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Immigration bail hearings by video link: a monitoring exercise by Bail for Immigration Detainees and the Refugee Council

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Summary of concerns and recommendations

Key concerns raised by this monitoring exercise:

1. Delays in listing bail applications are not addressed by video hearings
2. The choice of an in-court hearing is not being explained to bail applicants
3. One third of bail applicants did not understand how video hearings work
4. Nearly a third of Home Office bail summaries were not produced
5. 50% of bail applicants were not legally represented
6. Over 40% of hearings lasted 45 minutes or more – in prisons the video link would end before these hearings conclude
7. 27% of applicants who used an interpreter did not have everything interpreted
8. Bail applicants' experiences are not being systematically monitored

Recommendations to the AIT:

1. The roll out of video hearings must be systematically monitored to ensure that its impact on the people at the heart of the process – bail applicants – is evaluated. Until this is done, the roll out should be suspended. The AIT should use a standard monitoring form with all bail applicants and the findings should be promptly and publicly disclosed.
2. The option to request an in-court hearing must be clearly explained to all bail applicants. The meaning of 'exceptional circumstances' should be articulated, as should the route for requesting an in-court hearing and for challenging refusals.
3. Video hearings in prisons must not arbitrarily end after 45 minutes because of the commercial requirements of a private contractor.
4. As the introduction of video hearings has not ensured the three day target for listing bail hearings is consistently met, the AIT must employ alternative workable strategies to meet the target.
5. The late- or non-production of many bail summaries by the Home Office requires the time allocated for legal consultation prior to the hearing to be treated flexibly by the Immigration Judge and increased where necessary.
6. Immigration Judges should ensure that where an interpreter is used during a hearing, everything that is said in the court room is interpreted to the bail applicant.

Recommendations to the Home Office:

1. Instead of tackling the failure of private escorts to produce applicants at their bail hearings, the right of applicants to be present at their bail hearings has been withdrawn. Unreliable escort services remain a pressing concern that the Home Office must address.
2. The Home Office must adhere to the AIT's procedure rules and serve bail summaries by 2pm on the day before the hearing, or where the Home Office has less than 24 hours notice, as soon as is reasonably practicable.

Recommendations to the Legal Services Commission:

1. This monitoring exercise highlights the continuing difficulties faced by detainees in accessing quality legal advice for bail applications. The LSC should examine the findings of this exercise to address the particular barriers to legal advice facing immigration detainees seeking to exercise their right to apply for bail.

Background

Every year around 30,000 people are held under immigration act powers in the UK. Most immigration detainees are either asylum seekers awaiting decisions on their claims; refused asylum seekers or migrants awaiting forcible removal from the UK; or foreign national prisoners who have finished their criminal sentence and are awaiting deportation. They are held at one of ten immigration detention centres in England and Scotland or in prisons across the UK.

Immigration detainees are entitled to challenge the government's decision to detain them by applying for bail before the courts - known as the Asylum and Immigration Tribunal or AIT. According to the AIT's own instructions, bail applications should be listed for a court hearing within three working days of the application being submitted, and by 2pm on the day before the hearing the Home Office must produce a bail summary explaining why it believes the applicant should continue to be detained.

The Home Office has a contract with a private company - G4S, formerly known as Securicor - to escort immigration detainees to court for their bail hearings. Bail for Immigration Detainees (BID) and the Refugee Council have become increasingly concerned about the failures of this service. In our experience it is common for detainees not to be taken to court on time, or at all, for their bail hearings by these private escorts; the escorts' vans do not turn up, turn up late or fail to arrive at their destination court. As a result detainees are obstructed from accessing the courts and may be deprived of their liberty for longer. The failure to produce applicants also wastes court time and is distressing for the friends and families of detainees, who often travel long distances to stand surety at the bail hearing. BID, visitor groups, detainee supporters and the Refugee Council have all registered concerns with the Home Office and the AIT but little has changed.

In December 2006, the AIT announced its intention to introduce bail hearings by video link. Both the AIT and the Home Office have argued that video hearings are a way of addressing the long running problems with escorts whilst saving time and money. The introduction of video hearings means that detainees will no longer be taken to court. Instead their bail application will be heard by video link while they remain at the detention centre or prison. The Immigration Judge, the Home Office representative, and the legal representative, interpreter and sureties (if the detainee has them) will be in court. According to the AIT, all bail hearings will be video linked but in cases with 'exceptional circumstances' detainees will be able to request in-court hearings. As of February 2008, the AIT has not articulated the meaning of 'exceptional circumstances' to bail applicants or legal representatives and it is unclear how such a request should be conveyed to the courts.

A pilot of bail hearings by video link for immigration detainees held in prisons started in April 2007. In prisons, because of arrangements with a commercial contractor, the video link for bail hearings automatically cuts out after 45 minutes even if the hearing has not concluded. In September 2007, the AIT confirmed that on the basis of the pilot in prisons, which involved 22 cases, video linked hearings would be rolled out to detention centres. Video linked bail hearings began at Campsfield House (linked with Newport AIT hearing centre) on 22 October 2007 and at Oakington (linked with the AIT centres at Taylor House in London and at Birmingham) on 5 November 2007. Video hearings are being rolled out to other detention centres as equipment is installed. The AIT has said that as the commercial contractor is not involved in immigration detention centres, no time limit will be placed on the connection of video links for these bail hearings.

