Glasgow University Settlement

Find a Solution Report 2016

Immigration Bail Observation

Project Scotland (IBOPS)
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Annex

‘Immigration Bail: An Introduction to Being a Cautioner in Scotland’ and ‘Guide to Being a Cautioner in the Scottish Immigration Bail Process’
1. **Purpose of the Report** - We, Susannah Paul and Daniel Ferguson, both University of Glasgow Law Graduates and “Find a Solution” Student Interns, have compiled this report to document and describe the process of working with the Immigration Bail Observation Project Scotland on the 2016 “Find a Solution” Project. The Report shall outline the objectives and aims of the project, explain the process used to identify and define the task and describe the method and process used to carry out the task.

2. **Introduction to University of Glasgow Settlement and “Find a Solution” and Immigration Bail Observation Project Scotland**

   **The University of Glasgow Settlement**: (GU Settlement), founded in 1897, was set up by students and graduates of the University of Glasgow’s Queen Margaret College. The objective of the settlement is to advance education, citizenship and community development through funding projects and initiatives that engage with charities.

   **Find a Solution**: The UoG Settlement runs an annual “Find a Solution” programme that recruits students to partner with local charities to find innovative solutions to existing problems.

   **The Immigration Bail Observation Project Scotland (IBOPS)**
   
   IBOPS is a collaborative initiative between staff and students from the University of Glasgow, (Glasgow Refugee Asylum and Migration Network (GRAMNet), School of Law and the student Law in Action group) and Detention Forum Scotland. It has received funding from the AHRC Researching Multilingually Project. The aim of the IBOPS project is to conduct the first comprehensive and systematic study of immigration bail hearings in Scotland.

   In July 2015, IBOPS conducted a one-week pilot study, and between October and December 2015 IBOPS observed immigration bail hearing that took place over an 8-week period at the First Tier Tribunal (Immigration and Asylum Chamber) in Glasgow. Data was collected on 89 Immigration Bail hearings in total, and all 62 conducted hearings were observed.
A team of 15 volunteers carried out the observations, we (Daniel and Susannah, both 4th year law students at the time) were involved in the observation stage. In October 2015, we underwent training from Anna Beesley, Sarah Craig, Maria Fletcher (academics from the IBOPS project), Clara della Croce and Gill Baden from the Campaign to Close Campsfield’s Bail Observation Project (an English equivalent of the IBOPS project) and Tanjeel Maleque, an immigration solicitor, and his team.

The IBOPS Project differs slightly from the usual model of “Find a Solution” Projects in that we, as students, have been working within the IBOPS team as part of their ongoing project. Having thoroughly enjoyed being a part of the observation period, we were keen to apply to extend our involvement with IBOPS.

3. Find a Solution IBOPS Project Objectives

The objective for the IBOPS “Find a Solution” project was for us to make use of the wealth of data that was collected during the observation period of the project, in conjunction with further research, to solve an issue that was identifiable from the current IBOPS work.

4. Method

1. Initial consultation with IBOPS team: We began by meeting with the IBOPS team, Anna Beesley, Sarah Craig and Maria Fletcher and our non-academic mentor, Lizanne McKerrell. This meeting provided an opportunity for us to learn more broadly about the direction the project had taken since the observation stage. During the first meeting we brainstormed ideas for the focus of the project. The process involved firstly brainstorming the different stakeholders that could have an interest in the work of the IBOPS project. The consensus following the first meeting was that it would be good to focus on the non-legal participants in the process. This group included the people in detention, the cautioners, the family and supporters of the people in detention, and interpreters.

2. Collection and review of all the data and resources we had at our disposal: having narrowed our focus to the non-legal participants, we then began to review the data that was collected during the IBOPS project. Firstly, we looked over the pro formas (forms that were used to collect the data from each hearing). We then
expanded our attention beyond the IBOPS project data itself and looked at the Campsfield Project Reports (The English equivalent of the IBOPS project) and other reports on the topic of bail from Bail for Immigration Detainees and Right to Remain and Home Office Guidance and statistics.

