

GUIDE TO SUPPORTING DETAINEES IN IMMIGRATION BAIL HEARINGS IN SCOTLAND



Immigration Bail Observation Project Scotland
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THE CREATION OF THIS GUIDE

THE IMMIGRATION BAIL OBSERVATION PROJECT SCOTLAND

The Immigration Bail Observation Project Scotland (IBOPS) is a collaborative initiative between staff at the University of Glasgow's School of Law and the student-run Law in Action Group. It has benefitted from the assistance of the Glasgow Refugee Asylum and Migration Network (GRAMNet), Detention Forum Scotland and the Campaign to Close Campsfield. IBOPS' aim was to conduct the first comprehensive and systematic study of the immigration bail process in Scotland.

Between October and December 2015, trained IBOPS volunteers observed a total of 89 bail hearings at the First Tier Tribunal (Immigration and Asylum Chamber) in Glasgow. The volunteers collected data on a wide variety of features of the process.

Between December 2015 and March 2016 this data was collated and analysed by IBOPS staff and the volunteers. In April 2016 it was decided that two of the 10 volunteers would receive funding from the University of Glasgow Settlement's Find a Solution Project to continue the work of IBOPS between June and August 2016 under the supervision of IBOPS staff members.

IBOPS data indicated that cautioners ("sureties" in England and Wales) played a central, and often decisive role in Scottish immigration bail hearings. Cautioners support detainees by providing money guarantees, accommodation and other backing to assist their bail applications. Despite this, and the fact that cautioners invest significant time and resources into the bail process, IBOPS observers often noted that cautioners appeared unclear and uncertain of the process. As a consequence, it was decided that IBOPS would produce a comprehensive guide to inform cautioners of their role, rights and obligations in the Scottish bail process.

This guide has been written by Daniel Ferguson and Susannah Paul. Any errors and omissions are the responsibility of the authors alone.

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RESEARCHING MULTILINGUALLY
AT THE BORDERS OF LANGUAGE, THE BODY, LAW AND THE STATE



INTRODUCTION TO THIS GUIDE

HOW THIS GUIDE WORKS

This guide is designed for cautioners in the Scottish immigration bail process. If you are considering whether to be a cautioner, or if you have decided to be one, then this guide will provide you with an overview of the whole process. The guide is split into four parts:

Part 1 - Introduction to Immigration Detention and Bail

In this section we will explain the concepts of immigration bail and immigration detention. We will look at why people might find themselves in detention, why they may want to receive bail, and how they go about applying for bail. We will also explain what it means to be a cautioner, and why having a cautioner is so important for people applying for bail.

Part 2 - Bail Application and Preparing for the Bail Hearing

In order to receive bail the detainee must apply to a judge and attend a bail hearing. This section will take you through the application process and will explain what support you, as a cautioner, can offer to the person applying for bail. As a cautioner, you will take part in the bail hearing, and this section will set out some things you might want to think about in advance of the hearing.

Part 3 - The Bail Hearing

This section will take you through what happens on the day of the hearing itself. It will tell you how to get to the Tribunal, what will happen in the hearing, how long the process will take, and much more.

Part 4 - After the Bail Hearing

If the judge decides to grant bail, it is then that your obligations as a cautioner will begin. This section will take you through what these obligations are. It will also point out some things that can go wrong for you or for the person on bail. It will guide you on what you should do if these things happen.

This guide is split into various headings, each of which are questions that you might have about being a cautioner. They are listed in the Table of Contents below, so if there is a specific issue that you want to know about, then you can jump straight to the appropriate section.

There are short summary boxes at the end of each Part, and a table of useful links at the end of the guide.

IMPORTANT NOTICE: THE IMMIGRATION ACT 2016

Immigration law is known for changing on a regular basis. This guide aims to explain how the law operates as of 28th February 2017. The Immigration Act 2016 is set to change the bail process in a number of ways. These changes will come into effect over the next year. This guide will draw attention to some of the key changes that will affect the role of a cautioner.



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Part 1

INTRODUCTION TO IMMIGRATION DETENTION & BAIL

1.1 WHAT IS IMMIGRATION DETENTION?

Immigration detention occurs where someone who is subject to immigration control in the UK is taken into custody by the Home Office. In this guide we refer to people being held in Dungavel, but people can be held in one of nine Immigration Removal Centres across the UK or, sometimes, in short term holding facility. There are two broad reasons why a person might be detained:

- 1) They have entered the UK without permission, and the Home Office is deciding whether or not they should be allowed to stay.
- 2) The Home Office believes that they do not have a right to be in the UK and are planning to remove them from the country.

The Home Office normally detains people because they are concerned that if they are temporarily allowed to be free in the UK, they may 'abscond' by running away or hiding from the authorities. They sometimes detain people because they feel that allowing them to be free in the UK would not be in the public interest (e.g. people with a criminal record).

There is no time limit on detention in the UK, and people can be held in custody for a long time whilst the Home Offices processes their case.

1.2 WHAT IS IMMIGRATION BAIL?

Bail is the temporary release of a person from immigration detention for a specific period of time. Bail is an alternative to detention, and even though the person is released, some restrictions will be placed on them to satisfy the Home Office's concerns about absconding. These restrictions are called 'bail conditions'. Bail conditions can set the length of bail, when bail will end and what the person released on bail will have to do. Bail conditions can also restrict where the person must live, and require them to report to a Home Office Reporting Centre. Following the bail conditions is an important part of a person's release. If they breach their conditions, they can be taken back into detention and/or can lose a sum of money that they may have been deposited.¹

Note that the Immigration Act 2016 extends the definition of "immigration bail" to include people on "temporary admission" whose immigration status is being decided, but who might never have been detained. In this guide, however, we use the term "bail" in the narrower sense to denote the temporary release of a person from detention whilst the Home Office determines their case. If the Home Office

decides to remove a person and there are no more legal barriers stopping them, then a person on bail can be re-detained and removed.

