Bail observations at Taylor House, 2019-2020

by students at Oxford University

January 2021

Contents

Preamble

Between 18 January 2019 and 11 September 2020 – a period of 1 year, and nearly 8 months – 36 immigration bail hearings were observed, all at Taylor House hearing centre, London.

12 hearings were observed 'pre-Covid', 10 in 2019 – 5 on one day in January, and 5 on one day in February, and 2 in 2020, both on one day in February.

24 hearings were observed in the 'Covid era', on 18 dates between July and September 2020.

This report is based on observations made by 9 volunteer observers, all undergraduate students at Oxford University. The observers received training at two sessions run by organisers with the Bail Observation Project. 20 of the observations were conducted solo, 16 in a team of 2 or more. Observers completed a questionnaire derived from the one provided by BOP.

All pre-Covid hearings were observed in person at Taylor House. All Covid-era hearings were conducted remotely from Taylor House via either video link or BT conference call, and were observed remotely.

Covid allowed for a wider sample of hearings observed, as in-person observation meant observing one room with one judge presiding over all cases that day in that room, whereas observing online allowed for more mobility in dates.

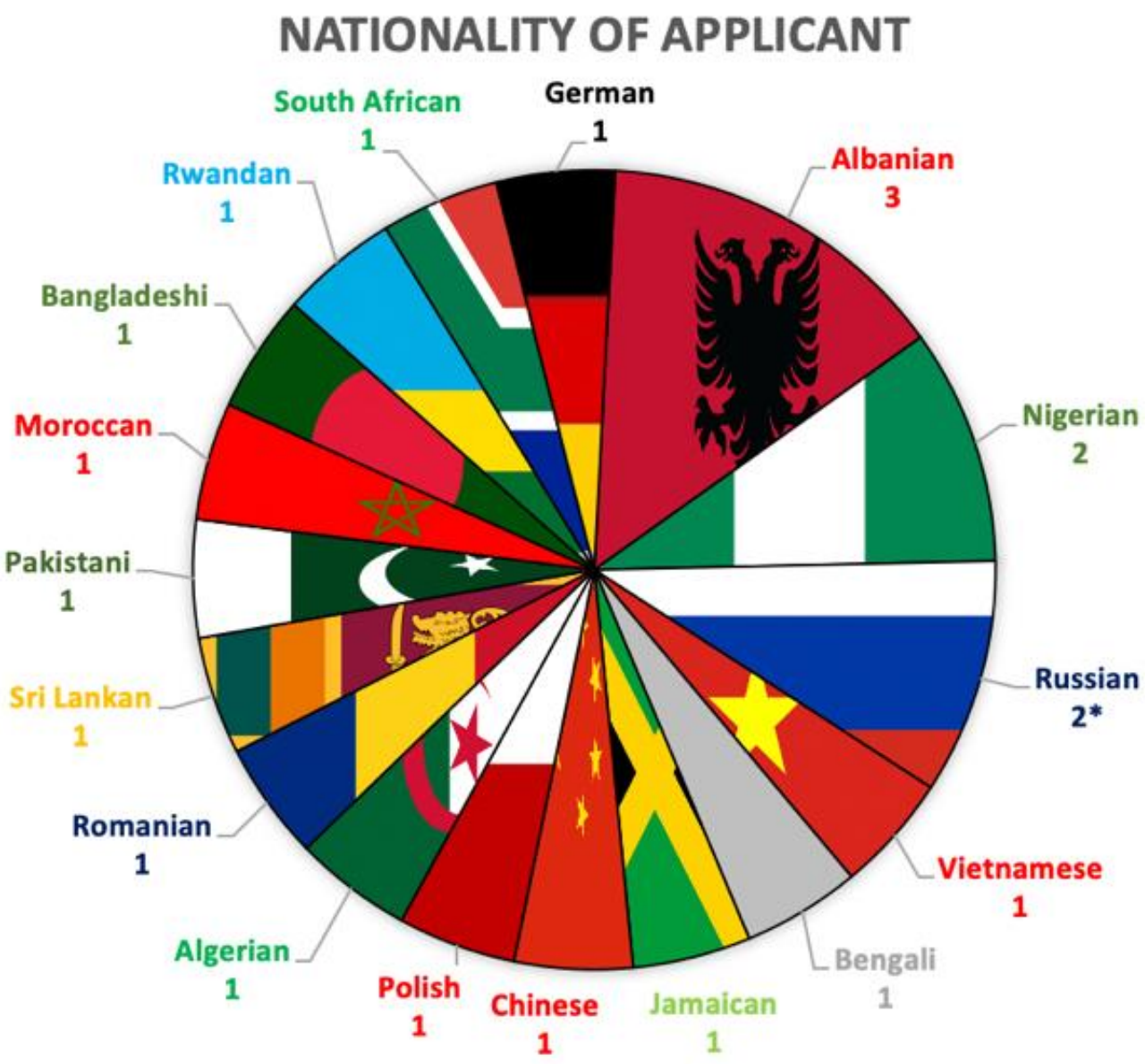
The observers wish to emphasise that they are not trained lawyers, and acknowledge that there will have been accidental error in the records made of the hearings. However they believe that the observations provide some insight into bail hearings during the period covered.

Observers wished to exercise their right to observe proceedings in the tribunal as members of the public. In 34 of the 36 hearings, the observer recorded if their presence was asked about or questioned. In 8 of the hearings, the answer was Yes.

Note: 'In person' in the diagrams refers to hearings conducted pre-Covid in the hearing centre or court room, as opposed to remotely during Covid.

