

The Detention Forum



Detention Inquiry submission from Judicial Oversight Working Group of the Detention Forum

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Contact

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1.1 The Judicial Oversight Working Group is one of the working groups of the Detention Forum.

1.2 It includes representatives from the following organisations: Bail Observation Project, Bail Circle, Quaker Asylum and Refugee Network, Kent Refugee Help, Campaign to Close Campsfield, End Child Detention Now, Asylum Network.

1.3 Members visit detainees, assist detainees in bail applications, and are familiar with hearings of the First and Second Tier of the Immigration and Asylum Tribunal.

1.4 Members of the Working Group would be happy to give oral evidence if that would be helpful.

Our overall concern

2.1 Members of the Working Group oppose the current practice of immigration detention in the UK as inhumane, not meeting stated objectives and expensive. In our view, the exercise of any policy of detaining certain migrants should only be in exceptional circumstances and for the shortest of periods.

2.2 The focus of this Working Group is on campaigning for judicial oversight of immigration detention in the UK.

2.3 We believe that there should be transparent, accountable and accessible system of judicial oversight of decision making on detention.

2.4 Such a system is clearly lacking at present. Research¹ and plentiful individual reports have demonstrated this. As the charity Liberty explains, '[a] decision to detain is made by individual immigration officers and, unlike people detained under the criminal justice system, its lawfulness is not automatically subject to independent review. A detained person can, after seven days have passed, apply to a judge for review of his or her detention, but many

¹ Bail for Immigration Detainees (2010), *A Nice Judge on a Good Day: Immigration Bail and the Right to Liberty*, Bail Observation Project (2011) *Immigration Bail Hearings: A Travesty of Justice? Observations from the Public Gallery*, BOP (2013) *Still a Travesty: Justice in Immigration Bail Hearings*.

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people, particularly those who don't speak English, are unaware of this procedure and find it difficult to access legal advice².

2.5 The initial decision to detain is made by a relatively junior immigration official. The quality of such decisions has frequently been challenged³. The quality of such decisions is brought into question also by the high proportion of detained people who subsequently obtain bail. Bad decisions are made by inadequately trained or informed officials, without proper oversight. There is too much power in hands of unaccountable officials. Foreigners are deprived of the basic right to liberty in a way that is not accepted for UK citizens. Such discriminatory practice is damaging to the public good. We believe a more substantial check on the exercise of these powers is necessary.

2.6 We believe when an individual is detained under immigration law, the detained person should be brought within 72 hours before a judicial authority so that the decision can be reviewed, confirmed or overturned.

2.7 Such changes may require amendment of relevant paragraphs of the 1971 Immigration and subsequent Acts.

2.8 In addition, decisions to detain should also be subject to inspection by an independent body composed of experienced legal practitioners or failing that the Independent Chief Inspector of Borders and Immigration or by the Her Majesty's Inspectorate of Prisons supported by a group of legal experts.

The right to apply for bail

3.1 At present the right to apply for bail is a minimal and insufficient protection for immigration detainees. Access to it requires substantial improvement.

3.2 The right to apply for bail is particularly important because, in the frequent absence of a resolution of their case that will enable release from detention, the prolonged detention results in substantial, sometimes irreversible, damage to the health, particularly the mental health, of the individual detainee⁴.

² Liberty (2014) Immigration Detention. London: Liberty <https://www.liberty-human-rights.org.uk/human-rights/asylum-and-borders/immigration-detention> (accessed 23 July 2014)

³ E.g. Fordham, M., Stefanelli, J. and Eser, S. (2013) 'Immigration Detention and the Rule of Law: Safeguarding Principles', Bingham Centre. London: British Institute of Comparative and International Law: http://www.biicl.org/files/6559_immigration_detention_and_the_rol_-_web_version.pdf (accessed 18 March 2014)

⁴ Medical Justice (2012) 'The Second Torture': The Immigration Detention of Torture Survivors. London: Medical Justice <http://www.medicaljustice.org.uk/reports-a-intelligence/mj/reports/2058-the-second-torture-the-immigration-detention-of-torture-survivors-22052012155.html> (accessed 18 March 2014)

See also cases made in relation to pregnant women and children by the same organization: Medical Justice (2013) Expecting Change: The Case for Ending the Immigration Detention of Pregnant Women. London: Medical Justice

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3.3 At present the right of the immigration detainee to apply for bail is severely limited by lack of access to legal representation. Before the recent legal aid cuts this was already a severe problem. Evidence⁵ shows that without legal representation, an immigration bail applicant has only one-third to one-fifth of the chance of obtaining bail enjoyed by the applicant who is represented by a lawyer at the bail hearing.