3. Identification of issue - In respect of non-legal participants, one recurring theme from our initial research was the apparent importance of the involvement of cautioners. Cautioners were involved in 63% of the cases observed. We examined the role of cautioners within the bail process and considered that they are likely to be very invested in the bail of a person in immigration detention. This includes the emotional attachment to the detention of the person, a financial investment in their bail (the most common bail bond was £1000) and an investment of time in acting as a cautioner. Through our research, we identified the potential for cautioners to lack a sufficient understanding of the bail process. In particular, many appeared unaware of their own role and involvement, both during and after the hearing. All of these factors were identified by the IBOPS team, who have noted down numerous examples of these in their observation records. For instance, on one occasion a cautioner had booked his return flight to London for 1pm on the day of the hearing, unaware that the process is likely to run into the afternoon.\(^1\)

Following our initial research into the information available on the subject of bail, we noted that there appeared to be a lack of resources directed towards cautioners. Most of the resources we found were directed towards individuals in detention. Any information that was available on cautioners was ancillary to the interests of the detainee. We also noted with concern that, according to the findings from the IBOPS research, judges often fail to explain the process to all parties involved in the hearing, including cautioners. In 59% of the cases, observers noted that the judge did not explain the process to all parties involved in the hearing. Whilst academic and activist focus on bail hearings rightly centres on the detainees themselves, the issue of cautioners is an important one. The problem of cautioners lacking sufficient knowledge is also one that has broader effects on the likelihood of bail, and the smooth running of proceedings.

4. Attempt to resolve the issue - In order to address the identified issue, we decided to create accessible information resources about the role of cautioners in the immigration bail process. We decided that these resources should take the form of

\(^1\) (Case 002)
i) a hard-copy leaflet and ii) a more detailed document to be provided as an online resource. The aim was that the documents would address a variety of factors, both practical and legal, that are central to the cautioners’ participation in the bail process. The areas that we decided to cover dealt with introducing the concept of bail, outlining the bail hearing itself, and discussing the rights and responsibilities of the cautioners following a grant of bail. We hoped that the provision of simple and practical explanations of their role would be able to assist in addressing uncertainties and may enhance cautioners’ performances at the hearing. It was also hoped that the resources could be utilised by persons in detention to help inform themselves and their prospective cautioners about the positive impact they can have on the hearing. At a minimum, our resource would aim to provide cautioners with a clearer explanation of their role and responsibilities.

5. Brief Review of Literature

One factor that we had to be cautious of at all times when researching the area is the procedural differences between Scotland and England. The law on immigration is UK wide, however the bail procedure in Scotland is different from the procedure in the rest of the UK.\(^2\) The terminology differs between Scotland and England; in England Cautioners are called Sureties. Additionally, Immigration law is a dynamic area of law that is constantly undergoing change. This meant that we needed to be careful to ensure our sources were not out of date. We tried to do this by cross-checking each area of substantive law against the most recent enacted legislation on the issue. The fast pace of developments in this area has proved to be one of the most challenging aspects of creating the information guides. We experienced this lesson particularly profoundly when, near the end of the drafting process, we discovered after receiving feedback and comments from a Tribunal Judge, that there is an imminent change in procedure in this area. Whilst we had been aware of the forthcoming legislation, we had not been aware of the specific impact that this would have on Scottish Procedure. We therefore had to ensure that we fully explained the information that is currently relevant whilst also explaining that this is likely to change substantially very soon. This led us to reflect that ‘finding a solution’ to the problem that we identified is not a one-off endeavour. Carrying out

\(^2\) Presidential Guidance Note 1 of 2012, page 29
maintenance, through redrafting of the information guides, will be an important factor for ensuring their continued relevance to those that use them.

Sources

Right to Remain, a UK-based human rights organisation has published a thorough toolkit that has been written for people who are dealing with the immigration and asylum system to help them take an active role in their legal case. Right to Remain toolkit has a section on detention, it clearly describes when people can be detained, actions that people can take to be prepared for potential future detention, and the legal options available to those in detention. The bail section from the toolkit provided a very clear introduction to the law on bail, and the Bail procedure in England. We were able to use this resource to build our understanding of the law. Additionally, we found this work to be particularly useful as an example of the style and language that we wanted to achieve for our information guides.

