patterns. However, our data is limited by several representational issues. For example, all of the applicants were male, and we only observed Bail hearings in one tribunal. The relevance of our findings to the entire immigration detention regime across the UK is thus limited. However, our data is broad in other ways; we observed a relatively large number of hearings with and without legal representation, with and without interpreters and with and without financial condition supporters. We are therefore confident that our data set is wide enough to draw reliable and useful conclusions.

Qualitative accounts

As well as completing the questionnaire, we also noted down anecdotes and other points of particular interest during the hearings we observed. This qualitative data was used to triangulate and evidence our quantitative findings and to identify areas for secondary research.

Analysis

After completing all observations, we worked in groups to design a shared form which reflected the answers given in our questionnaire and other themes that had come up frequently. The data was then analysed in aggregate, allowing trends and patterns to be identified.

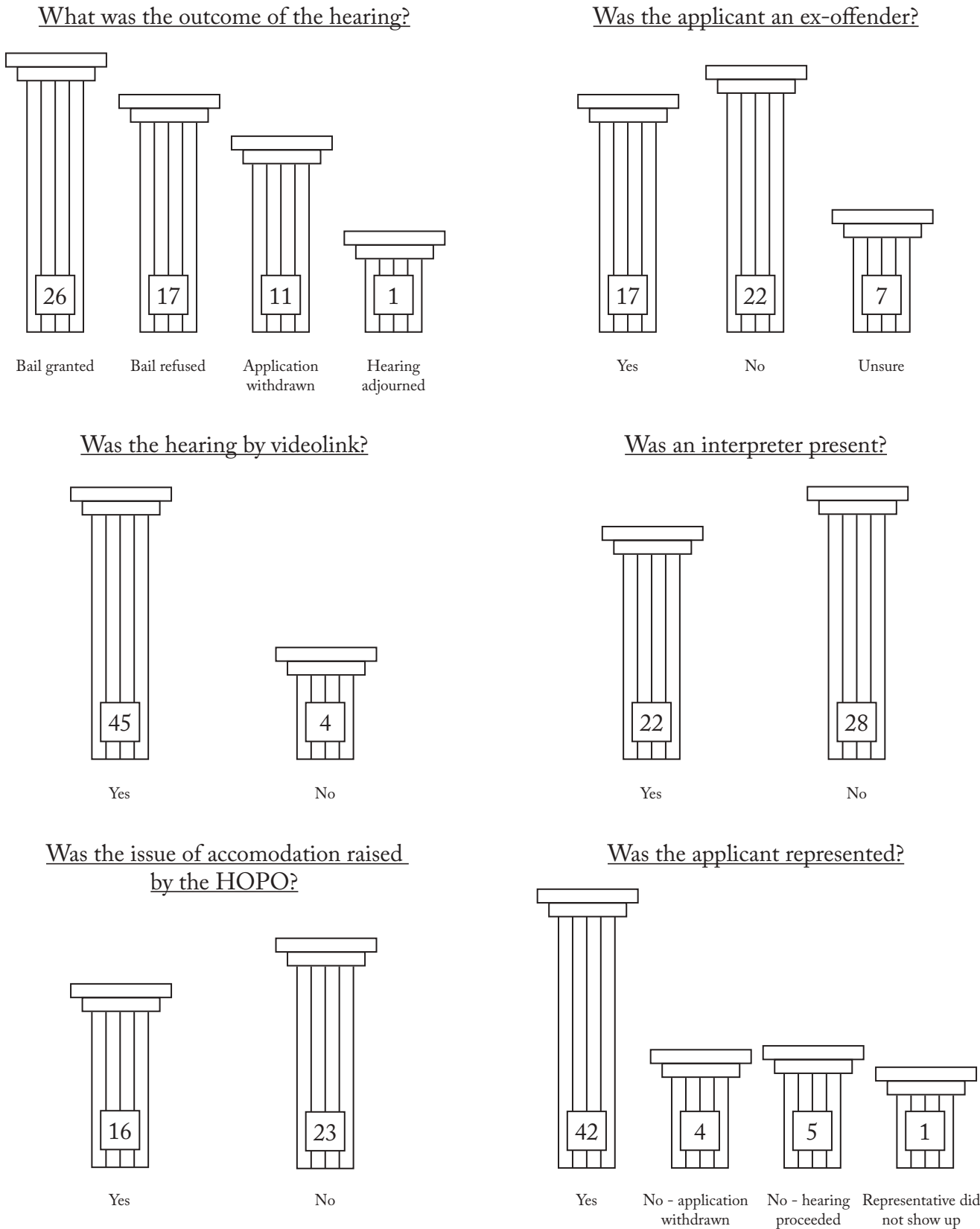
Ethical Considerations

A bail hearing is an important and often emotive moment for a person in detention. All hearings are open to the public, so there was no issue about us being present, but we took care to minimise our impact. We sat at the side of the room and remained silent throughout the hearing unless asked a direct question. If questioned by the judge or Home Office presenting officer about our presence we simply explained that we were students who had come to observe a hearing. We took a collective decision to not reveal our connection to BOP unless directly asked, as this may have influenced how the judge or other parties saw us.

Positionality of the researcher

We are aware that our own biases, particularly as a group of young and politically engaged individuals, may have influenced the way in which we conducted our research. However, the majority of our data was quantitative in nature, so any impact is limited. We never asked the applicant or any other parties a direct question, so the relationship between us, as researchers, and the parties to the hearing has not impacted our findings.

A Summary of Data Collected



Videolink: An architectural perspective

Visit to Taylor House Tribunal and Hearing Centre, November 2018.

**names have been changed.*

I wait 30 min the hallways, unsure whether I should go in or not. The family is late, there is a strike on the tube. The hallways are lively, there is the clicking noise of heels on the linoleum, conversations, doors slamming. It seems the hallways are used as makeshift conference rooms between the clients and their lawyers. I can hear them debrief or explain the process, make some last-minute adjustments, advise their client on what to say, how to say it, when to speak. I try to make myself scarce, standing by the water cooler.

Through the door I can hear Mr. Gasmi*, the applicant's solicitor for the bail hearing I came to see, talking with his client. He is quite loud; the connection doesn't appear to be working very well.

"Can you hear me", "Can you

hear me" he says many times. Eventually he kindly invites me in. It's a nice room, quite small, filled with natural light. At the centre of the there is a U-shaped table shared by both sides. The judge sits in a raised box facing the screen. The furniture is made of light wood; all in all, it's not very intimidating. I immediately notice the grizzling sound of the TV. The screen is frozen; I can only see half of the applicant's head. He looks odd, his head is resting in the air, to the side of his torso, the image is pixelated as if broken in pieces. The room in which he sits is rather bland, two chairs, a table, white wall, white floors. He only has one screen showing him an overall view of the courtroom; In the far-right corner, I can see my foot wiggling the air. I wonder what it feels like to be on the other side of the screen

Two knocks on the door, the judge enters, all rise. Mr Gasmi* asks for the interpreter to join at the table. The judge asks "Please miss, could you make sure Mr Rahimi* hears

you correctly." The microphone doesn't work. A bit of shuffling around, finally Mr Gasmi* passes his microphone down. At that point I notice there are only two microphones working, lit up in green, one in front of the judge and one in front of Miss Ayeni*, the interpreter. Mr Rahimi* clearly won't be able to hear much of anything else. The judge's voice echoes, his typing on the computer too, the sound is slightly late and slightly off.

"Can you hear me?" asks the interpreter.

Two, three seconds pass

"Yes, I can". The screen is still frozen.

"Anyway I expect most of the talking will be done on your behalf by your lawyer."

Mr Gasmi starts presenting the case, makes some notes, introducing errors in the files, dates to be fixed and so on. Documents are presented, which as far as I understand Mr Rahimi* will not see.



Appellant Viewpoint

The Home Office presenting officer (HOPO) rebuts the arguments. It goes on. Then comes the financial condition supporters, the judge, lawyer, and HOPO talk about their ability to pay, dissect bank statements, bills, passports. Two of the applicant's family members are asked to answer a few questions. All this time the interpreter has said nothing. Although I can see her attempting to raise her hand a few times.

Finally, the verdict: the bail is denied. Miss Ayeni tries to interpret over the judge's explanation. The voices overlap, it's confusing, frustrating. The screen is still frozen, Mr Rahimi* sits, head down, arms crossed on his chest, eyes closed. As if he were sleeping. I don't think he can hear anything let alone understand.

No response from his side.

I can see the family members are also confused.

"So, it's a no?"

And so, it seems to end, everyone stands, a bit dazed and they begin to make their way out of the room. Miss Ayeni* finally says: "I think this will need to be explained, I don't believe he heard me."

Judge: "Ah yes apology, this will need to be explained, Mr Rahimi* can you hear me? Could you call for the guard?"

No answer.

Finally the sounds of footsteps and door opening. And then addressing the guard.

"Just to let you know the bail application was denied, Mr Rahimi should be returned to his room, and could you call the next applicant in please"

In immigration bail hearings the use of virtual links has become the new norm for applicants, used in 51 of the 55 hearings we observed.

The use of videolink in some immigration bail hearings began over a decade ago, as a way of “avoiding excessive costs”, such as transporting the detainee to and from the tribunal.

The increasing usage of videolink is consistent with the £1bn HM Court and Tribunal Service (HMCTS) reforms, which were set out in the Transforming Our Justice System paper.⁵ In brief, this project involves the digitisation of the UK’s courts and tribunals system, with the overriding aims of expediting the resolution of disputes and increasing financial efficiency. One of the aims is that most civil disputes will be resolved online by 2022.

Appearing remotely from detention centres, a detainee’s experience of the justice system is altered in ways not yet recognized by the policy-maker. This section draws upon architectural and spatial research to address the impact of the changing site of adjudication from the tribunal to the carceral context which applicants are now asked to appear from.