However, bail is very useful because it means that a person does not have to remain in detention for a long time whilst decisions about them are made.

1.3 WHO CAN APPLY FOR BAIL?

Anybody in immigration detention can apply for bail if they have been in the UK for 7 days or more.² If a person has their bail application refused, they cannot re-apply for 28 days unless there is a change in circumstances.³

The Immigration Act 2016 will introduce a provision for automatic bail hearings before the Tribunal for a person in detention four months after the date of their detention or four months after the date of their last bail hearing. These automatic bail hearings will be arranged every four months in the same way for the duration of a person's detention.

Legal Representation

A person in detention does not need a lawyer to apply for bail and can apply by themselves if they wish. However, immigration law and the bail process is complicated and without a lawyer the person would have to make their arguments on their own. In addition, as we will mention in Part 1.4 (below), the person in detention will not normally get to attend the hearing in person. Rather, they will be kept in detention and will take part in the hearing via a video link. IBOPS has observed a number of difficulties with the video link system, including problems with communication. If an applicant has a lawyer, then they will be able to present arguments for them in person at the hearing. Research has shown that the chances of bail being granted are higher if an applicant is represented by a lawyer.⁴

The person in detention might already have a lawyer who is working on their immigration or asylum appeal, in which case they can ask them to work on their bail application. If the person does not have a lawyer then they should be able to access one from Dungavel Immigration Removal Centre. At the time of writing, some lawyers hold regular clinics at Dungavel, and detainees, if they meet the eligibility test, should be able to access Legal Aid or Legal Advice and Assistance through the Scottish Legal Aid Board, to help meet the costs of legal advice.

1.4 HOW CAN A PERSON APPLY FOR BAIL?

Applying to the Immigration Tribunal

In order to get bail, a person in detention will need to apply to the First Tier Tribunal (Immigration and Asylum Chamber). This is done by filling out Form B1 that can be accessed online⁵. They will have to provide some basic personal information, some information about their current legal situation, information about how much money they will deposit, and their arguments for why they should be granted bail.

Once the Tribunal receives the application, it will set a date for a bail hearing. The day before the hearing, the Home Office have to provide a written bail summary that lists the reasons why they think bail should be refused. They will send a copy to the Tribunal and to the person in detention or their legal representative. The bail summary will normally focus on the immigration history of the applicant and will argue that they cannot be trusted to follow the bail conditions if they are released.

At the hearing, the applicant and the Home Office will present their arguments to a judge as to whether or not bail should be granted. It is very unusual for the applicant to actually be at the bail hearing. They will normally be kept in Dungavel. Television screens, microphones and cameras will be set up so that they can take part in the hearing via a video link. The legal representative for the applicant, if they have one, will appear in person at the hearing to argue on their behalf. As the legal representative will only be given the bail summary on the afternoon before the hearing, the bail applicant should normally be given around 10 minutes to talk with them via the video link before the hearing.

The judge will listen to the arguments, ask questions and will decide if bail should be granted. They will do this by balancing the person's right to liberty against the risk of them absconding. They will consider what bail conditions can be put in place to minimize the risk of absconding and whether the applicant can be trusted to comply with them. If they are persuaded that the applicant, if released, will live at a specified address, report to the Home Office when asked, and comply with any other conditions, then they are likely to grant bail.

If the Home Office has already made removal orders for a person, and the date of their removal is set for within 14 days of the bail hearing, the Home Office representative will have to consent to the applicant being released. In these cases, even if the judge decides to grant bail, the person will continue to be detained if the Home Office do not consent.⁶ These cases only occur rarely (IBOPS observed only 1 such case in 89 observations).

¹ For more on 'Bail Conditions' see Part 4.3.

² Para 22(1B) of Schedule 2 to the Immigration Act 1971.

³ Para 25(2) of Schedule 2 to the Immigration Act 1971.

⁴ IBOPS data shows that the success rate of a non-represented applicant to be 33% (1 out of 3), compared to 36% for represented applicants (21 out of 59). However, these results are influenced by the sample size of non-represented applicants. A larger study in England found the success rates of non-represented applicants to be 10% (7 out of 68) compared to 48% of represented applicants (69 out of 145) (Still a Travesty: Justice in the Immigration Bail Hearings [2011])

⁵ http://hmctsformfinder.justice.gov.uk/HMCTS/GetForm.do?court_forms_id=2744

⁶ Para 22(4) of Schedule 2 to the Immigration Act 1971

1.5 WHAT IS A CAUTIONER?

The Role of the Cautioner

To help persuade the Tribunal judge that they will follow the bail conditions, a person applying for bail can ask a friend or family member to be their 'cautioner' (called 'surety' in England and Wales). A cautioner is a person who, if bail is granted, deposits a sum of money (called 'bail bond') with the Tribunal and undertakes to encourage the person released on bail to comply with their bail conditions. The cautioner may lose the bail bond if the person fails to comply with certain conditions (see Part 4.4). A person in immigration detention may, at some point, have either knowingly or unknowingly failed to follow immigration laws. This can sometimes make it difficult for them to persuade the judge that they will follow the conditions. Having a cautioner who promises to encourage them to comply can, therefore, be very useful. IBOPS research has shown that applicants with cautioners are nearly twice as likely to be granted bail than applicants without (41% as against 23%).

