

BID briefing on failure to produce bail applicants at court and AIT proposal for video conferencing of applications for immigration bail

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Summary: The Home Office has a contract with a private company to transport detainees to court for their bail applications. It is common for detainees not to be taken to court on time, or at all, for their bail application. BID and many other organisations have complained about this but little has changed. Now, the Home Office and the courts are planning to introduce video conferencing so that detainees will have their bail application heard by video link from the detention centre or prison, and will not be taken to court. BID is not aware that the AIT or Home Office have provided any written information about this proposal; this briefing provides an overview of the information that BID has, and summarises BID's concerns and queries.

Introduction: At present, if an immigration detainee applies for bail, they are supposed to be taken to the court where a Judge will hear their application for release (the Asylum and Immigration Tribunal). The detainees' lawyer if they have one, any sureties, family and the interpreter will meet them at the court. The location of the court depends where they are detained and the AIT is responsible for allocating which court will hear bail applications from which centre (set out in the AIT's "workload allocation list"). All bail applications are listed for 10 am, even though they will not all be heard at that time, and detainees, people standing surety, and friends or family, and the legal representatives and interpreter will often have to wait for long periods for the court to hear their case.

The Home Office has a contract with a private company to escort detainees to their bail hearing. At present, the contract is with Securicor. The escort contract and Operating Standards are in the public domain (<http://www.ind.homeoffice.gov.uk/6353/6356/operatingstandards.pdf>).

In BID's experience, it is very common for the escort company to fail to produce the detainee at court on time, or in some cases at all; the vans don't turn up, turn up late or fail to arrive at their destination court. The result is that detainees are obstructed from accessing the courts and as a result may be deprived of their liberty for longer. The failure to produce applicants also wastes court time, lawyers time and is distressing for the friends and families of detainees, who often travel long distances taking time off work to do so.

BID, visitor groups, detainee supporters and the Refugee Council at Oakington have all complained to the Home Office about this problem (see response to BID from Detention Services at the end of this briefing). The Home Office has not addressed the escort issues, but now state that they are intending to introduce video conferencing which will mean that detainees will not be taken to court, but will have their application heard by video link.

The proposal is to use a video link of the applicant who is in the detention centre in a courtroom where the judge, representatives and the applicant's interpreter would be. The Home Office argue that this is a way of addressing long-running problems with escorts and saves them both time and money. Both the Home Office and the courts have put to BID that this may be potentially beneficial to detainees as it could result in a faster and less disruptive hearing and thus perhaps, sooner release.

Consultation and proposals on video conferencing: On 21st December 2006, the President of the AIT, Mr Justice Hodge, wrote to various organisations involved in bail hearings to seek views on a proposal to introduce video conferencing for bail hearings.¹

BID responded to the consultation in January 2007 and raised a number of concerns about the proposals (see our full response at <http://www.biduk.org/library/policy.htm>). At the time of writing, BID has not received a response to the queries raised in our letter, or any further written information about the proposals.

BID understands from a meeting of the AIT Stakeholder group on 2nd May 2007 that

- a) the AIT had received five responses to its stakeholder consultation on reform of listing of bail applications and the use of video conferencing for bail applications
- b) a pilot of VC for bail hearings for immigration detainees held in prisons started on 18th April 2007 and will last for 3 months. The pilot started on with prisons, as some prisons already had video equipment whereas the immigration removal centres (IRCs) did not. Links were provided for 45 minutes, so the bail hearing would need to be heard in that time.
- c) At the beginning of May, six hearings had taken place. According to the AIT, the views of legal representatives were positive. BID asked whether the views of applicants had been sought and AIT staff confirmed that they had not. BID suggested that the views of applicants themselves should be sought, particularly if they did not have legal representatives. BID also asked if the results of the pilot would be published, and the AIT confirmed they would. Finally, BID requested that some written information be provided for detainees to explain the use of video conferencing. The AIT agreed to provide this, but at the time of writing BID has not received anything.
- d) The next stage is to use video conferencing at IRCs, scheduled to start at the end of June. BID understands that the Home Office are installing equipment in all IRCs; there will not be a pilot. Minutes of the Detention User Group meeting of the Home Office on 23rd April state "Brian Pollett confirmed the courts requested a video link between the centres and the courts. Equipment is being installed in the hearing centres and the facility will be available within four months. This is also happening within the IRC estate. Brian stated that the equipment could be used for other purposes e.g. interviews between detainees and their legal representatives."
- e) The Home Office has also said that it is looking into conducting substantive asylum interviews of FNPs via video conferencing. BID is aware that Asylum Aid, the Immigration Law Practitioners Association and the Medical Foundation have concerns about this proposal.