First Tier Tribunal Guidance- Presidential Guidance Note 1 of 2012 - The First Tier Tribunal Bail Guidance for Immigration Judges is a guidance note that has been written by the President of the First Tier Tribunal of the Immigration and Asylum Chamber and was implemented on the 11th of June 2012. This guidance directs judges on when bail should be granted, and outlines the factors that they should take into account in making decisions on the topic. It covers the topics of bail conditions, varying bail conditions, when bail ends, forfeiture and sureties. The guidance note also gave some guidance for judges on the best practice for conducting a bail hearing. The guidance served as a very useful tool to gain an understanding of the guidance under which the judges work. However, we acknowledged the limitations of the guidance in terms of creating realistic expectations for cautioners. We noted from the IBOPS observation that judges’ manners of conducting hearings and their reasoning can vary and diverge significantly from the best practice and the decision-making guidance.

Annex 7 of the Guidance note covers the topic of Adapting Bail Guidance for bail applications in Scotland and Cross-Border Issues. This section was a very important resource during our research stage. The distinctive features of the procedure in Scotland and the focus of majority of the resources on the procedure in England and Wales made it highly important that we understood and remained alert to the
differences. Understanding the effect of the idiosyncrasies of the procedure in Scotland proved to be one of the forefront issues during the drafting process. The main difference in Scotland is that the cautioners’ bail bond is currently deposited with the tribunal when bail is granted. This is an area that is expected to change soon when Schedule 10 of the Immigration Act 2016 introduces ‘financial obligations’ and stops the tribunal in Scotland from taking bail money in advance.

Campsfield Project - The Campsfield Project Reports come from the Bail Observation Project that was established in 2010 and involved the systematic study of bail hearings. In the first observation period, 115 bail hearings were observed between December 2009 and July 2010 at 4 different courts across England and Wales.

Following the publication of the FTT Guidance for Judges in 2012, another observation period was carried out and a further 212 bail hearings were observed between February and October 2012.

The Campsfield Project served as a blueprint for the IBOPS and these reports captured a wealth of anecdotal evidence and statistics pertaining to the Bail Proceedings in England and Wales. These provided a useful comparative tool. Additionally, the second Campsfield Report further warned us against treating the FTT Guidance for Judges as correlating to what occurs in practice.

BID - Bail for Immigration Detainees is a UK independent charity that exists to challenge immigration detention in the UK. We found BID’s self-help guides for detainees to be a very valuable resource from which to learn and understand the procedure of applying for bail.

Legislative sources contain the rules that govern bail. The Acts we used were the Immigration Act 1971, the Immigration and Asylum Act 1999, Asylum Immigration and Treatment of Claimants 2004, the Immigration Act 2014 and the Immigration Act 2016.

6. Project Plan

We devised a plan of the steps involved in creating our information guides for cautioners.
Our plan initially involved five stages:

Stage 1: General Research
We knew that we initially needed to carry out research on the topic of immigration detention with a particular focus on the matters relating to cautioners. It was necessary for us to gain a thorough understanding of the law and procedure in order for us to be able to communicate the important points for cautioners in a clear and precise manner. To do this we utilised a variety of sources including the IBOPS observation reports, the research produced by other campaign groups, Immigration Legislation, policy guidance and official statistics.

Stage 2: Interviews
We had initially planned to carry out interviews with a number of different stakeholders. Our intention was to interview lawyers, cautioners, visitor groups and clerks of the tribunal. We had planned to firstly ascertain the level of knowledge that cautioners had prior to the bail hearing by interviewing cautioners themselves and legal representatives in order to pitch our leaflet to their current level of knowledge. Time constraints prevented this from being a viable course of action for this project. After discussions with the IBOPS team, we realised that the time that these interviews would take to conduct and write up would extend into time that would be better spent creating and refining the content of the information guides. We decided with the IBOPS team that a better course of action would be to work on the content of the information guides and seek clarification from lawyers and other parties for specific issues that arose during the research and writing up process.