Who can be a Cautioner?

Anyone that is legally in the UK can be a cautioner. However, in order to be an effective cautioner you will need to persuade the Tribunal that you are able to exert some influence over the bail applicant and that you will encourage them to comply with their bail conditions. To do this you will need to show that you have a pre-existing relationship with them. It is helpful if you have a home address, some savings or regular income, and no past criminal convictions.

The Bail Bond

There is no set amount that a cautioner has to pay for the bail bond. The purpose of the bail bond is to provide an incentive to make sure that the person on bail does not abscond. Therefore, the money you pay needs to be an amount that you would not want to lose. IBOPS data showed that the amount most commonly offered in Scottish bail hearings was £1,000.

It is important to remember that bail bonds can be kept for a long period of time. You need to think carefully about whether you can live without the money you are offering. The Tribunal judge may reject the money that you have offered if they believe that you would not be able to support yourself and your family without it.

At the bail hearing you may need to show bank statements or pay slips to prove to the judge that you have the money and that it is your own. You might be asked questions about where the money has come from. You might also be asked questions about your income, any benefits you receive, and your living arrangements.

1.5.1 IMMIGRATION ACT 2016 - CHANGES TO BAIL BONDS

The Immigration Act 2016 brings significant changes to this area of law in Scotland. When in force Schedule 10 will stop the Tribunal in Scotland from taking deposits of bail money at the time when bail is granted. Instead the Tribunal will be able to impose a financial obligation, or an undertaking to pay. The use of a financial obligation will be discretionary and it has been suggested that imposing a financial obligation will be less frequently used in future than bail bonds are currently. Therefore, when the changes come into force, money will less often be transferred to the Tribunal when bail is granted. It is anticipated that these changes will come into force later in 2017.

Summary: "I have been asked to be a cautioner. What does this mean?"

- Someone you know is being held in immigration detention.
- They want to be temporarily released from detention.
- They have applied for bail to a Tribunal judge who will consider whether their loss of freedom is justified.
- The Tribunal judge will decide if there is an alternative to detention, and whether the risk of absconding can be minimised by setting conditions that the person will have to follow if they are released.
- The conditions usually outline what happens when bail ends, restrict where the person lives and how they should keep in contact with the Home Office.
- The person is asking you to help them persuade the Tribunal that they will follow these conditions.
- If you decide to help them, you may need to deposit a sum of money with the Tribunal. You might lose this money if the person released on bail absconds. (Please note the forthcoming changes in procedure relating to bail money – see section 1.5.1)

Part 2

BAIL APPLICATION AND PREPARING FOR THE HEARING

2.1 HOW MUCH MONEY SHOULD I OFFER AS BAIL BOND?

When a person in detention applies for bail, they will need to say how much money you are willing to offer as a cautioner. (Please note the forthcoming changes in procedure relating to bail money – see section 1.5.1) As we mentioned above, there is no set amount so you will need to find a balance between a sum of money that you would not like to lose and a sum of money you can afford to live without for a long time (IBOPS data shows that £1,000 is the most common amount offered).

A person applying for bail can ask more than one person to be a cautioner. If several people are willing to help, then they can ask each of them to offer some money as bail bond. Different people can offer different amounts depending on how much they have. You should always think about your own situation and not compare yourself to other cautioners.

If the bail applicant has a lawyer, then they should be able to give you advice on how much you should offer. Changing the sum you have offered can cause problems at the Tribunal, so it is important to try and get it right in the first place.

2.2 SHOULD I OFFER MY HOUSE AS A BAIL ADDRESS?

Bail Addresses

If the Tribunal judge decides to release a person on bail, they will set a condition that the person has to live at a specific address. This is called the 'bail address'. The bail address is important because it helps the Home Office keep track of a person. When the person is applying for bail they will have to include a proposed bail address in the Form B1.

What Does Providing the Bail Address Involve?

Providing your home as the bail address is a big commitment. If the person is released on bail, they will have to live in your house for as long as their bail lasts. As well as providing them with a room, you may also need to pay for their daily living costs (food, toiletries, clothes, travel costs etc.). If they have personal savings, they can use this to help. Bail can often last for a number of months, so the Tribunal judge will want to see evidence that you have enough room in your house and a regular income that you can use to help support the person released on bail.

What are the Benefits of Providing the Bail Address?

If you are a family member of the person applying for bail, or a friend that they used to live with before their detention, then you might want to provide the bail address so that

they can continue to live with you when they are released. As well as this, providing the bail address will mean that you will be in day-to-day contact with the person released on bail. This should help you in your role as a cautioner as you will be well placed to encourage them to follow their bail conditions. A common condition is that a person on bail must regularly report to the Home Office. If the person is living with you, you may have to help with travel costs when they go to report. This daily contact with the person released on bail will be a strong argument that should help you to persuade the Tribunal that you are a suitable cautioner.

Other Bail Address Options

If you cannot provide the bail address, there are other ways that a person in detention can get one.

First, they can ask another person to provide it for them. If they do this, you need to remember that you are the cautioner, and making sure the person follows their bail conditions is still your responsibility. If possible, the bail address that is provided should be one that is near to where you live. If the bail address provided by the other person is far away, it is more likely that the Tribunal will question how you will exercise influence over them and ensure that they are following their conditions.