The AIT conducted an evaluation of its pilot in prisons by gauging the views of legal representatives, even though many people are not legally represented at bail hearings. As of February 2008, no evaluation of the AIT pilot in prisons is publicly available and no attempt has been made to systematically monitor bail applicants' experiences of video hearings.

BID and the Refugee Council have serious concerns about how video link bail hearings will work for bail applicants and the impact it will have on their right to a fair hearing and their access to justice. We are aware that video conferencing is used in Crown Courts, but there are significant differences that apply to

immigration bail: in criminal bail cases, the hearing is almost always automatic, and in the vast majority of cases, there will be a legal representative. People are not deprived of their liberty indefinitely without automatic review by a court, unlike in immigration detention. By contrast, in immigration bail cases, there is often no legal representative, and applicants may have waited weeks or even months for their day in court.

Whilst video link bail hearings may well work for some detainees (particularly those who have previously been let down by escort failures), BID and the Refugee Council believe video hearings must only be used where detainees are consulted about their impact, informed about the process and given a meaningful choice between a video link and an in-court hearing. This monitoring exercise presents evidence, albeit based on a limited sample size, of how bail applicants are being affected by video link bail hearings and recommends action from the AIT, the Home Office and the Legal Services Commission.

Aim and methodology

To find out how video link bail hearings are affecting bail applicants, BID and the Refugee Council's office in Oakington used a standard monitoring form with bail applicants to capture their views. In order to mitigate the potential for the sample to be skewed by the outcome of applicants' bail hearings, i.e. for those granted bail to say video hearings work well and those refused to prefer in-court hearings, the monitoring form used mostly structured, quantitative questions. For example, 'were you given a choice about whether you would be allowed to attend court in person?', 'were you given information about how the video hearing would operate?', 'if unrepresented, did you send any paperwork to the Immigration Judge and the Home Office before your video hearing?', 'how long did your video hearing last?' Space was provided at the end of the form for more qualitative information to be disclosed.

All the sample used in this monitoring exercise were bail applicants supported by BID and/or Refugee Council staff between October and December 2007. Where BID/Refugee Council staff identified that someone's bail hearing had been through a video link, the monitoring form was explained to them. If the bail applicant agreed to take part in the exercise, they either filled out the form themselves (either in detention or after they had been released on bail) or it was read to them over the phone (again, either in detention or after they had been released on bail). This monitoring exercise is therefore illustrative rather than representative of the views of bail applicants supported by BID/Refugee Council during the period in question. As single men are held at Oakington and Campsfield House, there are no women in our sample.

For the form to be used in this exercise, a statement of consent had to be signed either by the bail applicant or, if used over the phone, by BID/Refugee Council staff once the applicant had heard and understood the consent statement. Questionnaires without signed statements of consent were not included in this analysis.

The monitoring forms were collated and analysed by Amanda Shah, Assistant Director Policy at BID. The raw data, the analysed findings and the concerns they raise are presented in this document.

Findings

Details of the video hearings

- Monitoring forms from 16 video link bail hearings were analysed.
- The video hearings took place between 29 October and 19 December 2007.
- Five of the bail applicants were detained at Campsfield House and 11 at Oakington.
- In four of the cases the Immigration Judge heard the bail application at Newport, and in eight cases at Taylor House (four did not specify a hearing centre).
- 37.5% of the bail applicants were granted bail (six out of sixteen cases).
- 31.25% of the video hearings were listed within three days of the bail application being made (five out of sixteen cases).

- 43.75% were listed more than three days later (seven out of sixteen cases) and the rest did not specify.
- In three cases it took seven days for the bail hearing to be listed.

Requests for an in-court hearing

- 87.5% of the bail applicants did not know that they could request an in-court bail hearing (14 out of 16 cases).
- When these applicants were asked 'if you had a choice would you have requested an in-court hearing?', 64.3% said their preference was for an in-court hearing (nine out of 14 cases) and 14.3% said their preference was for a video link hearing (two out of 14 cases).
- The two applicants who knew they could request an in-court hearing chose not to because one suffered from travel sickness and the other was worried about being tired before the start of the hearing.

Knowledge of how the video hearing would operate

- Nine of the applicants (56.25%) were given information about how the video hearing would work and seven (43.75%) were not.
- Those who were given information received it from their interpreter, their legal representative, or in a letter with their notice of hearing.
- Ten applicants (62.5%) said they understood how the process would work before the hearing began, five (31.25%) said they did not, and one did not specify.

Bail summaries

- Ten applicants (62.5%) received bail summaries from the Home Office before their video hearings, five (31.25%) did not, and one did not specify.
- Bail summaries were received between five days and one day before the hearing.