Stage 3: Collating Information
Following the conduct of research, the next stage was to collate our information and determine the scope and content of the pamphlet.

Stage 4: Writing the Pamphlet
The creation of the information guides was the most time consuming stage of the process. We carried this out in a number of stages. We aimed that the finished
product be thorough yet succinct, and the language accessible to those unfamiliar with Immigration Law and practice.

Stage 5: Reporting
The final stage of the process involved the completion of this report. We reasoned that this would involve us documenting the reason for our project, the actions that we took and the outcomes that we reached.

Project timeline
We devised a working schedule taking into account our other commitments. We aimed to complete the information guides and project report by 7th August 2016. We agreed that this would leave us ample time to prepare for the presentation on 31st August, and would also allow for flexibility if our project suffers unexpected delays.

7. Creating the Information Guides

We initially split the main headings of content to allow us to work on writing them up individually. Susannah focused on the ‘Introduction to Bail’ and ‘The Bail Hearing’ and Daniel dealt with ‘Accommodation and Support’ and ‘What happens after the Bail Hearing’.

With regards to the content, we started by writing up our findings using the technical language and legal terminology that we had learnt in the research stage. During the drafting process we initially focused on the content and ensuring that we had included all of the important information for cautioners.

Our focus then turned to layout and ordering the content in a logical and free-flowing manner, we spent time collating our work, checking for overlap and rewriting some sections.

The next stages of drafting involved rewriting the information to ensure that it would be accessible to people who are unfamiliar with the immigration law and practice. We also wanted to take into consideration that English may be a second language for some of the individuals that may use the information guides.

The following stage of drafting involved presenting the information in a manner that was clear, readable and visually pleasing.
Once we had our first draft we shared it with the IBOPS team who gave us feedback on the content and style of the guide. During our review meeting with the IBOPS team, we noted a list of points that we needed to seek clarification on prior to including them in the guide.

The final stage of our drafting involved sending our guide to a tribunal judge for feedback and comments. This stage proved to be very important. We are indebted to the judge for providing an explanation of forthcoming changes to the procedure in Scotland. This enabled us to update our guidance and highlight that some areas of the procedure were likely to change very soon.

8. Project Reflections and Scope for Future Research

Reflections
The IBOPS project served as a unique opportunity to work alongside the University academics on an on-going research project. The subject matter of the project was an extension of issues that we covered during our studies of Immigration and Asylum Law during our LL.B Honours course at Glasgow University and provided the opportunity for us to develop and put our learning into practice through research and problem solving. Getting an insight into the type of work that our academics engage with outside of their teaching duties was, very interesting and confirmed both our desires to engage in further study and academic research in future.

Scope for further study
As mentioned above, the Immigration Act 2016 provides significant changes to the procedure for bail in Scotland. Once in force, Schedule 10 will stop the Tribunal in Scotland from taking deposits of bail money, or caution, in advance. Instead, the tribunal will impose a financial obligation, or an undertaking to pay. The changes will mean that the procedure in Scotland will operate similarly to the English procedure of recognisance, where money is pledged, evidence of the surety’s ability to pay is verified however no money is transferred unless there is a breach of bail and the money is forfeited.

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 caution is
currently. It will be interesting to observe how this change will impact on the granting of bail in Scotland. During the IBOPS Observations, one observer noted that a judge had commented that “a cautioner was the best way of securing against the risk of absconding” (Case 052). It will be interesting to observe the manner in which the introduction of financial obligations in place of caution will be used and develop. Moreover, it could be interesting to research the impact that this has on the decision-making involved in granting bail.