If a person applying for bail has no one to provide a bail address for them, they can apply to the Home Office for 'Section 4' support.⁷ If they can show the Home Office that they have no one that they can stay with, they will receive basic accommodation and they should also receive £35 per week for food and toiletries.⁸ If a person is applying for Section 4 accommodation, they will first be granted Initial Accommodation to which they will be released if bail is granted.⁹ The Home Office will then arrange longer term accommodation for them. A person in detention cannot apply for bail until they have been granted Initial Accommodation. A study has shown that it normally takes nine days for the Home Office to arrange Initial Accommodation.¹⁰ It also found that if bail is granted it can take weeks before a longer term accommodation is arranged. In addition, there is no guarantee that the accommodation provided by the Home Office will be near where you live.

⁷ Section 4(1)(c) and 4(10) of the Immigration and Asylum Act 1999.

⁸ House of Lords Library Note: 'The Azure Card' (November 2014) (LLN 2014/036). Available at: <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/LLN-2014-036>

⁹ Annex 4 to Presidential Guidance Note No. 1 2012: 'Bail Guidance for Judges Presiding Over Immigration and Asylum Hearings'

¹⁰ Bail for Immigration Detainees: 'No place to go: delays in Home Office provision of Section 4(1)(c) bail accommodation'. Available at: www.biduk.org/new-bid-report-bail-address-delays-no-place-go-delays-home-office-provision-section-41c-bail

Important note: The Immigration Act 2016 will replace "Section 4" accommodation with a power to provide accommodation to people released from detention who would otherwise be destitute. These changes are likely to be introduced in 2017, but it is not yet clear how the changes will work.

Should I Provide the Bail Address?

As we have seen, providing the bail address yourself will provide you with a strong argument to persuade the Tribunal that you are a suitable cautioner. If you can afford to have the person live with you whilst on bail, then you should seriously consider offering the bail address. But remember that you are not under any obligation to do this, and there are other options available. Although persuading the Tribunal to grant bail may be more difficult if the bail address is far away, it is important to remember that this does not mean that bail will be refused. Providing the bail address is a significant commitment and you must think carefully before deciding to undertake it.

2.3 HOW SHOULD I PREPARE FOR THE HEARING?

Questions to Prepare For

When you attend the bail hearing you will normally be asked some questions by the bail applicant's lawyer, the Home Office representative and the judge (see Part 3.5). Before you go to the hearing, it would be useful for you to think about some answers to the questions that you might be asked. Some of the questions that you can be asked might feel intrusive or harsh and it is important that you are emotionally prepared to answer them. For example, you may be asked in-depth questions about your financial and living arrangements, and whether you can afford to be a cautioner.

As the role of a cautioner is to make sure that the person released on bail follows their bail conditions, the Tribunal judge will want to know about the level of influence you are able to exercise over the applicant. You will likely be asked questions to see how you will influence them and how you will react to certain situations. It is likely that the Home Office representative will try to show that you cannot be relied upon as a cautioner. In order to present yourself as a suitable cautioner you should prepare answers to questions concerning:

- 1) Whether you have an established relationship with the bail applicant;
- 2) How you will keep in contact with the applicant if they are released;

- 3) Examples of how you have exercised influence over the bail applicant in the past;
- 4) How you will respond if the person released on bail absconds;
- 5) If the bail applicant failed to follow immigration laws (e.g. overstaying a visa / working illegally), whether you knew about it and how you responded;
- 6) How you will respond if the Home Office take steps to remove the bailed person from the UK.

As a friend or family member of the bail applicant, Questions 5 and 6 can often be difficult to answer. In relation to the previous immigration history of the bail applicant, it is important that you answer the questions honestly. As for potential removal, you need to remember that even if you feel removal is unfair, as a cautioner your role is to encourage the person to comply with the bail conditions and cooperate with the Home Office.

Documents to Prepare

When you attend the bail hearing you will need to take a number of documents with you. If the bail applicant has a lawyer, they should be able to advise you exactly on what to bring. These can include:

- 1) Evidence of savings (3 months’ bank statements)
- 2) Evidence of income (3 months’ payslips)
- 3) Evidence of nationality and immigration status (passport and visa papers)
- 4) Evidence of employment (e.g. letter from employer)
- 5) Evidence of place of residence (e.g. Council Tax Bill) (only if you are providing the bail address)

Interpreters

If English is not your first language and you feel uncomfortable having to use it when speaking at the Tribunal, you are allowed to ask for an interpreter. They will translate what is being said for you, and if you are asked any questions they will translate your answers to the judge. If you need an interpreter, you should tell the applicant or their legal representative as they will have to include this in the application form so that the Tribunal has enough time to arrange it.

Summary: “I have decided to be a cautioner. What do I do now?”

Before the bail application is made you will need to decide:

- How much money you want to offer as bail bond. You will need to pick an amount you do not want to lose, but which you can survive without. (Please note the forthcoming changes in procedure relating to bail money – see section 1.5.1)
- Whether you want to offer your house as the bail address. If you do, it will help you fulfil your role as a cautioner and can increase the chance of bail being granted. But it is a costly and long commitment, and there are other options available.
- Whether you need an interpreter at the bail hearing. Even if you speak English and just have some doubts or anxieties, you have a right to request one in the bail application.

Before the bail hearing you will need to prepare:

- Answers to questions about how you will influence the person released on bail and how you will respond if they abscond or the Home Office decides to remove them.
- Answers to potentially intrusive questions about your knowledge of the bail applicant’s failure to follow immigration laws, your relationship with the applicant and your financial and living arrangements.
- Documents to prove your savings, your income, your immigration status and your address (if you are going to provide the bail address).