Legal representation

- 50% of the bail applicants were not legally represented.
- One unrepresented applicant (12.5%) sent information pertinent to his bail hearing to the Home Office and the court before his hearing, five unrepresented applicants (62.5%) did not, one was unsure if he did (12.5%), and one did not specify (12.5%).
- Of the eight applicants (50%) with a legal representative, one said he had ten minutes to speak with his legal representative before the hearing and the rest said they had enough time to do so.
- All the cases in our sample that were granted bail had legal representation.

Use of court interpreters

- Over two-thirds of the bail applicants used an interpreter during their video hearing (68.75% or 11 out of 16 cases).
- In 27.27% of these cases (three of 11 cases) only the questions that were directed specifically to the bail applicant, and their responses to them, were interpreted.
- Of the remaining cases with interpreters, at five hearings (45.46%) everything was interpreted and in three cases the applicant did not specify (27.27%).

Time and length of hearing

- In nearly two-thirds of the cases (ten out of 16), the hearing did not start when it was supposed to.
- Where this information was given on the monitoring form, the hearing started later than specified with one exception:
 'Notification said video link at 14:00. Suddenly at 12:45 while eating lunch in the canteen name was announced over intercom and told had to be in interview hall then and there. Asked officer if could go to room to put on a clean shirt for the judge and collect notes. Refused.'

- Two hearings lasted five minutes or less (12.5%), two hearings took between six and 15 minutes (12.5%), five hearings lasted between 16 and 44 minutes (31.25%), and seven hearings (43.75%) took between 45 minutes and one hour.
- Eight applicants (50%) thought their hearing did not last long enough, six applicants (37.5%) thought it did and two (12.5%) did not specify.
- 93.75% of applicants reported that the video link connection was maintained for the duration of the hearing (one applicant (6.25% of the sample) did not specify).

Learning the outcome

- Eleven applicants learnt the outcome of the hearing from the Immigration Judge during the video link (68.75%), four were informed by their interpreter (25%) and one did not specify (6.25%).

Presence of others during the hearing

If the applicant has sureties they will be at the AIT hearing centre and not at the detention centre. This question aimed to discern whether McKenzie Friends or other supporters were present during the hearing.

- In all but one case, bail applicants did not have anyone present to assist them during the hearing. The exception (one case, or 6.25% of the sample) occurred when an applicant's new solicitor happened to be visiting at the time of the hearing.
- When asked if it would have been helpful, 46.6% (seven out of 15) said yes, 26.7% (four out of 15) said no, and 26.7% (four out of 15) were undecided or did not specify.
- In three cases (18.75%) detention centre staff were present during the hearing or when applicants were consulting their legal representatives.

Video link equipment

- Three cases (18.75%) reported difficulties seeing and hearing what was happening in the court room. Two of these problems were with the sound and one with vision.

Comments on video link bail hearings

In the space for more qualitative responses at the end of the monitoring form, some bail applicants reflected positively about aspects of video hearings:

"My experience of using this video link is that I was put in the room which was next to the corridor and people were in and out and I could hear them and it was very difficult for me to hear the judge or anybody else in court. I think video link is OK because it saves a lot of time and people got let down with transport to get to court in the past. I think that is the best idea to save these problems. To do a video link you need to have a room which is completely quiet with no kind of noise. So you don't have to ask them at court to repeat the questions."

"I think the video link is better because you don't need to pack your stuff until you are granted bail."

"I prefer the video link because I applied for bail before at a tribunal but was refused. It took hours to get there and back, handcuffed, I was so tired and vomiting."

Others voiced dissatisfaction with their experience of video hearings:

"I think it is better to appear in court so you can see for yourself in front of a judge. So when you get bail your people are there to pick you up and take you home."

"If I was in court I would have had a chance to explain myself better. I could have shown evidence that what I saying was true."

"If in court it would be more personal. I can see judge, can express myself better. I also feel that it would be better for me if the judge could see me in the flesh."

“The judge would not answer me, or listen to anything I said. She did not treat me like a human being. I think in a proper court it is not so easy to ignore the person who is front of you and I might have been able to make my case.”

“Did not think it was a good experience. I asked for bail hearing to be held in Birmingham because knew 2 sureties (including wife) would be unable to get to Newport: they live in Birmingham. Letter from court simply said hearing would be by video link with Newport – no explanation.”

“If I am not allowed to state my case, how can I win? When I was asked about my auntie and sister in this country, she [the judge] would not allow me the time to answer. She turned to the Home Office [representative] every time to get an answer and told me to stop speaking. It was so quick, and she made her decision so fast. I was shocked and even less able to speak. The judge also did not accept the NASS address [accommodation provided by the Home Office] – said it was not good enough.”

Concerns

The findings of the monitoring exercise have given rise to a number of concerns, shared by BID and the Refugee Council, about the experiences of the bail applicants in our sample. Some of these concerns stem directly from the introduction of video link hearings (lack of choice about an in-court hearing, misunderstandings about the video link process, duration of the video link connection, monitoring and evaluation). Other issues (non-production of bail summaries, delays to the AIT’s three day listing target, lack of legal representation, inadequate interpretation) are long standing concerns about bail hearings which have been substantiated by the findings of this exercise.