The existing content:

Throughout history there has been considerable thought given to the architecture of courts and courtroom to ensure that it expresses the legitimacy and authority of the law. Courts are imbued with

symbols and iconography, detailed with dignified materials and finishes. Its acoustic and lighting qualities are designed carefully. Highly hierarchical,

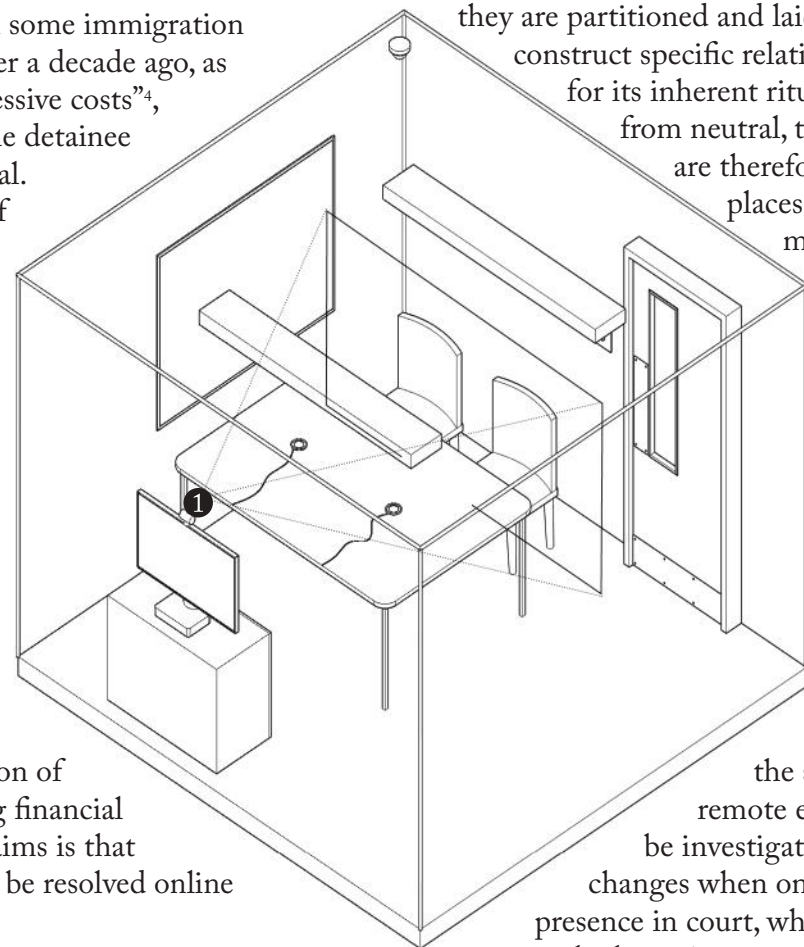
they are partitioned and laid out in ways to construct specific relationships and to allow for its inherent rituals to play out. Far from neutral, tribunals and courts are therefore more than mere places, they are physical manifestation of ideals of justice and as such they have a specific aesthetic which impacts various actor’s experience.

As the use of videoconferencing technology is expanding the legal practice by integrating new typologies of spaces into the legal arena, the spatial qualities of the remote environment should be investigated. We must ask what changes when one is denied physical presence in court, what is lost of the rituals upon which our justice system is built and how is the applicant’s subjective experience of justice altered by the remote experience and the carceral context that surrounds them.

Tribunal layout and design, and its impact on communication and participation:

In immigration tribunals the courtrooms are organized around a central U shape table. The solicitor sits on one side and the HOPO on the other while the applicant traditionally sits with

[^]*Brook House Remote Room*



his or her interpreter on the short side of the U, facing the judge’s raised booth. When one appears remotely a screen is placed behind the interpreter facing the judge. While the layout seems appropriate for in person hearing, it is incompatible with remote appearances.

On the tribunal side, only the judge has a clear view of the screen. In order to address the judge the solicitor, and interpreter are most often with their backs turned to the camera. From the self-view mode on the screen, one can observe that the viewpoint of the applicant is through one fixed camera that slightly distorts the image of the court. The various actors appear in small making them difficult to distinguish. The sides of the room, where the financial condition supporters (or sureties) sit, are not included in the frame. The applicant is not presented with any of the documents shown in court. From the detention centre perspective, it can become demoralizing. Isolated, the applicant is not only denied the basic human need for eye contact but is also presented with a single perspective, riddled with blind spots, potentially creating feelings of estrangement, isolation, anxiety and detachment.

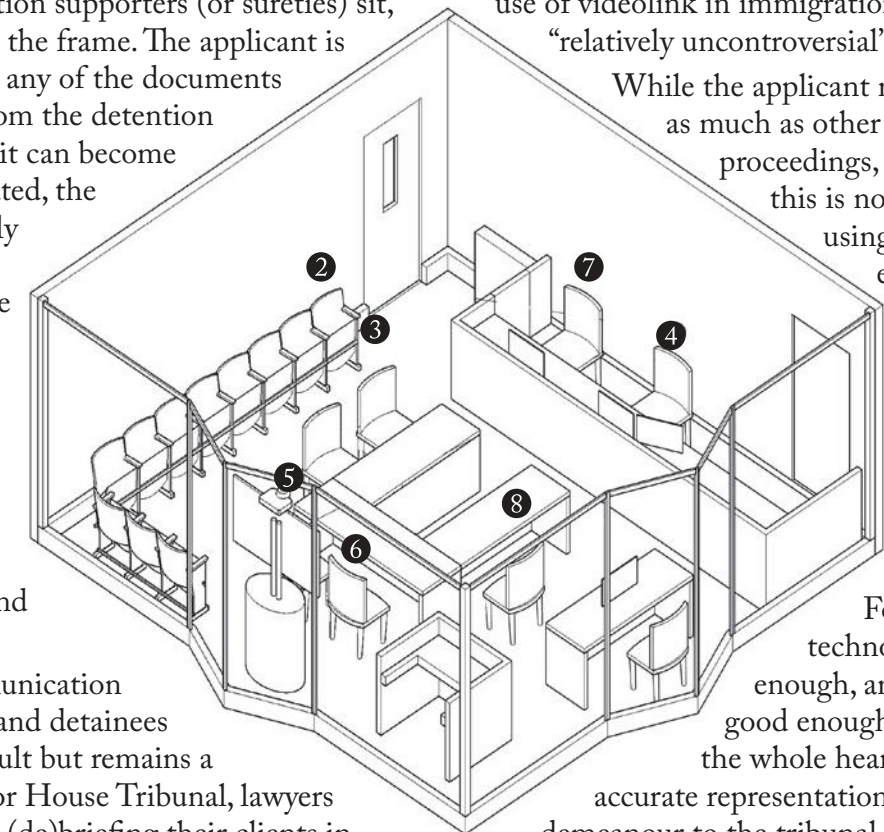
In tribunals, communication between solicitors and detainees can be rather difficult but remains a possibility. In Taylor House Tribunal, lawyers can often be found (de)briefing their clients in the hallways, offering clarifications, a few words of advice or comfort. Solicitors often agree that access to recommendations and direction on the court day is critical particularly for those in detention as it allows lawyers to immediately provide legal advice,

review evidence, discuss strategy, or take instructions from their clients. When one appears remotely one is denied the opportunities for exchange that the open and sometimes informal setting of the tribunal can offer.

The applicant in immigration proceedings makes relatively little active contribution to the hearing, which consists largely of a conversation between the judge and both sides’ legal representatives, and sometimes hearing evidence from financial condition supporters. This can be contrasted with, for example, criminal proceedings, where the defendant will almost certainly give oral evidence and be subjected to cross-examination. The reduced necessity of participation has led some to deem the use of videolink in immigration bail hearings as “relatively uncontroversial”.⁶

While the applicant may not contribute as much as other types of legal proceedings, it is our view that this is not a justification using videolink, which effectively diminishes the applicant’s participation in the hearing even further. It may be possible, in theory, to conduct a fair hearing using videolink.

For example if the technology is advanced enough, and the connection good enough, to fully transmit the whole hearing, along with an accurate representation of the applicant’s demeanour to the tribunal. Yet the hearings that our group observed, and hearings observed of other anecdotal studies,⁷ show that the use of videolink puts the applicant at a disadvantage. Such disadvantages, in our view, are too large to be outweighed by the reduced cost.



- | | |
|-------------------------------|-----------------------------------|
| 1. Camera | 5. Videolink Screen |
| 2. Public Gallery | 6. Interpreter |
| 3. Applicant's Representative | 7. Clerk |
| 4. Judge | 8. Home Office Presenting Officer |

[^]*Taylor House Layout*

On acoustics, materials and lighting. Understanding its impact on both the applicant's subjective experience and in the production of a prejudicial image of the applicant;

Although maybe lacking the "aura" one could expect from a civic building, Taylor House tribunal is a bureaucratic looking yet comfortable building. The courtrooms themselves are rather nice rooms, filled with natural light. The furniture is simple, made of light wood. The symbols of justice present but are not overpowering. All in all, it isn't a particularly intimidating building. Its environment seems appropriate for the types of hearing conducted there.

In contrast, the detention centre video link studios that I have seen from my visits to courts are often bland, small and anonymous, with poor acoustics and very rarely any natural light. White walls, white floors, two plastic chairs, a table and the video link technology, seem to constitute most of the remote rooms in detention centres. Often retrofitted in spaces of incarceration, they lack intent in their design.

We experience space from our panoply of sense, which affects our responses and behaviours. Similarly, to the ways in which courtroom architecture can be used to instil a sense of gravitas when one appears from the spaces of incarceration, the virtual room and the carceral context more broadly, frames his or her subjective experience of justice. Sound is a particularly relevant example as it creates environments, envelopes and surrounds.

The particulars of old courtroom sonic environment

are apparent in the Old Bailey: cavernous resonating inspiring awe and a sense of pomp. By contrast, in many newly built courtrooms, sound is muffled to accommodate for implementation of new sound systems. In any case sound is designed in particular ways. From my observation of prisons, spaces of incarceration are often hard places that combine large open interior and high ceilings with the use of highly reflective materials such as concrete, glass or metal. For questions of costs and efficiency, detention centres are often poorly acoustically insulated which makes for large reverberation time (often more than 2 second) creating uncomfortable echoing and decreased speech intelligibility. It is worth noting that the levels of noise allowed in detention centres would be unthinkable in courtroom or any white-collar environments for that matter.