9. Acknowledgements

In carrying out this project we benefitted from the help and guidance of many people who deserve our greatest gratitude. It has been an honour to work within the IBOPS team this summer; Sarah Craig, Maria Fletcher and Anna Beesley have provided unfaltering support, by offering their time, advice and answering our many questions. We owe great thanks to Lizanne McKerrell for her kind support as our non-academic mentor, Kate Alexander and Shirley Gillan, from Scottish Detainee Visitors, for their support and help with contacting individuals who had experienced the bail application process. We are also very grateful to Carl Macpherson for his illustrations used in the guide, leaflet and poster and to Adnan for his insight on bail process and an applicant's perspective on the bail process.
Immigration Bail: An Introduction to Being a Cautioner in Scotland

August 2016

Immigration Bail Observation Project Scotland

Made on behalf of the

Useful Organisations

Bail for Immigration Detainees (BiD):
https://www.biduk.org/information-detainees

Right to Remain Toolkit:
https://www.righttoremain.org.uk/toolkit

Unity Centre Glasgow:
https://unitycentreglasgow.org

Scotish Detained Visitors (SDV):
https://www.detainedvisitors.org.uk

Re-Detention

- A bailed person can be re-detained by the Home Office at any point
- Re-detention can only happen when the bailed person goes to sign-on
- If the person absconds, the Home Office expects you to contact them immediately
- At the forfeiture hearing the Tribunal will
  - consider what steps you took to encourage the bailed person to follow their conditions
  - determine whether or not they believe you are responsible
  - hold a forfeiture hearing to determine whether or not they believe you are responsible
  - consider whether or not they believe you are responsible
- If the Tribunal holds a forfeiture hearing
  - you must attend
- If the bailed person absconds, the Home Office expects
  - you to contact them immediately
  - to detain them
  - to hold a forfeiture hearing
  - to consider whether or not they believe you are responsible
  - to keep them in detention

Breaches or Bail Conditions

If the bailed person absconds (hides from the authorities) then you are liable to lose the bail bond.

If the Tribunal holds a forfeiture hearing
- if the bailed person absconds, the Home Office expects
- to detain them
- to hold a forfeiture hearing
- to consider whether or not they believe you are responsible
- to keep them in detention
If Bail is Granted

- Straight after the bail hearing, the cautioners will have to pay the bail bond to the Tribunal.
- Arrangements will be made to release the applicant to the agreed address.

If Bail is Refused

- The applicant will stay in detention and the cautioner will not pay any money.
- The person in detention can reapply for bail after 28 days (or earlier under certain circumstances).

Bail Conditions

- If bail is granted, the judge will inform the applicant and their cautioner of their bail conditions.
- The ‘primary condition’ sets out what the bailed person has to do when bail ends.
- The ‘secondary conditions’ normally restrict where the bailed person has to live, and also require them to regularly sign-on with the Home Office.
- A cautioner should be able to attend the bail hearing in Glasgow. They are expected to arrive at 9:30am and may have to wait until the hearing is called.
- A cautioner should be able to answer the bail hearing.
- The cautioner should be able to influence the applicant.
- A cautioner is someone who attends the hearing of the First Tier Tribunal (Immigration and Asylum Chamber) and agrees to encourage the applicant to follow their ‘bail conditions’ if they are released.
- The cautioner will have to deposit a sum of money (‘bail bond’) that they might lose if the person breaches their bail conditions.
- Note that the Immigration Act 2016 will change the procedure relating to bail money in Scotland. Please see IBOPS full length guide to the money (‘bail bond’) that they might lose if the cautioner will have to deposit a sum of money.

What is Bail?

- Bail is the temporary release of a person from immigration detention for a specified period.
- Bail does not give a person a legal right to remain in the UK, but means that a person does not have to wait in detention whilst decisions about them are made.
- Bail can help the case for bail.
- People on bail will have to live at an agreed address, which is usually the applicant’s home and may have to work until 7pm.
- Bail is granted.

What is a Cautioner?

- Out of all the successful bail applicants, 73% had a cautioner.
- Applicants with cautioners are twice as likely to be granted bail.
- 77% had a cautioner.
- 63% of bail applicants have a cautioner.
GUIDE TO BEING A CAUTIONER IN THE SCOTTISH IMMIGRATION BAIL PROCESS
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, and the University’s student-run Law in Action Group, with assistance from the Glasgow Refugee Asylum and Migration Network (GRAMNet) and Detention Forum Scotland. It has received funding from the AHRC Researching Multilingually Project. IBOPS’ aim is to conduct the first comprehensive and systematic study of the immigration bail process in Scotland.