1. Delays in listing bail applications are not addressed by video hearings

In December 2006 the President of the AIT, Mr Justice Hodge, sent a letter to various organisations involved in bail hearings seeking views on the proposed introduction of video link bail hearings. He wrote:

“Video Conferencing for Bail Applications: In order to assist in meeting the 3-day target consistently, we are further proposing to conduct some bail hearings by video link.”

In our sample, 43.75% of bail hearings conducted by video link did not meet the three day target and were listed more than three days after the bail application had been lodged. In two cases the bail hearing was listed between five and six days later, and in three cases the hearing was seven days after the application had been submitted.

BID responded to Mr Justice Hodge’s letter in January 2007 saying:

“It is not clear to BID how the use of video conference will ‘assist in meeting the 3-day target consistently.’ It is our understanding that video link hearings will not take any less time (and arguably could take more) than hearings where the applicant is present.”

The findings of this monitoring exercise reinforce our concerns. We are not persuaded that the introduction of video link bail hearings will assist the AIT to meet the three day target for listing bail hearings.

2. The choice of an in-court hearing is not being explained to bail applicants

The overwhelming majority of bail applicants in our sample - 87.5% - did not know that they could request an in-court bail hearing. This is a matter of significant concern for BID and the Refugee Council as the option of an in-court hearing had been presented by the AIT as a safeguard to concerns about

the appropriateness of video link bail hearings for applicants with particular vulnerabilities, including torture survivors. Based on this monitoring exercise, and communication between BID and legal representatives assisting bail applicants at Campsfield House and Oakington, it is not common knowledge that the option of an in-court hearing exists.

According to a stakeholder document produced by the AIT in September 2007,

“Where exceptional circumstances exist and it is considered that the Bail Applicant is unable to use the Video Link medium, an “Ex-Parte” application should be made in writing providing reasons to the Resident Senior Immigration Judge at the relevant Hearing Centre. Following Judicial consideration, you will be advised of the outcome.”

It is unclear how information about this application route has been conveyed to bail applicants (many of whom are not legally represented) or to their legal representatives. In the AIT’s ‘Applicant Guidance Notes’, issued on 29 October 2007 and sent to bail applicants with their notice of hearing, there is no mention that an in-court hearing can be requested. BID has since asked the AIT to clarify whether applicants can request an in-court hearing on their bail application form.

BID and the Refugee Council have suggested that video conferencing for those seeking asylum, especially torture survivors could lead to injustice. The outcome of a bail hearing rests to a great extent on the perceived credibility of the applicant. Credibility can be conveyed through body language and demeanour and we are concerned that these might be masked or distorted by a video camera image, as opposed to being assessed more straightforwardly when face-to-face.

If the option of an in-court hearing does not exist in practice, then concerns about the suitability of video hearings for vulnerable persons, raised by BID, the Refugee Council and the Medical Foundation for the Care of Victims of Torture during meetings with the AIT, have not been effectively addressed. Questions arise over the process for making a request; the criteria by which requests are being judged (what is the meaning of ‘exceptional circumstances?’); how decisions are communicated to applicants; and what opportunities there are for appealing or complaining about decisions.

3. One third of bail applicants did not understand how video hearings work

Almost half the bail applicants in our sample said they had not received information about how video link bail hearings work. Those who did receive this information did so through a variety of sources (interpreters, legal representatives, court) which suggests that the process of informing bail applicants is not standardised and will not ensure that all applicants systematically receive this information. As a result nearly a third of our sample said they did not understand how the process would work before their bail hearing started.

4. Nearly a third of Home Office bail summaries were not produced

According to the AIT’s procedure rules, the Home Office must produce a bail summary by 2pm on the day before the bail hearing, or where the Home Office has less than 24 hours notice, as soon as is reasonably practicable. The bail summary should explain why the Home Office believes it is necessary to maintain detention. In nearly a third of cases in our exercise, bail applicants did not receive bail summaries from the Home Office. The late or non-production of bail summaries breaks the AIT’s procedure rules and has been a long standing concern of BID, the Refugee Council and others. If the bail summary is produced late, is inaccurate or is not produced, this creates the need for longer discussions between legal representative and client immediately prior to the hearing. Of particular concern with video hearings is that only ten minutes video link time is allocated for this consultation prior to the hearing. In this scenario, the Immigration Law Practitioners Association has said to the AIT during stakeholder meetings that it considers ten minutes to be an inadequate amount of time.

5. 50% of bail applicants were not legally represented

We are acutely aware that many immigration detainees struggle to access quality legal advice. BID's very existence, as an organisation empowering detainees to make their own applications for release, is testament to detainees' unmet need for legal advice on their bail applications. Only 50% of the bail applicants in our sample had legal representation. The six cases granted bail were all legally represented - none of the cases without legal representation were successful.