As one interviewee mentioned, the soundscape of detention centre is one of constant noise. Exposure to noise, particularly abrasive, irregular and uncontrollable ones, like those commonly found in detention centre may cause increased stress and aggressive behaviours. Furthermore as sound penetrates the virtual room and therefore the conceptual space of the courtroom, it can become disruptive and distracting for the applicant, leading to missed social cues or odd behaviours but it can also permeate all the way to the court itself, in effect framing the image of the prisoner within the oppressive audio environment of incarceration.

A similar point could be made for the lighting and material qualities of the detention centre environment and its impact on how prisoner experience the place of law. Indeed similarly to

the acoustic properties of the remote space, its environment, the often harsh lighting qualities casting disadvantageous shadows, the captioning of the room, the material finishes are not only impacting the applicant's embodied experience of justice i.e. the way they feel and thus act as justice is being done, but seen from court it can also depict the detainee in an undignified light which can at times become prejudicial and create forms of bias.

⁴ UK. Courts and Tribunals Judiciary. *Upper Tribunal Immigration and Asylum Chamber Guidance 2013 No 2: Video Link Hearings*. June 5, 2013. Page 2. Accessed August 9, 2019. <https://www.judiciary.uk/wp-content/uploads/JCO/Documents/Guidance/Presidential Guidance note 2013 No 2 - Video link hearings.pdf>.

⁵ UK. Ministry of Justice. *Transforming Our Justice System*. September 2016. Accessed August 09, 2019. https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/553261/joint-vision-statement.pdf.

⁶ Thomas, Robert, and Joe Tomlinson. *The Digitisation of Tribunals: What We Know and What We Need to Know*. Public Law Project. UK Administrative Justice Institute. April 5, 2018. Page 22. Accessed August 9, 2018. <https://administrativejusticeblog.files.wordpress.com/2018/04/the-digitalisation-of-tribunals-for-websites.pdf>.

⁷ See: MacKeith, Bill, and Bridget Walker. *Still a Travesty: Justice in Immigration Bail Hearings*. Campaign to Close Campsfield. Bail Observation Project. 2013. Accessed August 10, 2019. <https://bailobs.files.wordpress.com/2015/03/2nd-bop-report.pdf>; Hynes, Jo. "Hello Dungavel!": Observations on the Use of Video Link Technology in Immigration Bail Hearings." UK Administrative Justice Institute. May 6, 2019. Accessed August 10, 2019. <https://ukaji.org/2019/05/06/hello-dungavel-observations-on-the-use-of-video-link-technology-in-immigration-bail-hearings/#comments>; and Gibbs, Penelope. *Defendants on Video - Conveyor Belt Justice or a Revolution in Access?* Transform Justice. Barrow Cadbury Trust. October 2017. Accessed August 10, 2019. https://www.barrowcadbury.org.uk/wp-content/uploads/2017/10/TJ_Disconnected.pdf.

⁸ Gibbs, *Defendants on video*, page 2.

Technological failures

Quite obviously, videolink is not a substitute for physical presence, yet the hearing process has not been altered at all to reflect this difference. Past research has shown that appearing via videolink can increase the defendant's feeling of isolation and stress. Forms of non-verbal communication such as eye contact, body language and posture play an essential part in evaluating the behaviour of a applicant, but this is almost entirely swept away by the use of videolink. One observer noted:

“ The video link meant that the applicant's ill health was unclear- he suffered from neck, limb and hand pain and was using crutches, which only became apparent at the end of the hearing when he got up. ”

“ In three different hearings, the applicant had been crying, either all the way through or for part of the time. This wasn't acknowledged by the judge, HOPO [Home Office presenting officer] or applicant's representative, and I only noticed as an observer when I reminded myself to look at the videolink. In hearings where sureties were present, this was very distressing for them. ”

The judge's (and other court attendees') ability to empathise with the applicant is reduced by the lack of physical presence. Our observations showed that the judge would often not acknowledge or include the applicant in proceedings beyond the introductory stage.

“ The interpreter and surety were both very soft spoken, and it did not seem like the applicant could always hear them through the video link. Found myself forgetting to even look at the screen, applicant basically ignored by everyone. Applicant did not even speak once. Videolink frozen throughout, could only hear applicant's voice. ”

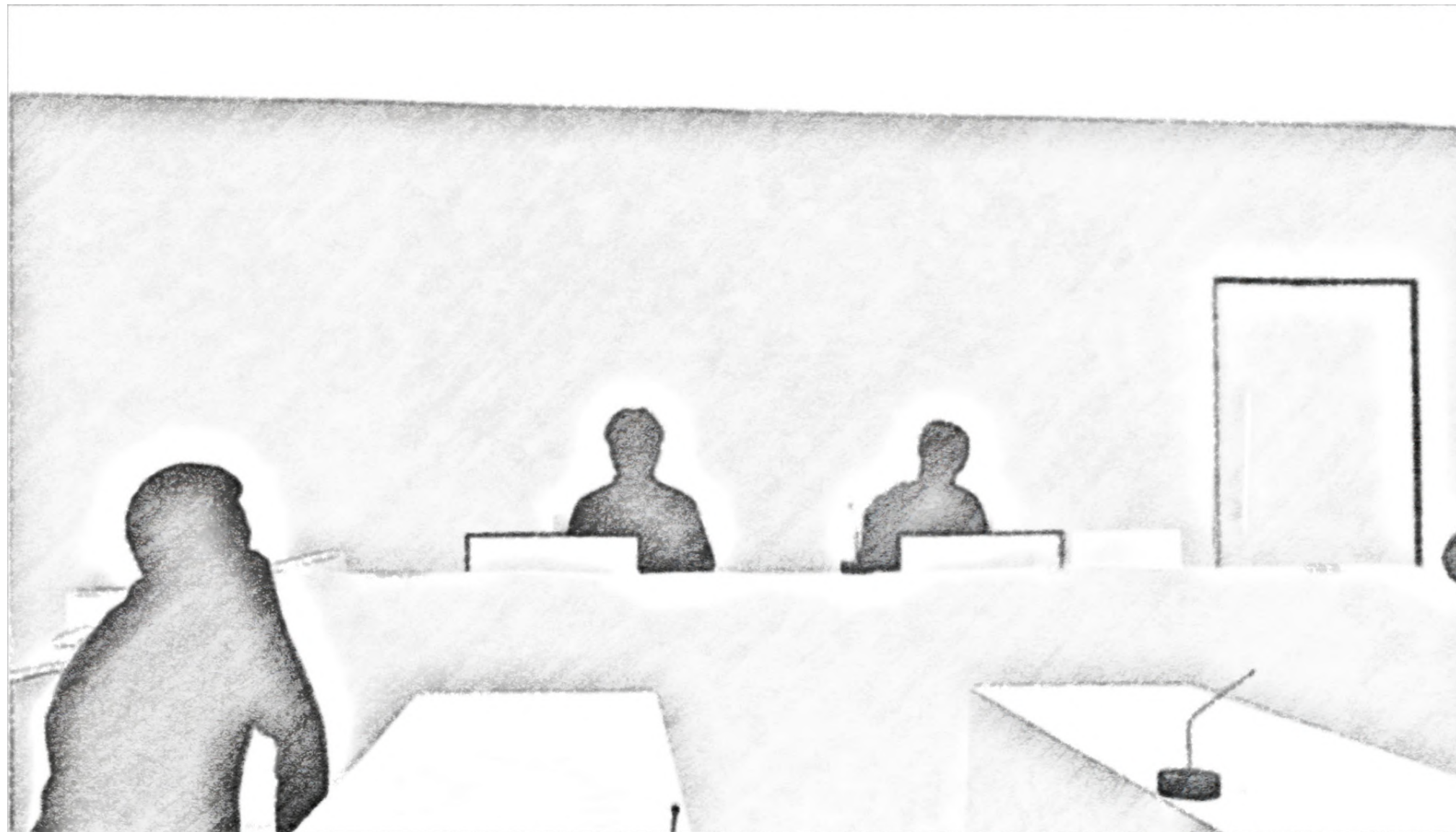
By comparison to the limited number of in-person hearings observed, 36.8% of the time the judge interacted with the applicant less during videolink hearings than in-person hearings. The remainder of the time it made no difference. Such behaviour was not limited to the judge.

The Interpreter

Translator Viewpoint

The Immigration Law Practitioner's Association has provided a set of guidelines regarding rules and procedures for interpreters to follow. These include the following:⁹

- The tribunal should ensure at the commencement of the hearing that the interpreter and the applicant understand each other
- The tribunal interpreter should:
 - interpret accurately the questions asked and the replies given in a language and dialect understood by the applicant,
 - interpret discussion in the tribunal between the immigration judge and the advocates,
 - interpret into direct speech the questions asked and the answers given,
 - interpret all comments made, disclose any difficulties with interpretation including variations in possible translation of different words,
 - intervene only to ask for clarification, to point out that a party may not have understood something or to alert the parties to a possible missed cultural inference.



Of the 55 hearings considered for this report, interpreters were present for 22. In a few cases, the absence of an interpreter led to severe consequences. In two cases, the hearing went ahead when there was no interpreter present even when one was needed. In one hearing, the absence of the interpreter led to the withdrawal. In hearings that did not have an interpreter, the applicant struggled to express themselves on their own in six hearings observed

(13%). In half of these hearings, they struggled significantly. In two hearings the applicant did not speak at all.

The significance of the interpreter is also seen in the communication between the judge and the financial condition supporter. In two hearings the financial condition supporter had some difficulty in expressing themselves. Overall, interpreters are not given much direction and the nature of

their interpretation is left to their own discretion, leading to a lack of uniformity. For example, in 30% of the cases, the interpreter gave the applicant updates or summaries of the proceedings periodically throughout the hearing; in 25% of the cases, the interpreter interpreted the proceedings simultaneously to the applicant throughout the entire hearing; and in 25% of the cases the interpreter only interpreted when the applicant

or surety was being questioned or spoken to directly. There were also special circumstances where the interpreter only interpreted some of the proceedings (i.e. initial explanation of the judge of the proceedings, explanation of the decisions and the conditions of bail) and cases where the applicant and interpreter agreed that the applicant would interject when they didn't understand or needed something interpreted. There was also a case where the interpreter

stopped interpreting early on in the hearing, and it seemed to the observer that the applicant was mostly unaware of the process.