3.4 Recent cuts to legal aid for immigration detainees, including those applying for bail, must be reversed, and availability of access to legal representation substantially improved.

3.5 In seeking to ensure that we have a 'transparent, accountable and accessible system of judicial oversight of decision making on detention' in bail hearings, the Working Group resolved to press for typed bail refusals clearly setting out how the decision was reached and transcripts/recordings of all proceedings at bail hearings. Without such records it is clearly difficult or impossible to read, scrutinize or challenge decisions by immigration judges in the immigration courts.

3.6 In a step forward, since July 2013 immigration judges 'reasons for refusal' have been typed. This has enabled applicants, nearly all of whom do not have English a first language, at least to read the decision of the judge not to grant bail.

3.7 Audio recordings of all immigration court proceedings were instituted at Taylor House, London, the largest immigration hearing centre. The head of the Immigration and Asylum Tribunal First Tier, Michel Clements, has said in two annual reports that such recordings were desirable (partly in order for judges to defend themselves in the case of criticism of their work) and in 2013 he announced that they would be extended to all hearing centres. However, in spring 2014, he announced that for financial reasons audio recordings would not now be introduced. This is unacceptable. In any case, the cost is relatively small.

3.8 There should be written or audio recordings of all proceedings at all immigration and asylum hearings, available to all interested parties.

Training of immigration judges

4.1 Current judicial oversight of the government's detention of asylum seekers and other migrants is by immigration judges in the Asylum and Immigration Tribunal.

4.2 The conduct of immigration judges has come in for considerable criticism⁶ for its inconsistency, unfairness, and partiality in favour of the Home Office.

<http://www.medicaljustice.org.uk/images/stories/reports/expectingchange.pdf> (accessed 26 June 2014)

Medical Justice (2010) State Sponsored Cruelty: Children in Immigration Detention. London: Medical Justice <http://www.medicaljustice.org.uk/images/stories/reports/sscfullreport.pdf> (accessed 26 June 2014)

⁵ Bail Observation Project (2011) Immigration Bail Hearings: A Travesty of Justice?, page 24, chart; (2013) Still a Travesty: Justice in Immigration Bail Hearings, page 30, chart.

⁶ Bail for Immigration Detainees (2010), A Nice Judge on a Good Day: Immigration Bail and the Right to Liberty; Bail Observation Project (2011) Immigration Bail Hearings: A Travesty of Justice?

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4.3 In addition, immigration judges too readily accept in many cases that removal is 'imminent' when it is not (and so detention may not therefore be justified), they too readily accept statements in the Home Office's Bail Summary that are not supported by any evidence, and they fail to require the Home Office to show why detention is necessary and that all alternatives have been exhaustively pursued.

4.4 From the observations of which we are aware, it appears that the Asylum and Immigration Tribunal does not inspect or monitor in court the performance of immigration judges. There appears to be a lack of responsibility and accountability. The lack of accountability of immigration judges has also been remarked on elsewhere⁷.

4.5 Training of immigration judges should be reviewed to ensure that the concerns expressed above are addressed.

4.6 The AIT should install a system of monitoring and assessment of the performance of individual immigration judges.

Other matters of concern

5.1 There are many other matters of concern about immigration bail and judicial oversight of immigration detention – including the use of videolink, lack of right of appeal against a refusal of bail, treatment of sureties, inadequacy of interpreter service – and we would direct you to the submissions made by the Bail Observation Project and others on these matters.

Observations from the Public Gallery; BOP (2013) Still a Travesty: Justice in Immigration Bail Hearings; Griffiths, M., Gill, N., Burrige A. (2013) 'Observing differences: asylum appeals in the UK', blog on Compass website: <http://compassoxfordblog.co.uk/2013/08/observing-differences-asylum-appeals-in-the-uk/> (accessed 30 September 2014)

⁷ Travers, M. (1999) *The British Immigration Courts: A Study of Law and Politics*. Policy Press; and Good, A. (2007) *Anthropology and Expertise in the Asylum Courts*. Glasshouse.