6. Over 40% of hearings lasted 45 minutes or more – in prisons the video link would end before these hearings conclude

In September 2007, the AIT produced a document for stakeholders stating that for immigration detainees held in prisons (rather than in detention centres):

"All sessions booked on the Video Link via Martin Dawes [private contractor] are set automatically to start and finish at the requested times. Once the allocated time has been exceeded the call will automatically finish and you will not be able to continue."

The allocated time has been set at 45 minutes. In our sample of cases, all at detention centres rather than prisons, seven hearings (43.75%) lasted between 45 minutes and one hour. Had these bail applicants been in prisons, their video link would have been terminated before the end of the hearing. We understand that during the video link pilot of 22 cases run in prisons during 2007, there was at least one case which also lasted longer than 45 minutes. In our view it is not acceptable that an applicant is not present when an Immigration Judge is deciding their fate. It is not good enough for their representative to tell them the judgment after the hearing, particularly as 50% of the cases in our sample were not legally represented. There are also wider issues – hearings should not be time constrained in such an arbitrary way with the Immigration Judge forced to rush a complicated hearing to comply with the commercial imperatives of a private contractor. In our sample, over two-thirds of the bail applicants used an interpreter during their video hearing. If everything said during the bail hearing is interpreted, the hearing will take twice as long with the result that non-English speaking bail applicants are disadvantaged by the arbitrary time limit of 45 minutes.

7. 27.27% of applicants who used an interpreter did not have everything interpreted

In 27.27% of the cases where an interpreter was used, only the questions directed specifically to the bail applicant, and their response to them, were interpreted. In one case the applicant commented:

"only questions and answers [were interpreted] for me – the rest of the time I was ignored or told to be quiet when I asked a question."

With video link bail hearings, the interpreter is sat in the AIT hearing room with the Immigration Judge, Home Office representative and the applicant's legal representative and sureties (if there are any). Despite being physically disconnected from the other people involved in the hearing, bail applicants should have everything that is said at the hearing interpreted for them. Where consecutive rather than simultaneous interpretation is used, which may be the case in video hearings as the interpreter and applicant are in different locations, this will take more time. An AIT document for stakeholders produced in September 2007 says,

"During the hearing it is important to ensure the following: [...] That time is given to the Interpreter to translate if required."

The experiences of those in this sample are that this is not always happening.

8. Bail applicants' experiences are not being systematically monitored

As of February 2008, no evaluation of the video link pilot in prisons (based on the views of legal representatives) is publicly available and no attempt has been made to systematically monitor bail applicants' experiences of video hearings. The AIT is currently asking detention centre staff what bail applicants think of video hearings. BID and the Refugee Council believe that it is wholly inappropriate to use detention centre staff to monitor how the roll out of video hearings is affecting bail applicants.

There are several reasons for this. Firstly, in its Annual Report for 2006-07 published in November 2007, the Border and Immigration Agency's Complaints Audit Committee found that customer satisfaction in BIA's management of complaints remains low - 65% of complainants said that they did not feel that a full and impartial investigation had been conducted. Many detainees are aware that in the vast majority of cases complaining to BIA staff or contractors does not result in satisfactory action. Moreover, we have worked with many detainees who are concerned about the repercussions that complaining to detention centre staff will have on them in the future. BID and the Refugee Council are therefore highly sceptical that detainees will use detention centre staff as a vehicle through which to pass complaints or negative information about their experience of video hearings.

Secondly, the Home Office's stated position is that it needs the roll out of video hearings to work in order to relieve pressure on its escort services. In our view this does not make detention centre staff (contracted to the Home Office) an appropriate conduit for the AIT to use to hear bail applicants' views on video hearings.

Thirdly, for the AIT to find out what changes need to be made to the video link process, very specific questions will need to be put to bail applicants. It is unlikely that the detailed information that the AIT needs will be elicited by unstructured questions from detention centre staff. The type of anecdotal information generated from this approach will not, in our view, assist the AIT to ensure the process is fair.

Conclusion

Immigration detainees have a right to apply for release on bail. They have now been denied the right to appear in person and hearings are being conducted by video link. This step has been taken because the Home Office has failed to enforce its contract with private escorts who seem unable to produce applicants at court on time or at all. We accept that some applicants may prefer for their bail hearing to be heard by video link. However, there has been no evaluation of applicants' views, and a failure to make clear to applicants that they have a right to ask for an in-court hearing. We call on the Home Office and the courts to suspend the roll out of video link bail hearings until detainees have been consulted about its impact and there is a clear mechanism for requesting an in-court hearing.

Recommendations

Recommendations to the AIT:

1. The roll out of video hearings must be systematically monitored to ensure that its impact on the people at the heart of the process – bail applicants – is evaluated. Until this is done, the roll out should be suspended. The AIT should use a standard monitoring form with all bail applicants and the findings should be promptly and publicly disclosed.
2. The option to request an in-court hearing must be clearly explained to all bail applicants. The meaning of 'exceptional circumstances' should be articulated, as should the route for requesting an in-court hearing and for challenging refusals.
3. Video hearings in prisons must not arbitrarily end after 45 minutes because of the commercial requirements of a private contractor.