Part 3

THE BAIL HEARING

3.1 WHERE WILL THE BAIL HEARING TAKE PLACE?

Bail hearings take place in Tribunal Hearing Centres in the Immigration and Asylum Chamber. In Scotland, there is only one hearing centre and it is in Glasgow. The address is: Eagle Building, 215 Bothwell Street, Glasgow G2 7TS. The Eagle Building is in Glasgow city centre, and is a 10-minute walk from Glasgow Central Station. It is also within walking distance from Glasgow Queen Street Station, Buchanan Bus Station and Buchanan Street or St Enoch Subway Station.

When you enter the building there should be a member of reception staff who can direct you to the correct part of the building.

Further details can be found at the Tribunal's website: <http://courtribunalfinder.service.gov.uk/courts/glasgow-tribunal-hearing-centre-eagle-building>

3.2 WHAT WILL HAPPEN WHEN I GET TO THE TRIBUNAL?

When you arrive at the Tribunal you will have to go through security. They will search your bag and you will have to walk through a metal detector. You will then make your way to the reception area. There will be a desk where a clerk of the Tribunal will be sitting. You should let the clerk know your name and what you are there for. They will take note of this and you will be invited to sit in the waiting area until your case is called. The legal representative of the person applying for bail will usually come and talk to you at some point before the hearing begins. As we mentioned in Part 1.4 the bail applicant will not normally be present at the hearing, but will be taking part via video link from Dungavel.

The Tribunal hears cases between 10am and 5pm. The bail hearings are heard one at a time by an individual judge. How long you will have to wait will depend on the number of cases being heard on the day, and your place on the case list. Whilst it is possible that you will be done within an hour, it is also possible that you will have to wait until late in the afternoon. To avoid any stress, it is best that you set aside the entire day. If you are arranging transport home from the Tribunal (e.g. trains or flights), you should book them for well after 5pm.

The Tribunal will normally break for lunch. You will be able to leave the Tribunal to buy lunch if you wish. There are plenty of cafes and restaurants in the nearby area.

3.3 WHAT FACILITIES ARE THERE AT THE TRIBUNAL?

The Tribunal has lift access and disabled toilets. It also has a hearing loop. If you or someone accompanying you has a disability that requires specific assistance, you should write a note and attach it to the Form B1 application. You can also call ahead to let the Tribunal know of your requirements. They will do their best to accommodate you.

The waiting area in the Tribunal is limited, with only some chairs and toilets. As you are likely to be kept waiting for a long period of time, you may want to consider bringing something to keep yourself occupied.

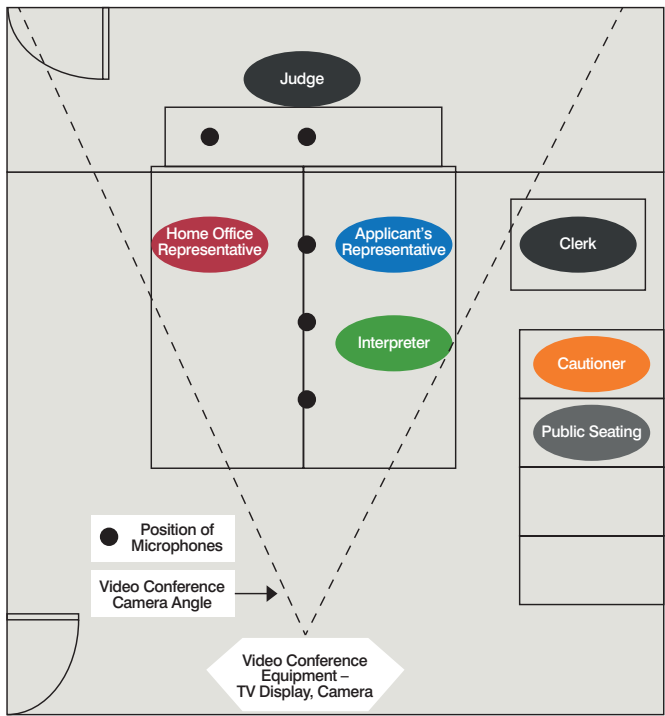
You are not allowed to take children into the hearing room with you, and there are currently no facilities for childcare at the Tribunal. If you have to bring your child with you, you will need to have another person to accompany you so that they can stay with your child in the waiting room whilst you are in the hearing.

3.4 WHAT HAPPENS IN THE BAIL HEARING?

The Format of the Hearing
You will normally be allowed to be present in the room throughout the entire hearing. However, on some occasions the judge might decide that you should remain outside and only be let in towards the end of the hearing so that you can be asked questions. However, this is rare.

When your case is called, the clerk will take you to the hearing room and will show you where to sit. The layout of the room is shown in Diagram 1. As you will see, you will be seated at the side or the back of the room. There will be a large table in the middle where the representative for the Home Office and the lawyer for the bail applicant will sit across from each other. If there is an interpreter, they will sit next to the bail applicant's lawyer. There will be a television screen, microphones and a camera set up so that the video link can be used. You will be able to see the bail applicant on the screen. They should be able to see you, but this will depend on where you are seated. There will be a bench at the front of the room where the judge will sit. Most bail hearings are open to members of the public. Whilst it is unusual for members of the public to attend, they may do so.

Diagram 1



Once everyone is seated the clerk will show the judge in. When the judge enters the room, you will be asked to stand until the judge is seated. The clerk will normally sit at a table next to the bench, but they may move in and out of the room during the hearing.

The judge is in charge of the hearing and will run it in the way that they think is best, so the format can be different from judge to judge. However, the hearing will normally proceed in the following manner:

- The judge will introduce himself or herself to the bail applicant. They will mention who else is in the room and should outline how the hearing will proceed. The judge will check to see if those present have seen the Bail Summary (mentioned at Part 1.4)
- The judge will ask the lawyer for the bail applicant to present their arguments as to why bail should be granted. The lawyer will make their arguments. They might ask the applicant some questions via the video link, and might ask you some questions.
- The judge will ask the Home Office representative to make their arguments as to why bail should be refused. The Home Office representative will make their arguments and might ask the applicant some questions via the video link, and might ask you some questions.
- The judge can interrupt at any point and put questions to the applicant or to you.

