

## VITAL REQUIREMENTS

### A GOOD PRACTICE GUIDE UP-DATE TO BAIL APPLICATIONS

20TH MAY 2015

1. You will all have noticed that Bail Applications now seem to have attracted a lot more paper-work over the year: gone are the days of some dozen or so pages for the Applicant would suffice. I've attached last year's Notes for ease of reference and, to begin with, I'm setting out i) the current essential checklist of what have now become mandatory requirements if an Application is to have a fighting chance of success and ii) some of the additional issues that may arise, for example, the provisions of Section 7 of the new Act.

2. The principle requirement is an indexed and paginated Bundle that has been served **in time** on the Home Office ("HO") and the Tribunal Judge, the contents of which **MUST** include - I cannot stress the importance of the adequacy of the evidential content too strongly - the following:

a) Evidence of any Judicial Review Application ("JR") and its current status - please see below and paragraphs 3 and 4 of my previous Notes;

b) Evidence of the proposed accommodation - please see below and paragraphs 3 and 5 of my previous Notes;

c) Evidence of i) Sureties' suitability and ii) adequate and consistently available funds - please see below and paragraph 6 of my previous Notes;

d) The attendance of an Independent Interpreter for the Applicant for the Pre-hearing conference - please see below and paragraph 7 of my previous Notes.

3. **As far as JR is concerned**, the HO are manifesting a disconcerting ignorance/outright denial recently as to whether or not a JR Application has actually been lodged on behalf of the Applicant, let alone its current status. It is therefore vital that documentary evidence of any correspondence (the application, any acknowledgment, timetable, etc) showing the basis for JR and the up-to-date position procedurally, be included in the Bundle. The existence (or not) of a pending JR is obviously of the greatest importance in support of any lack of 'imminent removal/deportation and its time-tabling' argument.

**4. As far as accommodation is concerned,** judges are now insisting on the renewal of the consent of the landlord, if the accommodation is rented property, for the Applicant to reside there and sometimes even if the tenancy is in the Applicant's own name. The accommodation address cannot be altered on the day of the hearing as it has to be approved in advance by the HO.

An additional problem can arise where the Applicant is on licence with Reporting Conditions. Difficulties can arise where the approved/proposed accommodation address is miles from the Offender Manager's Reporting address, particularly where it is S4 accommodation. It is therefore essential to have a copy of the licence in the Bundle; the Applicant will have their own copy, the HO may well not.

In a recent case, neither the HO nor I had a copy and the Judge, because of the possible potential for a breach of the Probation Reporting condition, directed the Applicant to ask a member of staff at the Detention Centre to fax a copy to Sheldon. This was done and the licence indicated that, on release, Probation Reporting by the Applicant was to be to the Probation Office in Folkestone however, the S4 accommodation was in Leeds. I was directed to contact Probation in Folkestone to ascertain whether a) the S4 accommodation was approved by the Offender Manager and b) whether Probation Reporting could be shifted from Folkestone to Leeds. Very fortunately, the Offender Manager was a) available and b) extremely helpful. She 'phoned Probation in Leeds who a) approved the address, b) assessed the Applicant as 'low risk' and c) agreed to transfer the Probation Reporting Condition to Leeds and then got straight back to me with this information. Equally fortunately for the Applicant, the Judge was willing to accept this oral approval as reported back by counsel and the Applicant was granted Conditional Bail.

However, this is an issue which should have been clarified prior to the hearing as without the co-operation of the Offender Manager at Folkestone, the Applicant would not have got bail (please see also paragraph 9 of my previous Notes).

**5. As far as sureties are concerned,** comprehensive evidence of availability of the presence of consistently adequate funds in their current account and/or savings account is essential. Wage slips and utility bills are always helpful. Judges are now tending to ask more searching questions of sureties. For example, how long has the surety known the Applicant? How long

has the surety known that the Applicant was in UK illegally? Did they report this forthwith to the authorities and if not why not? If the surety had known the Applicant for some time and known that the Applicant had been in UK illegally for some time, what assurances could the surety give to ensure the Applicant's compliance with any conditions imposed? Some judges have a particular dislike for Applicants who came into UK on a 6 month' visit visa and are still here illegally some 10 years later and possibly working illegally too. Sureties therefore need to be able to give credible answers in these situations (please see also my previous Notes at paragraph 6). Sureties should occupy (or live in reasonable proximity to) the proposed accommodation so as to be able to ensure compliance with any bail conditions on the part of the Applicant and should also be of good character. Previous convictions, even if spent or 'nearly spent' are not advisable for either sureties or landlords.