4. As the introduction of video hearings has not ensured the three day target for listing bail hearings is consistently met, the AIT must employ alternative workable strategies to meet the target.
5. The late- or non-production of many bail summaries by the Home Office requires the time allocated for legal consultation prior to the hearing to be treated flexibly by the Immigration Judge and increased where necessary.
6. Immigration Judges should ensure that where an interpreter is used during a hearing, everything that is said in the court room is interpreted to the bail applicant.

Recommendations to the Home Office:

1. Instead of tackling the failure of private escorts to produce applicants at their bail hearings, the right of applicants to be present at their bail hearings has been withdrawn. Unreliable escort services remain a pressing concern that the Home Office must address.
2. The Home Office must adhere to the AIT's procedure rules and serve bail summaries by 2pm on the day before the hearing, or where the Home Office has less than 24 hours notice, as soon as is reasonably practicable.

Recommendations to the Legal Services Commission:

1. This monitoring exercise highlights the continuing difficulties faced by detainees in accessing quality legal advice for bail applications. The LSC should examine the findings of this exercise to address the particular barriers to legal advice facing immigration detainees seeking to exercise their right to apply for bail.

Acknowledgments

The monitoring forms were used by staff and volunteers at the offices of Bail for Immigration Detainees and staff at the Refugee Council's office at Oakington. Grateful thanks are extended to the bail applicants who took the time to share their experiences with us.

Collation of findings from monitoring forms for people in immigration detention who have had bail hearings using a video link

What was the date of your video hearing?*
 October 2007: [1]; [2]
 November 2007: [3]; [4]; [5]; [6]; [7]; [8]; [9]; [10]
 December 2007: [11]; [12]; [13]; [14]; [15]; [16]
 *Specific dates withheld to prevent the identification of applicants

In which prison/detention centre were you held during the video hearing?
 Campsfield House: [1]; [2]; [3]; [8]; [10]
 Oakington: [4]; [5]; [6]; [7]; [9]; [11]; [12]; [13]; [14]; [15]; [16]

Which AIT hearing centre was the judge in?
 Newport: [1]; [2]; [8]; [10]
 Taylor House: [4]; [6]; [7]; [11]; [12]; [13]; [14]; [15]
 Did not specify: [3]; [5]; [9]; [16]

Was your bail application successful?
 Yes: [1]; [3]; [5]; [9]; [12]; [14]
 No: [2]; [4]; [6]; [7]; [8]; [10]; [11]; [13]; [15]; [16]

1. Did your bail hearing happen within three working days of your bail application?
 Yes: [1]; [3]; [5]; [8]; [10]
 No: [2]; [7]; [9]; [11]; [13]; [14]; [15]
 Did not know: [4]; [6]; [12]; [16]

If NO, how long after your application was it heard?
 4 days: [2]
 5-6 days: [11]; [15]
 7 days: [9]; [13]; [14]
 Did not know: [7]

2. Were you given a choice about whether you would be allowed to attend court in person?
 Yes: [5]; [12]
 No: [1]; [2]; [3]; [4]; [6]; [7]; [8]; [9]; [10]; [11]; [13]; [14]; [15]; [16]

If YES, why did you decide to have a video hearing?
 [5] The court is far. I suffer from travel sickness.
 [12] I did not want to travel a long way as I could get tired before the hearing.

If NO, if you had a choice would you have requested an in-court hearing? YES/NO (please explain why)
 [1] Yes – I think it is better to appear in court so you can see for yourself in front of a judge. So when you get bail your people are there to pick you up and take you home.
 [2] Yes
 [6] Yes - because I feel I would have been able to express myself better in court
 [8] Yes
 [10] Yes – would have been able to represent self better
 [11] Yes – because if I was in court I would have had a chance to explain myself better. I could have shown evidence that what I saying was true.
 [13] Yes - I was not able to speak to the judge properly or to answer questions fully. It would have been better in person.
 [14] Yes
 [15] Yes – If in court it would be more personal. I can see judge, can express myself better. I also feel that it would be better for me if the judge could see me in the flesh.

 [3] No – because of transport take long time
 [9] No

[4] It didn't really matter to me
[7] I don't have any knowledge about court procedures so for me it is meaningless either going or doing it by video link
[16] did not specify

3. Were you given information about how the video hearing would operate?

Yes: [2]; [3]; [4]; [5]; [9]; [10]; [12]; [14]; [15]

No: [1]; [6]; [7]; [8]; [11]; [13]; [16]

If YES, when did you receive this information?