As we mentioned in Part 2.3, you will normally be asked questions about how you will encourage the applicant to follow their conditions if they are released. As we mentioned, the questions can sometimes be quite forceful. You may be asked some difficult questions about how you will respond if the Home Office make orders to remove a person. If you have previous convictions, or have breached immigration control in the past, this might be brought up as well.

You should answer questions as calmly and honestly as you can. If you do not understand the question, or do not know the answer, you should say so. It is important to remember that you are not there to tell the Tribunal why the bail applicant should be allowed to stay in the UK. Your role is to help persuade the Tribunal that you can support the bail applicant to follow their bail conditions.

Interpretation

If the bail applicant mentioned in their application that you need an interpreter, the Tribunal will provide one who speaks your language and dialect. If the bail applicant needs the same interpreter, then the interpreter will translate for both of you.

The way the translation works will change depending on the interpreter and the judge. Some interpreters will translate simultaneously while the judge or representatives are speaking.

Others will wait until they have stopped speaking, and will then translate what has been said. If the interpreter is translating for the bail applicant and is simultaneously translating, then it might be difficult for you to hear what is being said. However, when you are being asked questions, they will speak directly to you so that you can hear them. Should you become aware of any difficulties with the interpretation, bring it to the attention of the Tribunal.

Rules of the Hearing Room

Tribunal hearings are less formal than normal court hearings. However, there are still some rules that you need to be aware of:

- 1) You should turn off your mobile phone and other electronic devices you have when you enter the hearing room.
- 2) You should stand up when the judge enters and leaves the room.
- 3) You should remain as quiet as you can when you are in the hearing room and try your best not to disturb the proceedings.

The judge is in charge of the hearing. In general, you should only speak when you are spoken to and you should not interrupt the judge or the representatives. If, however, something is unclear or incorrect, or you believe that something you said has been misunderstood, you should try to bring it to the attention of the Tribunal.

Summary: "What happens on the day of the bail hearing?"

Getting to the Tribunal

- Bail hearings in Scotland happen at the Hearing Centre in Glasgow. The bail applicant will be informed of the date of the hearing.
- An individual judge hears each case in order between 10am and 5pm. You should arrive at the Tribunal for 9:30am on the day, but need to be prepared for a long wait in a basic waiting room in case your hearing is not until later in the day.
- You might need to travel a long way to get to the Hearing Centre. If you are booking return transport, you should do so for well after 5pm.
- You should bring your passport, bank statements and proof of your address.
- If you have any disabilities, you should let the Tribunal know beforehand.

What happens in the hearing?

- You will normally be in the hearing room throughout the hearing. The clerk will show you where to sit.
- The judge will be in charge of the hearing and will give the representatives time to make their arguments. The representatives and the judge might ask you questions to see if you can influence the applicant, and whether you can afford the bail bond.
- If you asked for an interpreter, they will be present and will help translate for you when you are being asked questions.
- You should keep your electronics turned off to minimize disruption.
- Your role is to help persuade the Tribunal that you can support the applicant to follow their bail conditions and NOT to tell the Tribunal why they should be allowed to stay in the UK.

Part 4

AFTER THE BAIL HEARING

4.1 WHAT HAPPENS IF BAIL IS REFUSED?

The Decision to Refuse Bail

Once the representatives have finished making their arguments and asking questions, the judge will decide whether to grant or refuse bail. Different judges do this in different ways. Some will leave the room for a short while to think about it. Others will decide on the spot. Once the judge has decided, they will give their judgement orally in the hearing room.

If the judge has decided to refuse bail they will tell this to the person in detention. They will also give a short explanation for their decision. The judge will later provide a written form of their decision to the bail applicant or their lawyer if they have one. The judge will tell the guard at Dungavel that bail has been refused, and the person will be taken out of the video link room.

Once this has happened, the hearing is over and the clerk will show you out. You will not be asked to deposit any money and you will be free to go home.

Re-Applying for Bail

If bail is refused, the person who applied for it will be kept in detention. They will be able to apply for bail again but will need to wait 28 days unless there is a change in circumstance.¹¹ If they re-apply, they might ask you to be a cautioner again. Being a cautioner one time does not mean that you have to be one the next time, so it is entirely your choice if you want to be part of the process again.

4.2 WHAT HAPPENS IF BAIL IS GRANTED?

The Decision to Grant Bail

If the judge decides to grant bail, they will, again, tell this to the person in detention. They will give a short explanation for their decision. They will also mention what conditions they are attaching to bail. The judge will tell the guard at Dungavel that bail has been granted, and the person will be taken back into Dungavel to prepare for their release.

We mentioned in Part 1.4 that if the Home Office has arranged to remove the applicant within 14 days, the Home Office must consent to the judge's decision to grant bail. If this is the case, following the judge's ruling, the Home Office representative will leave briefly to make some calls. When they return they will inform the judge of their decision. If the Home Office does not give consent, the applicant will remain in detention and they should get urgent advice from

¹¹ Parap 25(2) of Schedule 2 to the Immigration Act 1971.

their lawyer as to whether any further legal steps (such as judicial review) can be taken in their case.