Another factor that explains the vastly differing standards of interpretation was the role of the judge. In nearly 32% of the cases the judge occasionally made time for the interpreter to summarise the proceedings to the applicant, yet in 18% of the cases, the judge only allowed for the interpreter to interpret when the applicant was being spoken to directly. Also, it is significant to note that in one case, there were no efforts made to interpret even when it was necessary.

The nature and behaviour of the interpreter also had a significant impact on the environment of the hearing and the overall manner in which the applicant was being treated. In only 50% of the cases did the interpreter face the applicant. This is exacerbated by the inadequate set-up of the courtroom for videolink hearings, where the interpreter is positioned directly between the video screen and the judge with a microphone in front of them and has to decide how to navigate speaking both in front of and behind them simultaneously.

⁹ P Coker, Jane, Jim Gillespie, Sue Shutter, and Alison Stanley. Representation at Immigration Appeals: A Best Practice Guide. Office of the Immigration Services Commissioner. Immigration Law Practitioner's Association. December 2005. Pages 8-10. Accessed August 7, 2019. <https://www.ilpa.org.uk/pages/publications.html>.
¹⁰ Burnham, Emily. Challenging Immigration Detention: A Best Practice Guide. Bail for Immigration Detainees. Immigration Law Practitioner's Association. October 2003. Page 88. Accessed August 7, 2019. <https://www.ilpa.org.uk/pages/publications.html>.
¹¹ UK. Courts and Tribunals Judiciary. First Tier Tribunal. Bail Guidance for Judges Presiding Over Immigration and Asylum Hearings. June 11, 2012. Page 28. Accessed August 8, 2019. <https://www.judiciary.uk/wp-content/uploads/2014/07/bail-guidance-immigration-judges.pdf>.
¹² Lindley, Anna. Injustice in Immigration Detention: Perspectives from Legal Professionals. Bar Council. November 2017. Page 21. Accessed August 8, 2019. https://www.barcouncil.org.uk/media/623583/171130_injustice_in_immigration_detention_dr_anna_lindley.pdf.
¹³ Lindley, Injustice in Immigration Detention, page 21.
¹⁴ “Best Practice Guide: Interpretation at the Hearing.” Electronic Immigration Network. March 31, 2018. S34.15. Accessed August 09, 2019. <https://www.ein.org.uk/bpg/chapter/34#toc1>.
¹⁵ National Audit Office. The Ministry of Justice's Language Services Contract: Progress Update. By Amyas Morse. January 22, 2014. Page 11. Accessed August 9, 2019. <https://www.nao.org.uk/wp-content/uploads/2015/01/The-Ministry-of-Justices-language-services-contract-Progress-update.pdf>.
¹⁶ “Best Practice Guide”, S34.19
¹⁷ Craig, Sarah. “Lowering or Raising the Language Barrier? Reflections on Interpretation, Translation and the Digitalisation of Immigration Tribunals.” UK Administrative Justice Institute. July 31, 2019. Accessed August 9, 2019. <https://ukaji.org/2019/07/22/lowering-or-raising-the-language-barrier-reflections-on-interpretation-translation-and-the-digitalisation-of-immigration-tribunals/>.
¹⁸ Burnham, Challenging Immigration Detention, page 88.
¹⁹ Craig, “Lowering or Raising the Language Barrier”.

While interpreters are provided for the court hearing, they are not provided for pre-hearing conferences. The absence of the interpreter led to severe communication difficulties, creating a hostile environment for the applicant and the financial condition supporters. Prior to one hearing, the applicant and solicitor attempted to have a conference over videolink, without an interpreter present. The applicant's family attempted to enter the room in order to interpret the proceedings, but the solicitor would not let them. They became frustrated with the solicitor, asking what was the point in her trying to have a conference with him when he was not going to understand what she was saying. The solicitor responded very disparagingly saying that after six years here the judge would probably expect him (the applicant) to speak some English.

In several hearings, the issues with the interpreter tied in closely with issues related to the videolink, contributing to a tense and heated environment. There was a hearing where the applicant (appearing via videolink) was unable to hear the interpreter well, which made communication more tense. The interpreter and applicant ended up speaking over each other, even when the interpreter was attempting to speak to the judge. On several occasions the interpreter shouted at

the applicant to get him to pause while she was speaking. This was possibly exacerbated by the fact that the interpreter was facing the microphone and so had her back to the applicant/camera. In another case, the applicant could not see the interpreter due to the positioning of the videolink, so could not see when the interpreter was motioning for them to slow down so they could interpret.

Emily Burnham, of Bail for Immigration Detainees, notes that courts book interpreters upon request when deemed necessary for a particular hearing.¹⁰ Lack of an interpreter when one is necessary for a given hearing can therefore be a result of several potential factors, including mistakes on the part of the court, the applicant or their representation, or the interpreter themselves.

Guidance for immigration judges states that they should remember to allow time for the interpreter to translate to the applicant.¹¹ Of the judges observed by our group, not all followed this guidance to the same extent or consistently in all hearings. Of the hearings with interpreters, in 23% the judge gave the interpreter time to interpret for the applicant often and throughout the hearing, in 32% the judge gave them time to interpret occasionally to summarise the proceedings to the applicant, and in 18% the judge only allowed for the

interpreter to interpret when the applicant was being spoken to directly. In one case, the judge made no effort to allow time for the interpreter to interpret to the applicant at all.

A report commissioned by the Bar Council found that many immigration judges were concerned about the negative impacts of video hearings on communication between applicants and those present at the hearing, specifically that the videolink impeded communication through visual cues.¹² The Bar group collected information for hearings on 31 days out of a 43 day period in 2017, and found that half of those hearings featured interpreters. Lawyers in that report noted issues relating to interpretation, such as when interpreters spoke the wrong language or dialect or failed to show up altogether, wasted time and resources of the courts, applicants, and applicants' legal representation.¹³

Under the Ministry of Justice's previous contract for court interpretation services with Capita TI, several organisations including the Justice Committee and National Audit Office (NAO) expressed concern regarding the quality of interpreters in immigration tribunals and other hearings.¹⁴ In 2014, the NAO released a report showing an increase in the use of the lowest grade interpreters in courts and tribunals.¹⁵ The Ministry of Justice

then recommended increased professional requirements for interpreters and a new hierarchical system of designation to match the most qualified reporters with the most 'important' or 'complex' cases. According to this recommendation, human rights and asylum cases were not to be afforded the highest level of importance, and thereby not the most skilled interpreters. Although the new Language Services Framework has proposed new systems to assure quality of interpretation, there has been little evidence of change regarding the lower designation of asylum cases.¹⁶

In a report for the UK Administrative Justice Institute, Sarah Craig noted interpretation is not a cut-and-dry nor mechanistic process, and that by the nature of their role, interpreters are active and influential participants in hearings. This can be seen as disadvantageous for applicants who question where an interpreter's allegiance lies.¹⁷ A court interpreter's duty is, after all, to the court and not the applicant.¹⁸ Craig also notes the alienating nature of hearings held via video link, especially with regards to interpretation and communication with the applicant, stating that "having the detainee communicate with the interpreter, and everyone else, through the videolink reveals that while virtually present, the applicant makes little or no active contribution to the hearing."¹⁹

No Representation

It is a criminal offence to give immigration advice if not regulated by the Office for the Immigration Services Commission (OISC) or the Bar Standards Board (BSB), and as such if applicants are to be represented it must be by a qualified solicitor or barrister. These services cost money. Most will qualify for legal aid funding; while it has been heavily axed for most immigration matters, it remains available to those in detention. Individuals in certain difficult circumstances may be represented for free by the independent charity Bail for Immigration Detainees (BID). For example, those who have been detained for a long time, those with dependent family members, or where detention is obviously inappropriate for medical or mental health reasons. Despite these safety nets, applicants may, and often do, proceed to the hearing unrepresented, with or without assistance in preparing their application. We are concerned that, following the introduction of automatic bail hearings for those in detention for more than four months in 2016, the number of applicants proceeding to a hearing unrepresented might increase.

Unfortunately we cannot comment on whether the number of detainees going through hearings without representation has actually increased, or whether the likelihood of being refused bail if unrepresented is higher. Our study did not stretch

across a long enough period of time, nor consist of enough observations. Ten of the cases we observed were unrepresented, and in half of those cases the applicant was advised to withdraw their application. Of the remaining five which proceeded, bail was granted in just two.

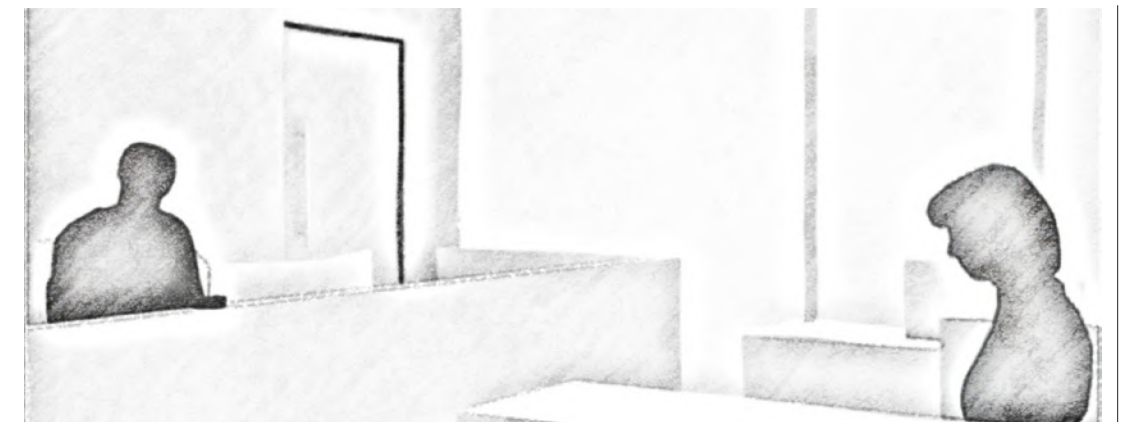
We hold that being unrepresented creates an inherent bias in the courtroom. The applicant is faced with the HOPO, a seasoned professional, who will present to the judge all the reasons the applicant should not be allowed bail. An observer noted in one hearing:

“ The no rep dynamic was awful and very unfair. The applicant was at a clear disadvantage to the well-prepared HOPO. ”

The judge is forced to try to remain impartial while simultaneously trying to correct the imbalance between sides. A refusal of bail causes a 28-day block on further applications. The stakes are high.