BID's concerns about video conferencing of bail hearings

- o It is not clear to BID how the use of video conferencing will "assist in meeting the 3-day target consistently." BID does not see that hearings by video link will take any less time than hearings where the applicant is present (and arguably could take more).

¹ Letter from President of the AIT, 21st December 2006, "*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. Many of you will know that this practice is routine now in Crown Courts. Initially, we propose to introduce this for those applicants who are detained in prisons but who have reached the end of their sentence, and are detained under the Immigration Acts. If this proves successful, we are likely to extend this to other bail applicants, subject to appropriate facilities being available.*

We are proposing to run four video bail courts, in Glasgow, Manchester, Newport and Taylor House. Where an interpreter is required, they will sit in court with the judge. Home Office Presenting Officers will also be in court. Applicants' representatives will be given the choice whether to be present in court, or to present their case by video link from the prison."

- If there are currently significant delays caused to the court by the escorts failing to produce bail applicants on time, then steps should be taken to address this whilst upholding the right of the applicant to be present at their hearing. (For example, the contract monitor of escorts should ensure compliance and production, and impose penalties if delays occur.)
- It seems to BID that the main beneficiaries of video conferencing are the Home Office who must fund the travel and escorting of applicants from the detention centre to the court. BID believe, in the vast majority of cases, it is in the interests of the applicant to be present in the court. BID is aware that video conferencing is used in Crown Courts, but feels that significant differences 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 representative. People are not deprived of their liberty indefinitely without automatic review by a court, unlike in immigration detention. Also, in immigration bail cases, there is often no representative, and applicants may have waited weeks or even months for their day in court.
- There may also be considerable practical difficulties in providing confidential space to take instructions from detainees. These difficulties will be exacerbated if an interpreter is needed, which is very common in immigration bail hearings. The representative may need to speak to sureties, client and HOPO before the hearing.
- There are particular difficulties when using video conferencing vulnerable persons. Questions arise over how the AIT would be able to identify and protect those for whom video conferencing would be inappropriate. On what criteria is it possible to judge someone who is vulnerable? BID suggests that there should be *at least* some sort of protocol to cover this issue.
- Clinical psychologists from the Medical Foundation 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, something which can be masked or distorted by a video camera image. The trust-worthiness of an applicant can be assessed far more easily face-to-face than on a television screen.
- BID is also concerned that the views of video conferencing users, specifically bail applicants, have not been sought in the pilot studies. At the AIT Stakeholders meeting, the AIT confirmed that their views would be sought and then published to the stakeholders.
- The Medical Foundation have also raised concerns that video conferencing might, in effect, become compulsory because given the choice between a video hearing and the possibility that the escort to an actual hearing might not arrive, the appellant would be pressured to use the former. This is then would not a free choice.
- It is not clear what would happen if the hearing were to overrun the designated 45 minute slot. AIT staff suggested that the appellant's representative could give the appellant an indication of the result. This response is concerning. In BID's view the applicant should be present when a court is deciding their fate. It is not good enough for their representative to tell them the end judgement. There are also wider issues – the hearings should not be time-constrained in such an arbitrary way with the adjudicator forced to rush a complicated judgement. Also, what happens if the appellant is unrepresented?

BID has written to the AIT on 21 June to ask for clarification on the following points:

- 1. Practical arrangements:** In our consultation response we asked for a response to queries about the practicalities of hearing bail applications via video link. Please could you provide information about how confidential space will be provided and how arrangements for interpreting will operate.