Release of the Person from Detention

People in detention are not normally well prepared for their release. After bail has been granted and formalities including the transfer of the bail bonds have been organised the staff at Dungavel will direct the bailed person to collect their belongings. (Please note the forthcoming changes in procedure relating to bail money – see section 1.5.1). The bailed person will then be transported to a train or bus station and given a ticket to get to the town where their bail address is. If you are providing the bail address, you may want to try and contact the person so that you can arrange how they will get to your house.

4.3 BAIL CONDITIONS AND LIFE ON BAIL

In Part 1.2 we mentioned that a person who is released on bail will be required to follow a number of different conditions. We discussed how the conditions are central to the person's release on bail and how they help the Tribunal reduce the risk of the person absconding. As the role of a cautioner is to encourage the person released on bail to follow their conditions, it is important that you understand what these conditions require.

Bail Conditions

Bail conditions set out how long bail will last and what the person released on bail must do when it ends. They also place certain restrictions on the person for the duration of their bail. These will normally enable the Home Office to require them to live at a certain address and regularly sign on with the Home Office.

If the person released on bail breaches any of their conditions, they can be re-detained by the Home Office, and they may sometimes face criminal charges. However, as their cautioner you can only lose the money you deposited as the bail bond if the person does not follow the primary conditions (i.e. they fail to report at the end of their bail). (Please note the forthcoming changes in procedure relating to bail money – see section 1.5.1)

As we have mentioned, a grant of bail lasts for a specific period of time. The primary condition sets out how long bail will last and what the bailed person has to do when their bail period comes to an end.

If a person has an ongoing immigration or asylum case, then their bail will last until the case has concluded.

If a person has no appeal or legal action pending, as a cautioner, your consent is needed before bail can be renewed. The Tribunal will not renew bail unless you are happy to continue as a cautioner, and you are entitled to refuse. In practice, neither you nor the bailed person will have to physically attend the Tribunal. Shortly before the grant of bail comes to an end, the Home Office will send a letter to you or to the bailed person's lawyer. This letter will ask for your signature to confirm that you consent to bail being renewed.

The condition that a person should answer to the Tribunal when there is no longer an appeal pending is unique to Scotland. This only happens because the Tribunals in Scotland require you as the cautioner to pay the deposit to them. As we mentioned in Part 1.5, once the new Immigration Act 2016 comes into effect, cautioners will no longer have to actually deposit the bail bond. This will also change how this condition works.

Once the 2016 Act comes into effect, if there is no appeal pending the process is likely to work like this: the Tribunal will grant bail for 7 days. After the 7 days the bailed person will have to report to a Chief Immigration Officer (CIO) to 'answer to bail' (the condition will set out which CIO). The CIO will then renew bail for a length of time (usually a few months). From this point onwards it will be the CIO, and not the Tribunal, who will be responsible for renewing bail. Similar to current practice, as the cautioner, your signed consent will be required for bail renewal. If a person does have an ongoing appeal, then they will need to attend each of their appeal hearings and once the appeal is concluded, they will need to answer to a CIO.

Residence and other Conditions

The Tribunal judge will also set some further conditions that aim to make sure that the person reports at the end of their bail. These conditions will also help the Home Office supervise the person whilst they are on bail. The Tribunal can set a wide range of conditions, but usually sets two or three common ones.

The first of these is called the residence condition. As we mentioned above in Part 2.2, a person applying for bail will need to provide a bail address. The residence condition means that once the person is released, they must live at the bail address for as long as their bail lasts.

The Tribunal also normally set reporting conditions that will require the person released on bail to keep in regular contact with the Home Office. The judge will set dates and times (e.g. 'between 9am and 3pm every Monday') during which the person has to 'sign on' at a UK Visa and Immigration office or, sometimes, a local police station.

4.4 WHAT DO I DO IF THINGS GO WRONG?

It is possible that whilst a person is released on bail things can go wrong. The person may fail to comply with a bail condition, or they may suddenly be re-detained by the Home Office who are attempting to remove them. As a cautioner it is important for you to know the consequences of these situations and how you should respond.

Re-Detention

We emphasised in Part 1.2 that a grant of bail does not give a person a right to stay in the UK. It is quite possible for a person released on bail to be re-detained by the Home Office. For different people, there are different reasons why this can happen. The two main reasons are change in circumstances and a breach of bail conditions.

Change of Circumstances

The first reason why a person can be re-detained is a change of circumstances. If a person was released on bail whilst the Home Office is making a decision on their right to stay in the UK, the Home Office making a decision that they should be removed would be a change of circumstances that could lead to detention. If a person was released on bail whilst their legal appeal is being heard by a court, then losing the appeal will be a change of circumstances that could lead to detention. Basically, the Home Office might re-detain a person if they decide that they want to remove them, and when there are no longer any barriers to them doing so.

If the Home Office decides to re-detain a person because of a change in circumstances, they will not normally give them any notice. It is common for the person to be re-detained when they go for one of their regular signing-ons. If the person is re-detained, it may be some time before they are able to call you to let you know what has happened. Because of this, you may want to have a system to help you find out that the person has been re-detained. There are organisations (e.g. Unity) who can help with this. The person can check-in with Unity before going to sign-on and can then check-in with Unity once they are finished. If they do not return, Unity will know that they have been re-detained. If the person is regularly signing on with the same group of people, they could also ask one of these people to notify you if they are re-detained. If you find out that the person has been re-detained, the first thing you should do is contact their legal representative. The Home Office may be planning to quickly remove the person from the UK, and their representative might be able to stop this. If the person is re-detained because of a change in circumstances, then as their cautioner you are not at fault. The re-detention will mean that your role as a cautioner is over and your deposit should be returned to you.