Representation

The linking of the immigration and criminal systems by making immigration offences criminal offences makes those with an uncertain immigration status vulnerable. They are more vulnerable to crime, abuse, or exploitation from employers because they will be less willing to report their situation. They are unable to hold their solicitors accountable in the case of legal malpractice, due to a fear of coming to the attention of the authorities.



Lawyer Viewpoint

Our data does not show any meaningful trends on the quality of representation. Most representatives were very good, and we saw little discrepancy between solicitors and barristers. However some hearings stood out as having particularly bad representation:

“ Representation was quite poor – she seemed like a bad solicitor and it showed. Bad that she had a conference with the client without an interpreter and was snide to his family. Poor arguments to explain his Construction Skills Certificate Scheme (CSCS) card. Didn’t justify his actions very well. ”

“ I don’t think the representative was very good, seemed to incriminate his own client accidentally and kept mentioning his crime. For example, the judge asked about the relationship the applicant had with his children, and the solicitor said he didn’t really have a relationship with them because he was in prison! ”

Home Office Presenting Officer

As with the applicant's representative, our data did not show any meaningful trends with regards to the HOPO. However we did note some particularly bad moments:

Before the hearing began, the HOPO was conversing with us and stated that "I wish they would all withdraw or get rejected quickly so that I can go home"

Claimed applicant showed a blatant disregard to British law and is "the author of his own demise" despite an assessment saying he's a low risk of harm.

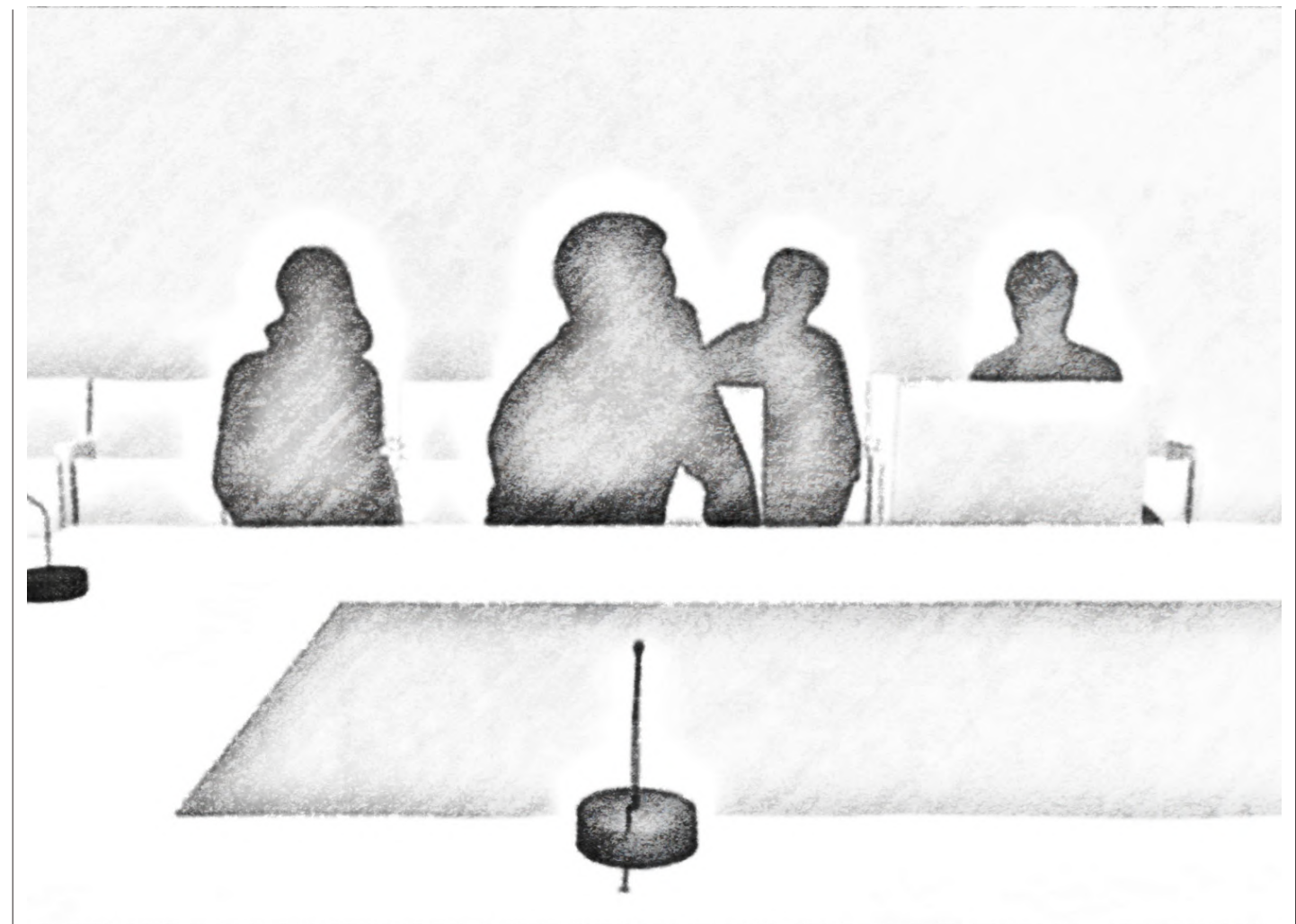
Interviewed the surety (the applicant's partner) very aggressively and seemed to question her parenting.

HOPO asked "is it fair to say she's too young to have any concept about what's going on?" about the 2 year-old daughter. Suggesting that it's ok to separate a 2 year-old from her father because she doesn't understand what's going on.

HOPO also asked what the source of her money was - she says it's because I work. HOPO suggested given that she works she wouldn't be able to influence him to go to his meetings because she'll be busy. Surety replies that he's complied in the past.

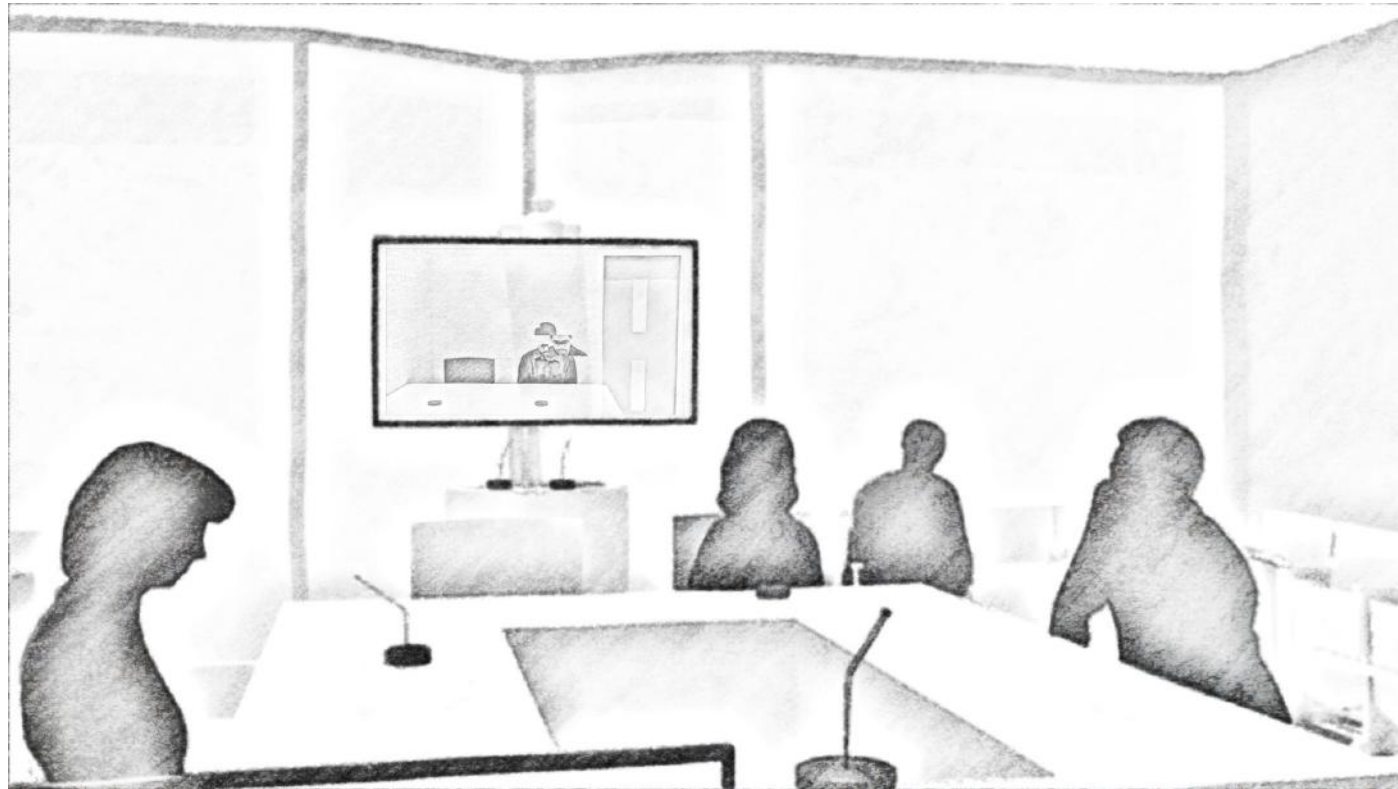
One trend we did note was that despite Immigration Detention existing in order to facilitate removal, the HOPO only put forward the argument that removal was imminent in 10 of 55 hearings.