[1] Been told is video link but never shown the video link room or even told how it will work

[2] With notice of hearing

[3] Same day

[4] Just before the hearing via video link from the interpreter

[5] A day before the video link, by my solicitor

[7] The information that I would have my hearing by video link was on a piece of paper

[9] 2 days before the video link

[12] 1 or 2 days prior to the hearing

[14] I received it in Oakington by my solicitor

[15] IAS before hearing

4. Before the hearing began did you understand how it would work?

Yes: [1]; [2]; [4]; [5]; [9]; [10] rough idea; [12]; [14]; [15]; [16]

No: [6]; [7]; [8]; [11]; [13]

Did not specify: [3]

5. Were you given a copy of the bail summary explaining why the Home Office wanted you to stay in detention?

Yes: [1]; [2]; [3]; [4]; [5]; [10]; [11]; [12]; [13]; [15]

No: [6]; [7]; [8]; [9]; [16]

Did not specify: [14]

If YES, when were you given this information?

[1] I knew this was going to happen 3 months ago because of being a foreign national. (But got paper work 2 days before release date).

[2] The day before the bail hearing

[3] 3 days after the first bail hearing

[4] The day before the bail hearing

[5] A day before the video link

[10] Only yesterday i.e. day before hearing

[11] 2 days before the hearing

[12] 1 or 2 days prior to hearing

[13] 5 days before hearing

[15] By IAS the day before

6. Were you legally represented during the video hearing?

Yes: [1]; [3]; [4]; [5]; [6]; [9]; [12]; [14]

No: [2]; [7]; [8]; [10]; [11]; [13]; [15]; [16]

If YES, did you have sufficient time to talk with your legal representative using the video link before the hearing started?

[1] Had 10 minutes with my barrister before my bail hearing started

Yes: [3]; [4]; [5]; [6]; [9]; [12]; [14]

If NO, did you send any paperwork to the judge and the Home Office before your video hearing?

Yes: [10] Wrote letter saying has close ties in UK contrary to monthly report. Have wife/partner of 5 years and 3 children.

No: [2]; [7]; [8]; [13]; [15]

Unsure: [11]

Did not specify: [16]

7. Did you use an interpreter during the video hearing?

Yes: [2]; [3]; [4]; [5]; [6]; [7]; [8]; [9]; [12]; [13]; [14]

No: [1]; [10]; [11]; [15]; [16]

If YES, were you able to communicate well with the interpreter or did you experience any difficulties?

Communicated well: [3]; [4]; [5]; [6]; [7]; [8]; [9]; [12]; [13] the interpreter was fine but the judge did not want to listen to what I said; [14]

[2] Interpreter not necessary. Bail application withdrawn as surety didn't turn up.

If YES, did the interpreter communicate everything that was said during the hearing, or just the questions that were directed specifically to you and your responses to them?

Everything: [3]; [4]; [5]; [8] but the judge did not give me enough time to speak; [12]

Only questions directed to bail applicant: [6]; [7]; [13] only questions and answers for me – the rest of the time I was ignored or told to be quiet when I asked a question.

Did not specify: [2]; [9]; [14]

8. How long did your video hearing last?

[1] 30-45 minutes

[2] 5 minutes

[3] 45 minutes

[4] about an hour

[5] one hour

[6] 45 minutes to one hour

[7] 15 minutes

[8] one hour

[9] 45 minutes

[10] approx 4 minutes in total

[11] 14 minutes

[12] 30-40 minutes

[13] 20 minutes

[14] 40 minutes

[15] 45 minutes

[16] 20 minutes

9. Was this long enough?

Yes: [1]; [3]; [4]; [5]; [9]; [15]

No: [6] I was not given a chance to give my witness in front of the judge; [7]; [8]; [10]; [11]; [12]; [13] no chance to give my side; [14]

Did not specify: [2]; [16]

10. Did the video link end before the hearing had finished?

Yes:

No: [1]; [3]; [4]; [5]; [6]; [7]; [8]; [9]; [10]; [11]; [12]; [13]; [14]; [15]; [16]

Did not specify: [2]

11. How were you informed of the judge's decision?

During the video link by the judge: [1]; [3]; [5] and then by fax; [8]; [9]; [10] but felt that decision had already been made before the video link started; [11]; [12]; [14]; [15] and later by correspondence; [16]

By the interpreter: [4]; [6]; [7]; [13]

Did not specify: [2]

12. Did the video hearing start at the time it was supposed to?

Yes: [1]; [2]; [3]; [4]; [14]

No: [5]; [6]; [7]; [8]; [9]; [10]; [11]; [12]; [13]; [15]

Did not specify: [16]

If NO, were you given a break or lunch if appropriate?