**6. As far as Independent Interpreters are concerned,** if the Applicant has a poor command of spoken and written English, an Independent Interpreter is essential. This issue can be dealt with by way of a friend or surety who is able to interpret for them. The permission of the judge to use a friend or surety as interpreter in the pre-hearing conference must be sought but is usually forthcoming. Firstly, the Applicant should be asked if they are able to confirm that i) they have been served with the Bail Summary, ii) if they have understood it and iii) if they agree with what is said in it. Secondly, if any of the evidence referred to above is missing, particularly the required accommodation documents, or is seriously inadequate, such as the sureties' funds, it may well be that it is in the Applicant's best interests to withdraw their Application. This is often very difficult to put across to an Applicant who is desperate to have their liberty and who frequently takes the view that the advocate is simply 'not trying' or 'not on their side'. On consideration of the advisability of withdrawing, it is then necessary to explain to the Applicant the implications of the provisions of **Section 7 of the Immigration Act 2014** which will be covered below (please see also my previous Notes at paragraphs 7 and 8). A Withdrawal means that the Applicant can rectify any defects in the present Application as soon as possible and re-apply immediately this is done with a 'clean slate'. A Refusal of Bail with the Judge giving Reasons for Refusal can often jeopardise future Applications and almost certainly delay them for 28 days, thereby giving the HO more time to obtain an ETD with the inevitable consequences.

7. **Section 7 of the Immigration Act 2014** came into force on 28.7.14 and reads as follows:

**Immigration Bail: repeat applications and effect of removal directions**

*"(1) Schedule 2 to the Immigration Act 1971 (administrative provisions as to control on entry etc) is amended as follows.*

*(2) in paragraph 22 (bail) at the end insert -*

*"(4) A person must not be released on bail in accordance with this paragraph without the consent of the Secretary of State if -*

*(a) directions for the removal of the person from the United Kingdom are for the time being in force, and*

*(b) the directions require the person to be removed from the United Kingdom within the period of 14 days starting from the date of the decision on whether the person should be released on bail."*

*(3) In paragraph 25 -*

*(a) the existing paragraph is re-numbered as sub-paragraph (1)*

*(b) in that paragraph, for "may" substitute "must";*

*(c) after that paragraph insert -*

*"Tribunal Procedure Rules must secure that, where the First-tier Tribunal has decided not to release a person on bail under paragraph 22, the Tribunal is required to dismiss without a hearing any further application by the person for release on bail (whether under paragraph 22 or otherwise) that is made during the period of 28 days starting with the date of the Tribunal's decision, unless the person demonstrates to the Tribunal that there has been a material change in circumstances."*

*(4) In paragraph 29 (grant of bail pending appeal), in sub-paragraph (1), at the end insert "(and paragraph 22 does not apply)".*

*(5) In paragraph 30 (restrictions on grant of bail pending appeal), in sub-paragraph 1 -*

*(a) after "if" insert "- (a)";*

*(b) for "or the power to give such directions is for the time being exercisable" substitute "and*

*(b) the directions require the person to be removed from the United Kingdom within the period of 14 days starting with the date of the decision on whether the person should be released on bail."*

*(6) After paragraph 33, insert -*

*"33A(1) Tribunal Procedure Rules must make provision with respect to applications to the First-tier Tribunal under paragraphs 29 to 33 and matters arising out of such applications.*

*(2) Tribunal Procedure Rules must secure that, where the First-tier Tribunal has decided not to release a person on bail under paragraph 29, the Tribunal is required to dismiss without hearing any further application by the person for release on bail (whether under paragraph 29 or otherwise) that is made during the period of 28 days starting with the Tribunal's decision, unless the person demonstrates to the Tribunal that there has been a material change in circumstances."*

The material change has to be demonstrated on the papers.

8. Thus, the first change to the provisions for bail means that a person who is due to be removed within 14 days starting with the date of the decision, cannot be released on bail without the consent of the Secretary of State. The second change means that Tribunal Procedure Rules must secure that where bail has been refused, any further application made within 28 days must be refused on the papers unless there has been a material change in circumstance. The Statement of Intent on Bail says that

*"If the immigration judge considers that there are exceptional circumstances that mean an individual should be granted bail ...the Secretary of State will give serious consideration to release ...While it not possible to anticipate every exceptional circumstance where the Secretary of State may consent to release as the decision will be taken on a case by case basis, possible examples may include persons who are recently bereaved or have complex medical requirements."*

9. The length of time spent in Immigration Detention should never be overlooked; some judges are extremely sensitive to this issue. The length of time should not exceed 6 months but for various reasons it frequently does (please see further **Presidential Guidance Note No 1 of 2012 - Bail Guidance for Judges presiding over Immigration and Asylum hearings**, at paragraphs 16 -21 - **(b) The length of the detention to date and its likely future duration.**

10. The importance therefore of getting the Application right the first time round with all the required documents in place is absolutely crucial in order to put the Applicant in the best position possible for achieving a grant of conditional bail as soon as possible. A situation where an Applicant has to be advised to withdraw their Application because of defects in the documentary evidence causes immense distress and should be avoided at all costs. Let us never forget the right to personal liberty.

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