Home Office Viewpoint



The Judge

Judge Viewpoint



Judicial discretion

The role of the judge in an immigration bail trial is to determine whether the Home Office has the right to continue to detain someone under immigration powers for the purpose of removal. Bail from an immigration judge is just one of four ways out of detention. However, as mentioned, this is the only route where an independent body, rather than the Home Office, can alter the detainee's position.²⁰

The judges' posts require five or seven years of practice as a barrister or solicitor following qualification, however the Courts and Enforcement Act 2007 widened the eligibility for judicial posts, which allows for more diversity in the judicial positions.

²⁰ "Getting out of Detention." Bail for Immigration Detainees. Accessed August 13, 2019. <https://www.biduk.org/pages/96-getting-out-of-detention>.

²¹ UK. Courts and Tribunals Judiciary. Guidance on Immigration Bail for

What guidelines exist for immigration judges?

The Guidance on Immigration Bail for Judges of the First-tier Tribunal of the Immigration and Asylum Chamber was drafted in response to requests from judges and focuses on "practical issues".²¹ This guidance is to be used by the judges in conjunction with Schedule 10 of the 2016 Act which details the main provisions of immigration bail. Some of the most pertinent **general principles** from the guidance are the following:

Judges of the First-tier Tribunal (Immigration and Asylum Chamber). By Michael Clements. January 15, 2018. Accessed August 13, 2019. <https://www.judiciary.uk/wp-content/uploads/2018/05/bail-guidance-2018-final.pdf>.

Ethos:

Liberty is a fundamental right of all people and can only be restricted if there is no reasonable alternative.

Purpose:

Immigration detention cannot be used as punishment, as a deterrent or for any coercive purpose, [...] to prevent or restrict the establishment of family or private life, or to prevent or restrict an applicant from pursuing lawful action to remain in the UK.

"Lawfulness" of detention:

When considering whether to grant bail, judges are not deciding whether continued detention is lawful.

Length of detention:

Detention for three months would be considered a substantial period and six months a long period. Imperative considerations of public safety may be necessary to justify detention in excess of six months.

Judicial interference:

Judges should be slow to interfere in cases where a person is detained for the expedited examination of an immigration application, such as a protection claim, where detention can be shown to be necessary and justified and there is no reasonable alternative. However, judges should not tolerate delays in such actions.

Specific Provisions

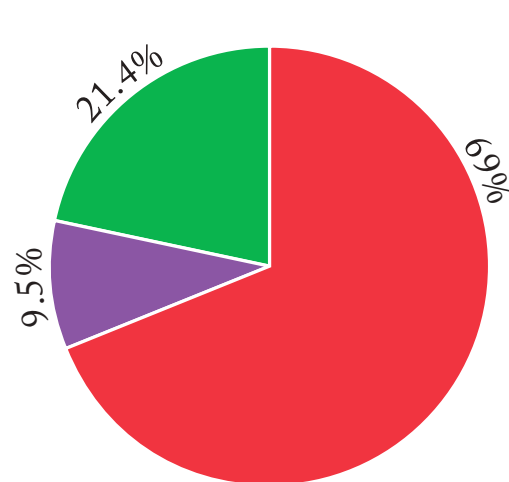
Bail conditions

These often include financial conditions, bail accommodation, curfew and periodic reporting to the Home Office. The guidance states that judges “*should only impose the minimum condition necessary*”.²² We found that judges routinely required more than minimum conditions. Regarding accommodation, the guidance states that the risk of absconding is “*likely to be low if the person seeking bail proposes to reside at a stable address*”²³, yet we found that

judges did not grant bail without a bail address.

With regards to the financial condition the guidance states that “*Judges must be cautious about imposing a financial condition simply because one is offered. A judge must only impose the minimum bail conditions necessary and do no more because bail conditions are themselves a restriction of liberty*”.²⁴ However, financial condition supporters were required in 69% of the observed trials.

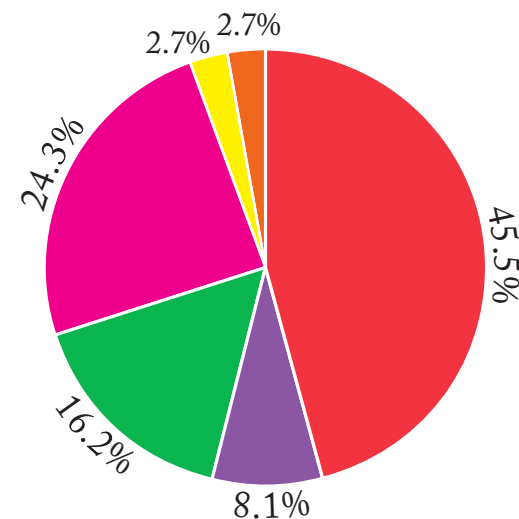
Did the immigration judge discuss financial condition supporters?



- Yes and financial condition supporters were required
- Yes and financial condition supporters were not required
- No

Yes, required: 29, Yes, not required: 4, No: 9

Do you think oral evidence of financial condition supporters was significant in influencing the Immigration Judge's decision?



- Yes
- No
- Somewhat
- No sureties present
- Did not get called on
- Did not get that far in the hearing

Yes: 17, No: 3, Somewhat: 6, Sureties present: 9, Did not called on: 1, Did not get that far in hearing: 1

We were struck by the diversity of judicial approaches to financial condition supporters, as can be shown by observations of three separate trials:

“ The surety was required for support of the applicant but not for financial contribution. ”

“ The judge was slightly impatient with applicant's solicitor, and described the applicant's history as “appalling”. He did not talk to the sureties just said “I'll take both sureties - I assume they know the consequences of this”. Both had stood as sureties before for the same person. Despite seeming very against granting bail to the applicant, he did eventually grant bail. ”

“ No sureties [financial condition supporters] were present, there was a presumption of bail unless the Home Office could show why it was not persuaded. There was no risk of reoffending and no bail address was given. ”

Withdrawing a bail application

The 2018 judicial guidance states that:²⁵

“95. Judges should not encourage withdrawal of bail applications as an alternative to refusing bail. [...] In other words, the giving of a preliminary view must not be used as an alternative to deciding the application.

96. These principles are needed because the provisions relating to repeat bail applications (see para 12 of schedule 10) can only be effective if the Tribunal is robust in its handling of bail applications [...]”

However, we noted that judges frequently encouraged withdrawal when at first glance they considered evidence would be insufficient to grant bail. If a

bail application is refused, this triggers a 28-day waiting period before the applicant can make a fresh application.²⁶ An observer made note of this in one of the hearings she attended:

“ The judge suggested a withdrawal. There had been a fresh claim submitted on Friday (now Monday), but the Home Office did not think this would be a barrier to removal. The applicant's counsel formally requested withdrawal after taking counsel with sureties. The applicant agreed. ”

²² Support for People on Immigration Bail. Asylum Support Appeals Project. October 2018. Accessed August 13, 2019. http://www.asaproject.org/uploads/18-10-30_Support_for_people_on_Immigration_Bail.pdf.

²³ Courts and Tribunals Judiciary, Guidance on Immigration Bail for Judges, page 7.

²⁴ Ibid

²⁵ Nicolaou, Angelina, and Eleri Griffiths. “Immigration Bail: The New Routine.” One Pump Court. September 10, 2018. Accessed August 14, 2019. <http://onepumpcourt.co.uk/news/immigration-bail-the-new-routine-2/>.

²⁶ McKinney, CJ. “How Immigration Bail Really Works: Scenes from Hatton Cross Immigration Tribunal.” Free Movement. February 13, 2018. Accessed August 14, 2019. <https://www.freemovement.org.uk/bail-hatton-cross-immigration-tribunal/>.

Further changes brought on by the new guidance: “Imminent removal”

When the new guidance replaced the 2012 guidance in order to take into account Schedule 10 of the 2016 Act, certain aspects of it decreased the likelihood of bail being granted due to the increased scrutiny and restrictions on the tribunals.²⁷ Specifically, it placed

new limitations on the Tribunal’s power to grant bail when (1) Directions for removal are in force or (2) Directions require removal within 14 days.²⁸ This means that the tribunal cannot grant bail in any circumstances if removal is due to occur within 14 days, even if the detainee meets all the other conditions.

Though scrutiny on the judiciary is vital, the Immigration Tribunals

are virtually the only place where the Home Office’s decisions can be objectively questioned. Therefore, it is not in the applicant’s interest that the judges’ ability to grant or refuse bail are limited, even when removal is imminent. As our data shows, 74.4% of the observers found the immigration judge to be “impartial” and 54% found them “fair and balanced” (see below).

It is notable that in one instance, an observer noted that the HOPO stated that removal was imminent:

“ They were attempting to get a travel document from the applicant’s home country which would take 6-8 weeks ”

This would clearly go beyond the foreseen 14-day time window.

Effect on the applicant and their family

Nicolaou and Griffiths astutely observe another aspect that has changed drastically since the new guidance - there is no mention of the effect extended detention has on the applicant or their family/dependents:

“In the 2012 guidance, Immigration Judges were required to focus inter alia on the effect of detention upon the person and his/her family when deciding whether to grant immigration bail. It is extremely unfortunate that there isn’t a clear steer from the guidance that this is a relevant factor to be considered, particularly as reference to

the need for detention to be compatible with Article 8 ECHR, the UN Convention on the Rights of the Child and s.55 of the Borders, Citizenship and Immigration Act 2009 is also removed. These factors are clearly still relevant as matters of significant importance when assessing an application, and where appropriate representations can still be made in that regard they should.”²⁹

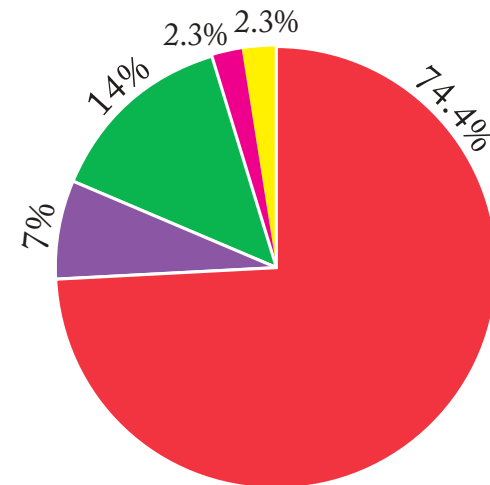
In accordance with this, in our observations we found that the judge did not inquire about the applicant’s health or their dependents in the overwhelming majority of cases.