Between October and December 2015, 10 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 played a central, and often decisive role in Scottish immigration bail hearings. Despite this, and the fact that cautioners are required to invest significant time and money 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 cautioner’s 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.
Acknowledgements

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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 is titled ‘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 is titled ‘Bail Application and Preparing for the Bail Hearing’. In order to receive bail person 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 is titled ‘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 is titled ‘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, and this is true for the laws around immigration bail. This guide explains how the law operates as of 31st August 2016.

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 an asylum seeker or migrant in the UK is taken into custody by the Home Office. People in immigration detention are normally held in one of a number of Immigration Removal Centres or, sometimes, in short term holding facility. There are two broad reasons why a person might be held in immigration detention:

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’. There are two categories of bail conditions. The ‘primary condition’ will set the length of bail. It will set out when bail will end and what the person released on bail will have to do. The ‘secondary conditions’ can vary, but will normally restrict where the person must live whilst they are on bail, and will also require them to regularly report to a local 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 can lose a sum of money that they will normally have to deposit before they are released.¹

¹ For more on ‘Bail Conditions’ see Part 4.3 (below).
It is important to understand that bail does not give a person a legal right to remain in the UK. Bail is simply a temporary release from detention whilst the Home Office decides how to handle the person’s 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 wait in detention for a long time whilst decisions about them are made.

1.3 Who can apply for bail?

Anybody that is held in immigration detention can apply for bail if they have been in the UK for 7 days or more. If a person has their bail application refused, they cannot re-apply for 28 days unless there is a change in circumstance. 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 4 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 below 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 make the best arguments for them and present 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.

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 the Immigration Removal Centre. A number of lawyers hold short weekly clinics at the Centres, and people in detention

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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])
can also access their contact information. If they meet the eligibility test, the person will be able to access Legal Aid so that they do not need to pay the lawyer’s costs themselves.

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 a Form B1 that can be accessed online\(^5\) or in the Immigration Removal Centres. 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 the Immigration Removal Centre. 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 hearing on the afternoon before the hearing, the bail applicant will 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 have 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. These cases only occur rarely (IBOPS observed only 1 such case in 89 observations).

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). A cautioner is a person who, if bail is granted, deposits a sum of money (called ‘bail bond’) with the Tribunal * (See important note below at 1.5.1 concerning changes in this procedure) 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 22%).

1.5.1 Immigration Act 2016

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 can 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 caution is currently.

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 exercise 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.

Cost of the Bail Bond

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*Para 22(4) of Schedule 2 to the Immigration Act 1971.*
There is no set amount that a cautioner has to pay for the bail bond. The purpose of the bail bond is to give you 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 shows that the amount most commonly offered in Scottish bail hearings was £1000.

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.

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

- Someone you know is being held in immigration detention because the Home Office are processing their entry or removal.
- They want to be temporarily released from detention whilst the Home Office make their decisions.
- They have applied for bail to a Tribunal judge who will consider whether the risk of them absconding can justify their loss of freedom.
- 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 are split into ‘primary conditions’ (which outline what happens when bail ends) and ‘secondary conditions’ (which 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 will need to deposit a significant sum of money with the Tribunal. You might lose this money if the person released on bail absconds or fails to follow their primary condition. (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 fills out the Form B1 to apply for bail, they will need to put down 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 £1000 is the most common amount offered).

A person applying for bail can ask more than one person to be a cautioner. If they have lots of friends or family members who 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 legal representative, 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.

Who Can Provide the Bail Address?

If the person applying for bail owns or rents a house, then they can put this down as the bail address. If they do not own a house, then they will have to rely on someone else to provide it for them. As their cautioner, you can provide the bail address, but you do not have to. Whilst providing the bail address yourself will help you in persuading the Tribunal that you can influence the bail applicant, there are other options available. The person applying for bail can ask other friends of family to provide a bail address for them. If they do not have anyone that
will provide the bail address, they can apply to the Home Office who will provide basic accommodation for them.