[5] Started one hour late

[6] They said 2 o'clock but it started at half past 2
[7] It started after 3 – it was scheduled for 2pm
[8] It was supposed to start at 3:30 but it started at 4:00
[9] Yes
[10] Notification said video link at 14:00. Suddenly at 12:45 while eating lunch in the canteen name was announced over intercom and told had to be in interview hall then and there. Asked officer if could go to room to put on a clean shirt for the judge and collect notes. Refused.
[11] No
[12] It was supposed to start at 10am. It started at 11am – but that's how the court works
[13] it was late because the interpreter had not arrived
Did not specify: [15]

13. Did anyone sit with you during the video hearing to assist you?
Yes: [8] My new solicitor went in but he did not take part in the hearing as he was here to visit me
No: [1]; [2]; [3]; [4]; [5]; [6]; [7]; [9]; [10]; [11]; [12]; [13]; [14]; [15]; [16]

If NO, would that have been helpful?
[1] If somebody can't speak English I think it's helpful
[7] Yes, of course
[6] I would have preferred to have an interpreter who could have explained what they were saying about me because I don't know what was said
[11] Yes, because I would have felt more comfortable and they could have explained to me what was happening
[13] Much better – I could not express myself properly and needed help and support
[14] Yes
[15] Yes

[3] No
[5] No problem
[9] Not a problem
[16] No

[4] It might have been nice to have someone there but without I managed to do it
[10] Maybe
[12] It's normal to be alone during hearing
Did not specify: [2]

14. Were prison/detention centre staff present with you during the video hearing or when you were consulting with your legal representative by video link?
Yes: [7]; [10]; [16]
No: [1]; [2]; [3]; [4]; [5]; [6]; [8]; [9]; [11]; [12]; [13]; [14]; [15]

If YES, did that cause you any difficulty?
[4] GSL officers were outside the room
[7] No
[10] Officer, not helpful
[16] No

15. Were there any problems with the equipment during the video link?
Yes: [1] – just some adjustment with the volume that's all. They set it up for me; [10]
No: [2]; [3]; [4]; [5]; [6]; [7]; [8]; [9]; [11]; [12]; [13]; [14]; [15]; [16]

16. Were you able to hear and see everything in the court room?
Yes: [1]; [3]; [4]; [5]; [7]; [9]; [11]; [12]; [13]; [14]; [15]; [16]
No: [6]; [8]; [10]
Did not specify: [2]

If NO, what were you unable to see/hear?
[6] I could see it but I didn't hear everything and I had no chance to speak.
[8] I was not allowed to hear what the judge discussed with the representative of the immigration

service. Judge out of sound.

[10] Could not see any faces including the judge. Too far away. Could only hear what was being said.

17. Do you think you would have had a better chance of getting bail if you had been in court in person? (please give reasons)

[1] I don't know because this is my first video link and my bail was granted. I think doesn't really matter because video link is same as you are there.

[2] Yes. Could speak to the judge in person.

[3] No

[4] I don't know about that and I always believe the judge is the one who makes the decisions

[6] Yes, at least I would have been able to express myself and to give more information.

[7] I've never been to court so I don't know if it's better to attend in person or do it by video link.

[8] Yes, the judge will have the opportunity to speak to me directly.

[9] I was granted bail – everything went fine.

[10] Yes – would have been able to express myself better. Was in the middle of eating lunch and then had to run to the video link – flustered.

[11] This was my first time in court therefore I do not know if I would have had a better chance otherwise.

[12] I was granted bail.

[13] Yes – the judge would not answer me, or listen to anything I said. She did not treat me like a human being. I think in a proper court it is not so easy to ignore the person who is front of you and I might have been able to make my case.

[15] Yes - if in court it would be more personal. I can see judge, can express myself better. I also feel that it would be better for me if the judge could see me in the flesh.

[16] Don't know.

18. Do you have any other comments about your experience of using a video link for your bail hearing?

[1] My experience of using this video link is that I was put in the room which was next to the corridor and people were in and out and I could hear them and it was very difficult for me to hear the judge or anybody else in court. I think video link is OK because it saves a lot of time and people got let down with transport to get to court in the past. I think that is the best idea to save these problems. To do a video link you need to have a room which is completely quiet with no kind of noise. So you don't have to ask them at court to repeat the questions.

[3] I think the video link is better because you don't need to pack your stuff until you are granted bail.

[5] I prefer the video link because I applied for bail before at a tribunal but was refused. It took hours to get there and back, handcuffed, I was so tired and vomiting.

[7] It would have been very helpful to attend court in person because whatever reasons the judge was giving I could have answered very straightforwardly and shown my fingerprints. I could have had a better chance to prove my innocence.

[10] Did not think it was a good experience. I asked for bail hearing to be held in Birmingham because knew 2 sureties (including wife) would be unable to get to Newport: they live in Birmingham. Letter from court simply said hearing would be by video link with Newport – no explanation.

[11] Yes. All the hearing happened in a very short time (14 minutes). I was not given the chance to talk, I did not understand what was going on. Also my hearing was at 13:00 and I had the impression the judge wanted to hurry up to go to lunch.

[13] If I am not allowed to state my case, how can I win? When I was asked about my auntie and sister in this country, she [the judge] would not allow me the time to answer. She turned to the Home Office rep every time to get an answer and told me to stop speaking. It was so quick, and she made her decision so fast. I was shocked and even less able to speak. The judge also did not accept the NASS address – said it was not good enough.

[14] Video link is a good idea. In my opinion it is very good and you have to carry on with that.

[15] I would have done better with a legal rep/solicitor to represent me at the hearing.