²⁷ “New Guidance on Immigration Bail for Judges of the First-tier Tribunal.” Electronic Immigration Network. May 8, 2018. Accessed August 14, 2019. <https://www.ein.org.uk/news/new-guidance-immigration-bail-judges-first-tier-tribunal>.

²⁸ Nicolaou and Griffiths, “Immigration Bail”.

²⁹ Nicolaou and Griffiths, “Immigration Bail”.

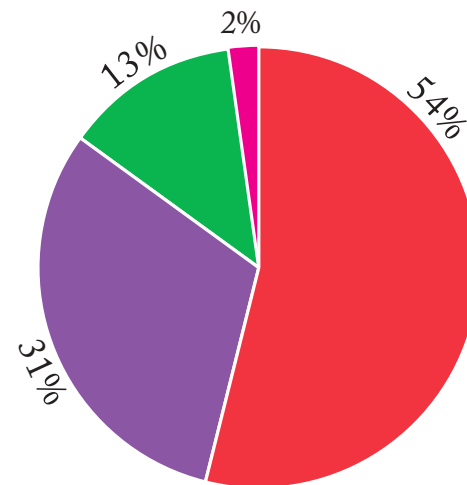
In your opinion, did the Immigration Judge seem impartial?



● Yes
 ● No
 ● Somewhat
 ● Unable to judge impartially as one side was unrepresented
 ● He did not seem to work from a presumption of liberty

Yes: 32, No: 3, Somewhat: 6, Unable to judge impartiality as one side was unrepresented: 1, He did not seem to work from a presumption of liberty: 1

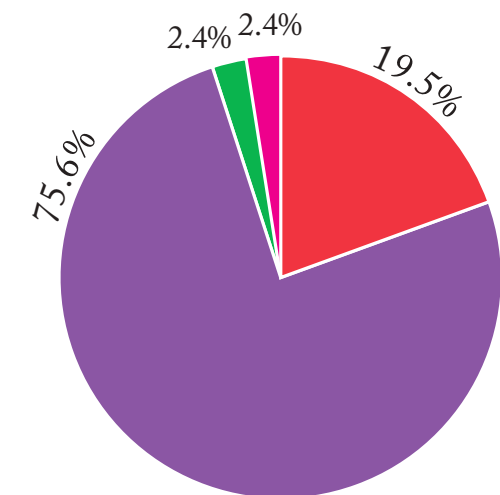
Did the decision of the Immigration Judge seem “fair and balanced”?



● Yes
 ● No
 ● Somewhat
 ● No decision made

Yes: 28, No: 16, Somewhat: 6, No decision made: 1

Did the Immigration Judge ask about applicant’s children or dependent family members?



● Yes
 ● No
 ● Somewhat
 ● No children or dependent family members, but inquired about applicant’s partner
 ● Brought up by the representation

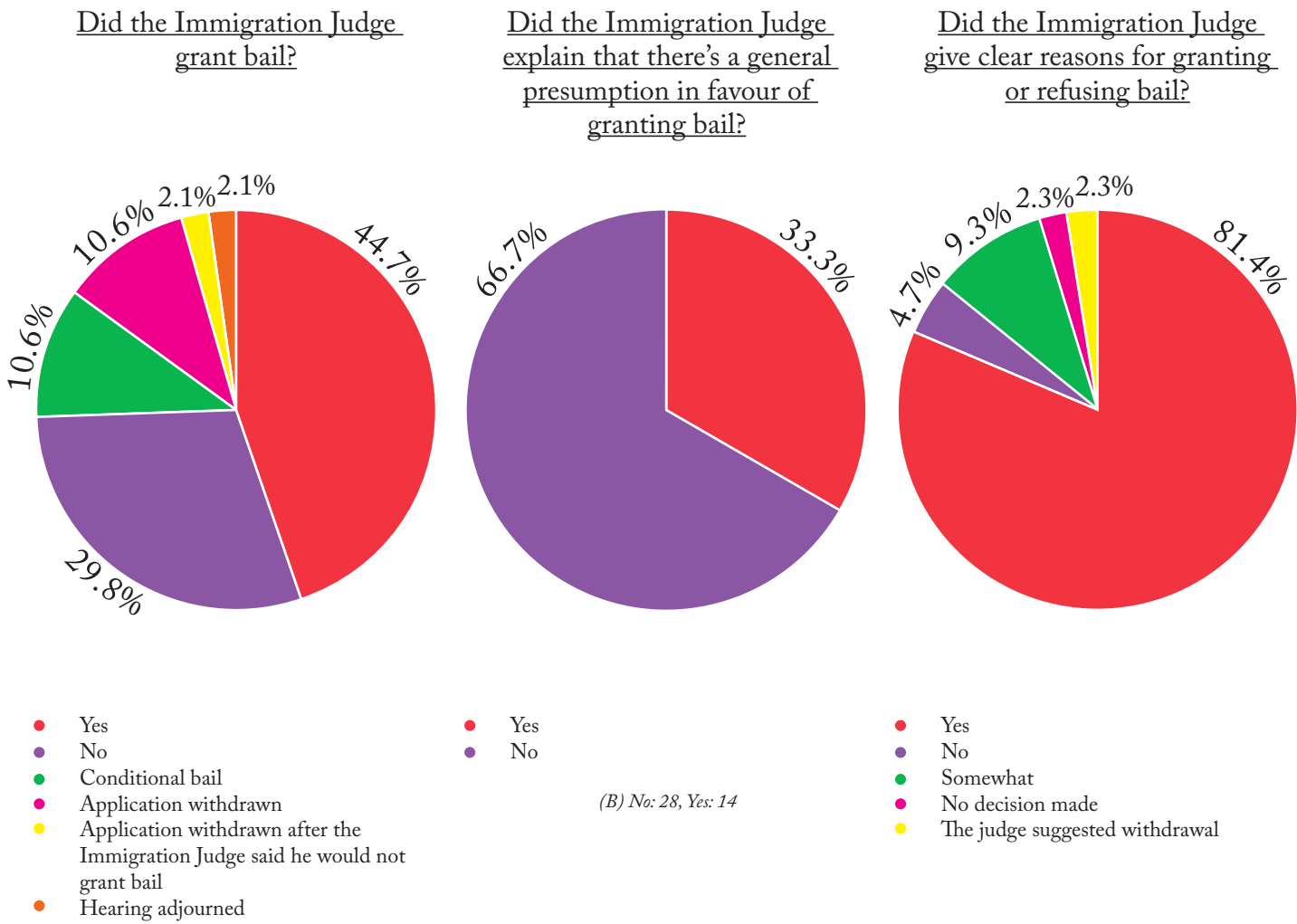
Yes: 8, No: 31, Somewhat: 0, Partner was brought up: 1, Brought up by applicant’s representative: 1

How often do Immigration Judges grant bail?

We found that Immigration Judges were more likely to grant bail than not (A), although we also found that judges did not generally state that there was a general presumption in favour of granting bail (B).

Furthermore, the overwhelming majority of observers noted that judges clearly explained why they refused bail. The observers noted various reasons for such a refusal. The most common ones were the following:

- “Likelihood of absconding, History of absconding, Likelihood of noncompliance”
- “Removal date imminent”
- “Accommodation should be inspected”
- “Disruptive behaviour in detention”
- “Criminal history”



Getting Bail: Accommodation

The repeal of section 4 (1)

Section 4 (1) of the Asylum and Immigration Act 1999 which allowed immigration detainees who did not have a bail address to apply for accommodation from detention, was repealed in January 2018.³⁰

In the new regime, homeless detainees are faced with a far more restrictive and complicated system of accommodation.

There are now multiple pathways through which detainees can apply for accommodation. However, the eligibility criteria for each of these pathways are dependent on whether the detainees are asylum seekers, refused asylum seekers or individuals who have not made an asylum claim. Asylum seekers and refused asylum seekers can apply for section 95 and section 4 (2) accommodation respectively by filling out a 32 page form asylum support application form (ASF1).³¹ However, individuals are effectively only able to complete the form and pass the destitution test once they have been given bail and can prove that they are or likely to become destitute within 14 days, if they are not provided with assistance. Therefore, detention in itself becomes a barrier towards receiving accommodation.

Individuals who have not made an asylum claim can only apply for schedule 10 accommodation.³²



Gallery Entrance

However there is not a specific application process (e.g. a form) and in order to be considered for schedule 10, the applicant has to have been given 'bail in principle', i.e. bail on the condition that they secure accommodation within a specific period of time. Moreover, schedule 10 accommodation is only provided in 'exceptional circumstances' and at the discretion of the Secretary of State.

The law as it stands is complicated, inconsistent and uncertain and reproduces the hostile environment.

The limits of the research

Bail hearings last approximately 10-20 minutes. In this short window of time, a few main issues are discussed, including whether removal is imminent and if there

is a risk of absconding. These determine whether or not the applicant will be granted bail. Additional information about the applicant and their immigration claims are rarely discussed. This made it difficult for the bail observers to consistently note, for example, whether or not the applicant was an asylum seeker or refused asylum seeker and which pathway they had taken to apply for accommodation. Consequently

we were unable to determine the processes and challenges that a homeless applicant faced in their efforts to secure accommodation from the Home Office.

Our findings

That being said, our research corroborates certain findings from BID's briefing on the new post-detention accommodation

regime.³³ One of the most important findings is that immigration judges are highly unlikely to give bail if the applicant does not have a bail address, even if removal is not imminent and there is no risk of absconding. The general sentiment is summed up by one of the judge's statements - "This is a court of law, I will not release a man to be homeless".