**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 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 and check if they are doing so. A common condition is that a person on bail must regularly report to the Home Office. If the person is living with you, you will be able to remind them to report on the days that they are required to. This daily contact with the person released on bail will be a strong argument that should help you 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 likely that the Tribunal is likely to 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. If they can show the Home Office that they have no one that they can stay with, they will receive basic accommodation and £35 per week for food and toiletries. If a person is applying for Section 4 accommodation, they will first be granted Initial

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7 Section 4(1)(c) and 4(10) of the Immigration and Asylum Act 1999.
Accommodation to which they will be released if bail is granted. The Home Office will then arrange permanent 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 9 days for the Home Office to arrange Initial Accommodation. It also found that if bail is granted it can weeks before a permanent address is arranged. In addition, there is no guarantee that the accommodation provided by the Home Office will be near where you live. As we mentioned above, this can lead the Tribunal to question your ability to influence the applicant.

**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 heading 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

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10 Bail for Immigration Detainees: ‘No place to go: delays in Home Office provision of Section 4(1)(c) bail accommodation’
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 of family member of the bail applicant, Question 5 and 6 can often be difficult to answer. In relation to the previous immigration offences 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. At minimum you should take 3 months’ worth of bank statements, your passport and any documents relating to your immigration status. If the bail applicant has a legal representative, 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’ paycheques)
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 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 put this down in the Form B1 application 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 ask for one.

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://courttribunalfinder.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 the Immigration Removal Centre.

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 and do not make any plans. If you are arranging transport home from the Tribunal (e.g. trains or flights), you should book them for after 5pm as it is possible that it may be that late before you are finished.
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 extremely basic with only some chairs and restrooms. 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?

*Diagram 1*
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 it is time for the hearing that you are part of, 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.

Once everyone is seated the clerk will show the judge in. When the judge enters the room everyone must stand and sit down only once 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 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 as 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 ask 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 a broken the law or failed to comply with immigration laws 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. This is a bail hearing and your role is to help persuade the Tribunal that you can help the bail applicant follow their 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.

**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 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, and you should try and be as least disruptive as possible during the hearing.
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 the IRC that bail has been refused, and the person will be taken out of the video link room and back into detention.

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. 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 also give a short explanation for their decision. They will also mention what conditions they are attaching to bail that the person will have to follow when they are released. The judge will tell the guard at the IRC that bail has been granted, and the person will be taken back into the IRC to prepare for their release.

11 Parap 25(2) of Schedule 2 to the Immigration Act 1971.
We mentioned in Part 1.4 that if there is an order 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 to briefly 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.

**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 (Please note the forthcoming changes in procedure relating to bail money- see section 1.5.1), the staff at the detention centre will direct the bailed person to collect their belongings. 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 briefly mentioned how 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.

**Primary and Secondary Conditions**

As we have already mentioned, bail conditions are split into ‘Primary’ and ‘Secondary’ conditions. The ‘Primary’ condition sets out how long bail will last and what the person released on bail must do when it ends. The ‘Secondary’ condition will place certain restrictions on the person for the duration of their bail. These will normally enable the Home Office to exercise some supervision over them by requiring them to live at a certain address and regularly sign on with the Home Office.

We will look at primary and secondary conditions in more detail below, but first it is important to understand the difference between the two. The key difference is the consequence of non-compliance with the conditions. If the person released on bail breaches any of their conditions (primary or secondary), they can be re-detained by the Home Office. They can also 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 (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)
Primary Conditions

As we have mentioned, a grant of bail only 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. The primary condition works differently depending on whether or not the bailed person has an ongoing legal appeal.

If a person has no legal appeal pending, then their bail will last until a specific date set by the Tribunal. This date will normally be set at 3 months from the date of their release. At the end of this 3-month period, the condition will state that the bailed person has to attend the Tribunal to ‘answer to bail’. When a person ‘answers to bail’ (i.e. when their grant of bail comes to an end) the Tribunal will normally renew their bail and extend the grant for a further 3 months. 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. Once you have returned this letter to them, they will arrange with the Tribunal for bail to be renewed for a further 3 months. You will be notified when this happens.