If the person is re-detained, it is also possible that they will be taken back into Dungavel. They will be able to make a new bail application and may ask for you to be their cautioner again. As we mentioned in Part 4.1, this decision is entirely your own.

Breaches of Bail Conditions

Your role as a cautioner is to encourage the person released on bail to follow all of their bail conditions, but even with your best efforts, it is possible that the person will fail to follow a bail condition.

As we mentioned in Section 4.3, there are different consequences for breaching different bail conditions. The breach of any condition can lead to the person released on bail being re-detained. However, only the person absconding or, (at the time of writing) failing to answer to the Tribunal for bail can lead to the loss of your bail bond deposit. In these circumstances, the Tribunal will hold a 'forfeiture hearing' to decide whether you should lose some or all of the deposit. You should find a lawyer who will represent and argue for you at the hearing. If you are eligible, you should be able to access Legal Aid to help pay for the costs. Unfortunately, you cannot hire the same lawyer that is working for the person on bail, as this is a conflict of interest. At the hearing, the Tribunal will look at how you encouraged the person to follow all their conditions. (Please note the forthcoming changes in procedure relating to bail money – see section 1.5.1)

If a person released on bail fails to follow a condition (e.g. failing to sign-on), they will not always be re-detained. Sometimes they will simply receive a warning letter from the Home Office. If the person cannot follow a condition (e.g. because they are in hospital), then you should encourage them to contact the Home Office centre where they are reporting.

If the person absconds, you could lose the money that you deposited as your bail bond. (Please note the forthcoming changes in procedure relating to bail money – see section 1.5.1.) If you think that the person is going to abscond, and you are worried that you cannot convince them otherwise, then you are allowed to contact the Home Office and ask to be removed as a cautioner. You need to think carefully before you do this, however, because this can lead to the person being re-detained. If you do contact the Home Office and tell them of your concerns, it is unlikely that you will lose any of your deposit.

If the person has absconded, you could lose some of your deposit. In deciding whether you should lose it, the Tribunal will consider how you responded to the absconding, whether you reported your concern to the Home Office, and any other explanations you may have about difficulties you faced in carrying out your role as cautioner. (Please note the forthcoming changes in procedure relating to bail money – see section 1.5.1)

Summary: "The bail hearing is finished. What happens now?"

If bail is refused:

- The Tribunal judge will give reasons why bail was refused. The person who applied for bail will be kept in detention and cannot reapply for 28 days unless circumstances change. Your role as a cautioner is over and you do not need to be a cautioner again if you do not want to.

If bail is granted:

- The Tribunal judge will give reasons why bail was granted and will set the bail conditions. You will have to sign a form and pay the bail bond. The person in detention will be released to the bail address that they provided.
- It should be noted that the Immigration Act 2016 will make some changes to this area of law. Instead of an advance deposit, a procedure involving the cautioner agreeing to undertake to pay if the bailed person breaches their conditions will be used. When the amendments come into force there will therefore be no money transferred to the tribunal at the time of a grant of bail.
- The person released on bail will have to follow some conditions. These will say where they have to live, when they have to sign on at the Home Office, how long their bail lasts and how they can have it renewed.
- It is your job to encourage the person to follow the conditions. If they break the conditions, they can be re-detained. If they break a primary condition, there will be a forfeiture hearing where the Tribunal will decide if you should lose your deposit.
- If the person absconds, you should contact the Home Office and cooperate with them as much as you can. If you are worried that the person is going to abscond, you can also contact the Home Office and ask to be removed as a cautioner.

Useful Links

Guide to Supporting Detainees in Immigration Bail Hearings in Scotland

www.glasgow.ac.uk/schools/law/employability/

You can download a PDF copy of this booklet here.

Bail for Immigration Detainees (BiD) Self-Help Guides

www.biduk.org/information-detainees/useful-forms-and-bids-self-help-guide-bail

The BiD self-help guide is designed to help people in detention who are making their bail application without a lawyer. It explains bail and how to make the strongest arguments before the Tribunal. The guide is available in a number of different languages.

Right to Remain Toolkit

<http://righttoremain.org.uk/toolkit/index.html>

The Right to Remain Toolkit looks at a whole number of different issues relating to immigration and asylum. For detention and bail you should click the 'Contents' tab and then the 'Detention' box.

Unity Centre

<http://unitycentreglasgow.org>

The Unity Centre provide support for people on bail with their signing-on at the Home Office. A person can check-in and check-out with Unity before and after signing-on. This way Unity will know if they have been re-detained.

Second Report of the Bail Observation Project (Campaign to Close Campsfield)

<https://closecampsfield.wordpress.com/old-campaign-articles/still-a-travesty-justice-in-immigration-bail-hearings>

The Bail Observation Project (different to IBOPS) observed a large number of immigration bail hearings in England. Their report contains a range of statistics relating to bail hearings.

Presidential Guidance Note No. 1 of 2012

www.judiciary.gov.uk/wp-content/uploads/2014/07/bail-guidance-immigration-judges.pdf

This document is the guidance given to immigration judges to guide them in making bail decisions. It uses legal language and is complicated, but it can give you an idea of the factors that the Tribunal judge will be considering.

Paragraphs 21-25 of Schedule 2 to the Immigration Act 1971; the Immigration Act 2016 Schedule 10 and 11

www.legislation.gov.uk/ukpga/1971/77/schedule/2/part/I/crossheading/temporary-admission-or-release-of-persons-liable-to-detention

The law surrounding bail is found in a number of different places. These parts of the 1971 and 2016 Acts contain key provisions. The language is complicated and if possible you should seek the assistance of a lawyer to explain it to you.



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