This means that the Home Office policy of requiring applicants to first get released on bail or be given 'bail in principle' and then apply for s 95 or s 4 (2) accommodation through the ASF1 form or schedule 10 accommodation does not work. It effectively results in detention being unlawfully used as accommodation as applicants continue to be detained, without legal justification, until the home office provides them with suitable accommodation.

Our research also revealed that, while accommodation was not a prominent issue in

³⁰ UK Parliament. Immigration and Asylum Act. C.33, s.4. 1999. Accessed August 14, 2019. <https://www.legislation.gov.uk/ukpga/1999/33/contents>

³¹ UK Parliament, Immigration and Asylum Act, s.4 and s.95

³² UK Parliament. Immigration Act. C.19, sched 10. 2016. Accessed August 14, 2019. <http://www.legislation.gov.uk/ukpga/2016/19/schedule/10>

³³ "BID Briefing on Post Detention Accommodation." Bail for Immigration Detainees. June 13, 2018. Accessed August 10, 2019. <https://www.biduk.org/resources/76-bid-briefing-on-post-detention-accommodation>.

most bail hearings, when issues did arise, they proved to be the determining factor of the hearing. Bail was denied due to lack of accommodation in two cases and in another it was part of the Judge’s reasoning for refusing bail. However we did note a general lack of clarity and understanding of the new law. In two other cases, bail was given in principle with the condition that the Home Office provide accommodation within the next two weeks. However, as discussed, the Home Office have discretion rather than a duty to do so. Moreover, there is no right of appeal against the Home Office’s decision not to provide schedule 10 accommodation.

Our qualitative findings also elucidate the specific set of challenges faced by applicants who are ex-offenders.

An overview of our observations

In fourteen hearings, observers recorded that the issue of accommodation was raised substantively by the

applicant’s representative. In sixteen hearings, observers recorded that the issue of accommodation was raised substantively by the HOPO. Bail was granted in principle to two applicants. In three hearings, observers recorded that bail was not granted to applicants on the basis of a lack of suitable accommodation. In four hearings, bail was granted to applicants without a fixed address. It is worth noting that it was not recorded whether this meant that the applicants were released into destitution.

Schedule 10 accommodation

In two hearings, the applicant had applied to the Home Office for accommodation under Schedule 10, but the HOPO stated that the Home Office had no record of any application for accommodation. It was unclear in both cases whether this meant merely that the application under Schedule 10 was not included in the bail summary, or whether this was symptomatic of more systemic

and procedural issues. In one hearing, it was stated by the HOPO that the applicant had been determined by the Home Office as failing to meet the conditions laid out in paragraph 9 of Schedule 10 . It is noteworthy that in all three of these cases, the applicants were ex-offenders.

Ex-offenders and the suitability of accomodation

Observers recorded that the immigration judge and the Home Office presenting officer (HOPO) sometimes used the hearing as an opportunity to determine the suitability of bail addresses and post-detention accommodation. This was particularly apparent during hearings where the applicants were ex-offenders, or in Home Office jargon, Foreign National Offenders. The following observations were recorded in separate hearings, and the applicants have been anonymised and given an identifying letter to reflect this.

In the case of applicant R, bail was granted on the condition that the

applicant would reside with his mother rather than his girlfriend on the grounds that he had been involved in criminal activity near his girlfriend’s home.

In the case of applicant S, the immigration judge, prompted by the HOPO, raised concerns about the suitability of the bail address, which was that of the applicant’s family home. The immigration judge suggested that the applicant’s children may be negatively affected by the presence of their father owing to his criminal record. This was in spite of the assessment of the local authority, which found that the applicant’s continued detention was having an adverse effect on the wellbeing of the children.

In the case of applicant T, both the immigration judge and the HOPO raised concerns about the fact that the financial condition supporter’s home had not been assessed by the applicant’s probation officer. This was in spite of the applicant’s request for an inspection well in advance of the hearing.

These qualitative findings reflect the challenges faced by ex-offenders when applying for bail. These result both from the lack of clarity surrounding

applications for post-detention accommodation, and from the difficulties of coordinating the approval of accommodation by multiple agencies (the Tribunal, the probation officer and the Home Office).

A hearing in focus

The case concerned an Algerian applicant who had entered detention in July 2018 and was approaching his 5th month in detention. At the beginning of the hearing his representative stated that the applicant had been caught shoplifting, which could not be categorised as a ‘threat to public safety’ which purportedly justified the extended period of detention. Moreover, the applicant had submitted an asylum claim based on persecution for his sexuality three months prior to this hearing. However, he was unable to complete his application as he was suffering from severe mental health issues.

The representative submitted two possible options to the judge for resolving the crucial issue surrounding the applicant’s lack

of accommodation. The first was to grant bail in principle with the condition that the Home office approves an application for accommodation. The second option he proposed was that the judge should grant bail without accommodation, and then the applicant’s solicitors could make a claim for emergency accommodation for asylum seekers. The judge accepted the applicant’s representative’s first option, stating that “bail will be granted in principle but not in practice”. He further stated that since removal was not imminent (there were outstanding claims) “bail will be granted on paper with the condition that the Home Office comes up with the offer of accommodation within two weeks. Bail management is declined to the Home Office and remains within the matters of the tribunal.”The judge ended the hearing by stating that, “if nothing happens within two weeks... [the applicant] is left with his remedies”. We surmised that this means the applicant could reapply for bail, following the 28 day time limit on an application following refusal.

Conclusions

We are opposed to the use of detention for immigration enforcement purposes, and especially to the use of indefinite detention. Deprivation of liberty is a violation of a fundamental human right.

While there is detention, we call for the process of bail to be fair.

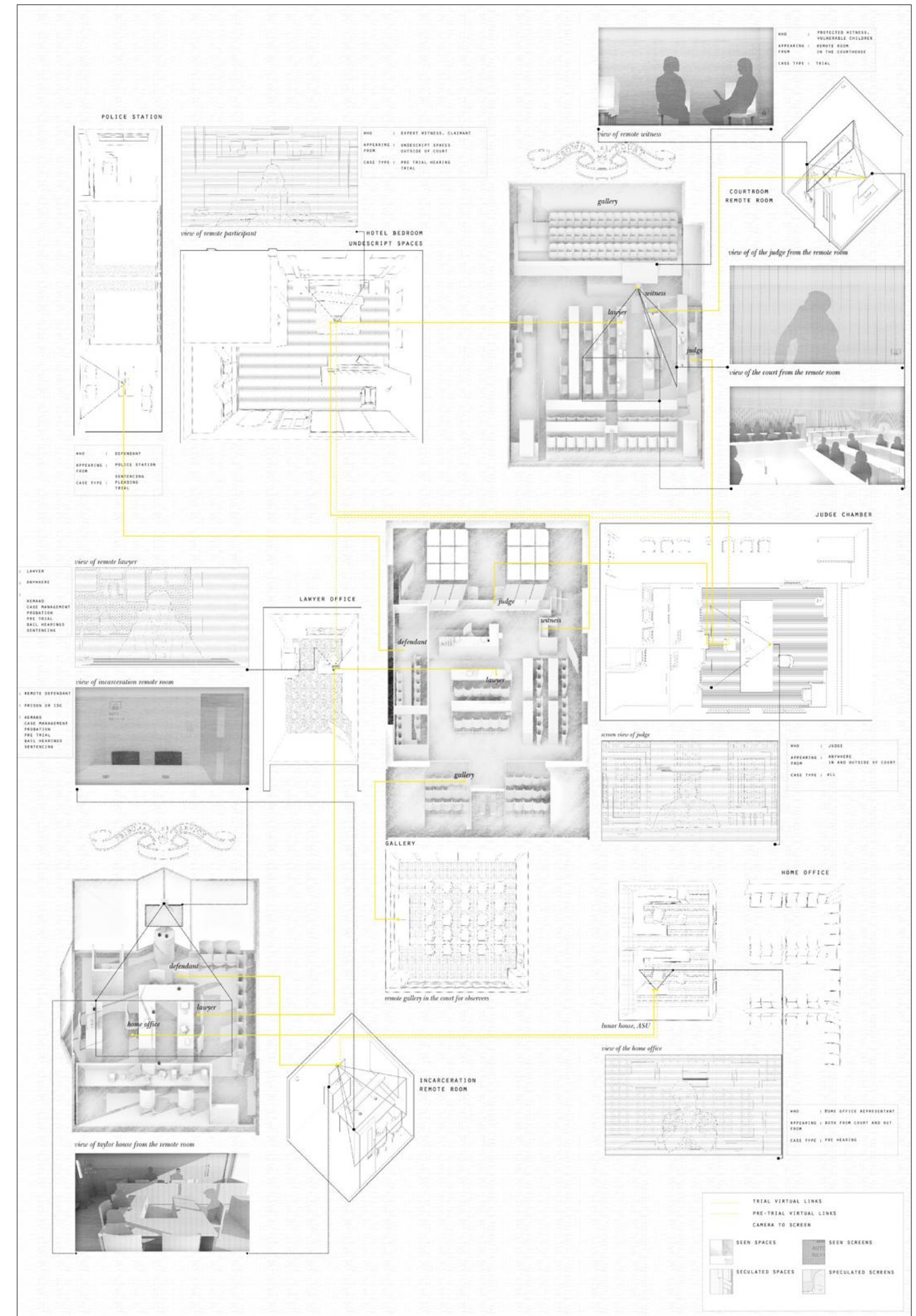
As it is currently being used, videolink technology does not allow for a fair hearing. We ask that videolink is discontinued, since an applicant ought to be present at their own hearing.

At the very least, courtrooms should be designed for videolink, paying attention to sound and the positionality of an interpreter, and technological support must be on hand to assist with problems.

We ask that in a videolink context, interpreters be provided in the detention centre, to allow for simultaneous interpretation of the entire hearing.

We ask for an expansion of legal aid in the immigration context such that all applicants are able to secure representation.

We ask for a humane conversation around those in detention, so that those dealing with cases will always treat them with respect, not with an attitude of getting the case done fast so they can get home.



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