If a person has an appeal pending, then their bail will last until the appeal has concluded. The primary condition will require them to attend each of the hearings for their appeal. Once a decision has been made, the Tribunal will grant bail until a specific date at which they will have to answer to the Tribunal. During this time, the Home Office will give effect to the ruling in their case (i.e. arranging their leave to remain if they were successful, and possibly arranging their removal if they were not).

The primary 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 the primary condition works.

Once the 2016 Act comes into effect, if there is no appeal pending the Tribunal will grant bail for 7 days. After the 7 days the bailed person will have to report to a Chief Immigration Officer 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.
Secondary Conditions

The Tribunal judge will also set some secondary conditions that aim to make sure that the person reports at the end of their bail. These secondary conditions will also help the Home Office supervise the person whilst they are on bail. The Tribunal can set a wide range of secondary 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. What ‘living’ at the bail address means is a little unclear, but you should take it as meaning that the person should return there each day at some point to sleep. They will not be able to leave the area for a holiday or stay with other friends.

The Tribunal also normally set a reporting condition that will require the person released on bail to keep in regular contact with the Home Office. The judge will set a date and time (e.g. ‘between 9am and 3pm every Monday’) during which the person has to ‘sign on’ at a nearby UK Visa and Immigration office or, sometimes, a local police station. The queues for signing on can be long, and it is normal for a person to have to wait in line for an hour or two.

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. We will deal with a change of circumstances in this section, and will deal with a breach of bail conditions in ‘Breach of Bail Conditions’ below.

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 decide 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 the Immigration Removal Centre. 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**

As you now know, your role as a cautioner is to encourage the person released on bail to follow all of their bail conditions. Even with your best efforts, however, 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 a breach of the Primary condition can lead to the loss of your bail bond deposit. If the primary condition is reached, the Tribunal will hold a ‘forfeiture hearing’ to decide whether you should lose some or all of the deposit. (Please note the forthcoming changes in procedure relating to bail money- see section 1.5.1) At the hearing, the Tribunal will look at how you responded to the breach of the primary condition, but will also look at how you encouraged the person to follow their secondary conditions. So it is important that you take all the conditions seriously.

If a person released on bail fails to follow a secondary 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 fails to follow their secondary conditions, you should strongly encourage them to follow them the next time, as repetitive breaches could make re-detention
more likely. 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 or fails to follow their primary condition, 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 or fail to comply, 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 suddenly absconds, you should contact the Home Office and their legal representative to inform them of what has happened. If the person has absconded, you could lose some of your deposit. In deciding how whether you should lose it, the Tribunal will consider how you responded to the absconding and whether you reported your concern to the Home Office. Whilst it may be difficult for you to do, especially as the absconding could lead to the person’s re-detention, reporting it to the Home Office is an important step if you want your bail bond returned. (Please note the forthcoming changes in procedure relating to bail money- see section 1.5.1)

As we mentioned, if the person released on bail fails to follow the primary condition, the Tribunal will call a ‘forfeiture hearing’ where a judge will decide how much of the bail bond deposit you should lose. 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 decide whether you should lose none, some or all of the money that you deposited as the bail bond. The judge will consider a number of things in order to make their decision:

1) The steps you took to make sure the person followed their primary condition
2) Whether you reported any concerns to the Home Office
3) The steps you took to make sure the person followed their secondary conditions
4) Any explanations that you have as to why you could not carry out your role as cautioner

If you can show the Tribunal that you did everything in your power to encourage the person to follow their conditions, and you immediately notified their absconding to the Home Office, then the Tribunal is more likely to return some or all of your deposit. (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. 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

Bail for Immigration Detainees (BiD) Self-Help Guides:


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 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)


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:


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 law surrounding bail is found in a number of different places. However, most of it is contained in this part of the Immigration Act 1971. The language is complicated and if possible you should seek the assistance of a lawyer to explain it to you.