- 2. Length of hearing:** BID understands the slot for a bail hearing is 45 minutes. It is not clear what would happen if the hearing were to overrun the designated 45 minute slot. At the AIT Stakeholder meeting, Karla Morris suggested that the appellant's representative could give the appellant an indication of the result. BID is very concerned about this prospect. In addition, what happens if the appellant is unrepresented? We are also concerned that the hearings should not be time-constrained – how was the figure of 45 minutes arrived at? Please clarify a) how long is available for a hearing and b) what would happen if the Judge required longer than the allotted time.
- 3. Bail applicant's ability to choose:** What is the protocol for requesting a hearing in person, if the detainee does not wish their bail application to be heard via video link?
- 4. Situation for bail applicants at Yarl's Wood and Harmondsworth, where an AIT hearing centre is on site:** What is the proposal for use of video conferencing where there is a hearing centre on site? For example, will women detained at Yarl's Wood who are applying for release on bail be heard via video link or will the onsite courts be used?
- 5. Views of bail applicants:** BID is concerned that the views of video conferencing users, specifically bail applicants, should be sought in the pilot phase. At the AIT Stakeholders meeting, this was agreed. Please provide details of how this is happening.
- 6. Written information for detainees:** At the stakeholder meeting, BID suggested that written information should be produced for applicants, explaining the use of video conferencing. Has this information been developed? If not, when is it likely to be available and could BID please have a copy?
- 7. Implementation in IRCs:** BID would request that written information is provided to detainees in IRCs (via libraries, ILPA, BID, detainee support groups etc) about the use of video conferencing before hearings start to take place. Please confirm that this will be provided.

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Dear Sarah

ESCORTS TO BAIL HEARINGS

Thank you for your letter of 20 April highlighting specific concerns regarding escorts to bail hearings for persons detained at Campsfield House. My apologies for the delays which have been experienced as a result of some escort delays, clearly this has impacted on the overall service provided to detainees.

We are conscious of a number of escort failures within the contract and are in regular contact with the supplier trying to effect the best provision possible. The number of failures however needs to be put into context against the backdrop of escorting demand representing a small proportion of the 9000 escort requests effected nationally each month. However any failing has its consequences and we are anxious to keep this to a minimum to ensure effective service and ensure detainees are not affected. In effecting escorts, the suppliers are providing the level of contractual resource required, the ability to deliver the entirety of the service however is sometimes compromised as a result of a significant increase in demand in some areas of activity which we have faced over the last year. In particular this relates to a notable increase in AIT movements to bail hearings, often to several different AIT centres from each individual immigration removal centre on the same day. In addition the contractor has been faced with a large increase in demand for movement of ex-foreign national prisoners (FNPs) who are dispersed through the Prison estate. In cases where there are competing priorities and escorting resources can be stressed, it is essential to prioritise moves, and on occasion, this has led to some cancellations particularly for AIT hearings.

We have been in discussion with both the contractor and other agencies in respect of this increased demand, and following consultations with AITs, we are now pursuing a project to introduce video links in each of the IRC's in order that bail hearings can take place over a video link, and thus cancellations will not arise. This is an important new initiative, not least because it saves on valuable escort contract resources allowing them to be deployed to other activity. However it also serves the welfare interest of detainees, avoiding the necessity of often lengthy journeys to distant courts for what may be a very short court appearance. Rather detainees will remain in this establishment and after a short period at a video link can return to regime activity if bail is not granted. We are trying to expedite this project and aim for installation in the next few months.

With regard to the detainee moved from Campsfield House to Colnbrook, transfers are sometimes effected following consultation with the centres and DEPMU following behavioural concerns regarding detainees. Where transfer is requested, detailed information needs to be provided by the centre to outline the reasons this is required. Following consideration of this a decision will be made on whether this should be effected. The differing conditions particularly in terms of available security at each Centre mean that such transfers need to take place to maintain security and order in the centre for the benefit of the establishment and safety of other detainees held therein. However in this instance following transfer, arrangements should have been made to effect the court appearance of the individual from Colnbrook to Newport on the day of the required hearing. I regret that due to what appears to be a breakdown in communication amongst the organisation, this court hearing was cancelled.

Finally in respect of the escort contract I attach an electronic copy of the contract for your information. The Monitor is Paul Newman based in Feltham who can be contacted on 0208 818 1338.

Yours sincerely

BRIAN POLLETT
Director