Nationality of applicants

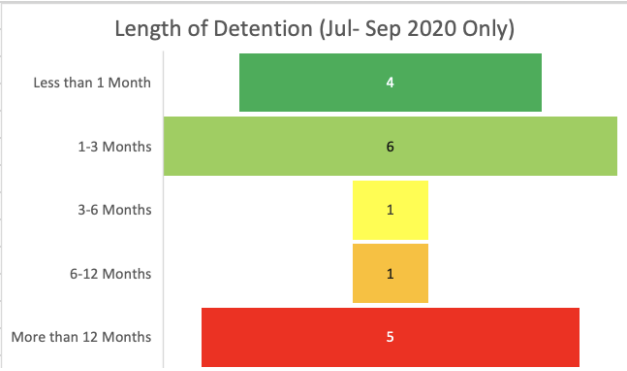
The nationalities of applicants were registered in 21 of the 36 hearings that were observed. There were 17 different recorded nationalities (16 if 'Bengal' is taken to be Bangladeshi). The split is shown in chart below:



** Both hearings involved the same applicant.*

Duration of detention

The duration of detention was recorded in 22 of the 36 hearings. The total split is shown below:



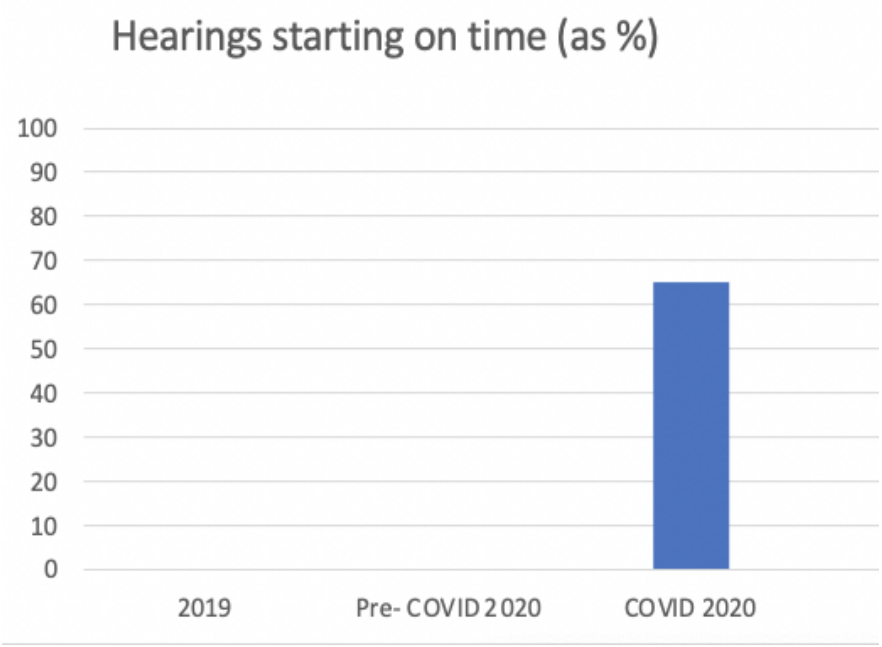
Both pre-Covid and Covid-era hearings show a similar spread of length of duration of detention in the hearings observed.

Duration of hearing and late starts

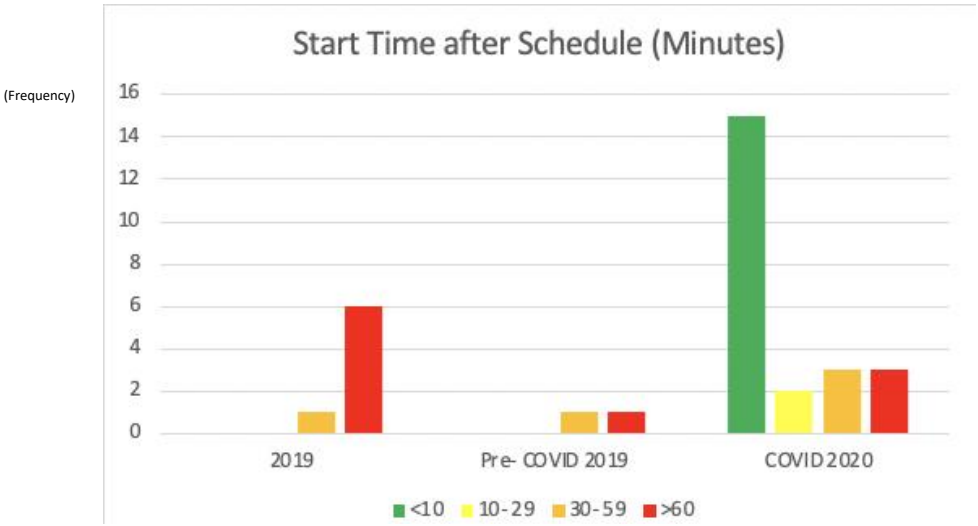
In 32 of the 36 hearings, a start time was recorded against the scheduled start time. Of those 32, 29 had the duration of the hearing recorded.

Of the 12 hearings recorded in person pre-Covid, 8 had the start time recorded, and 6 had duration recorded. None of those hearings started on time, or within 10 minutes (deemed as acceptable). 6 of those hearings started over an hour after the scheduled start. However, all morning hearings pre-Covid were scheduled for 10am: every hearing after the initial one was bound to start after the scheduled time.

Covid, in this regard, made it easier: the scheduled time had to be more precise as it was a remote conference, i.e., no waiting rooms. Of the 24 hearings recorded in the Covid era, 23 had both start time and duration recorded. 65% of those hearings started on time, or within 10 minutes (deemed as acceptable). 3 started over an hour after scheduling.



Of the 32 Covid-era hearings where start time was recorded, 15 started less than 10 minutes after scheduled time (47%), 2 started 10-29 minutes after (6%), 5 started 30-59 minutes after (16%), and 10 started over an hour after scheduled time (31%).

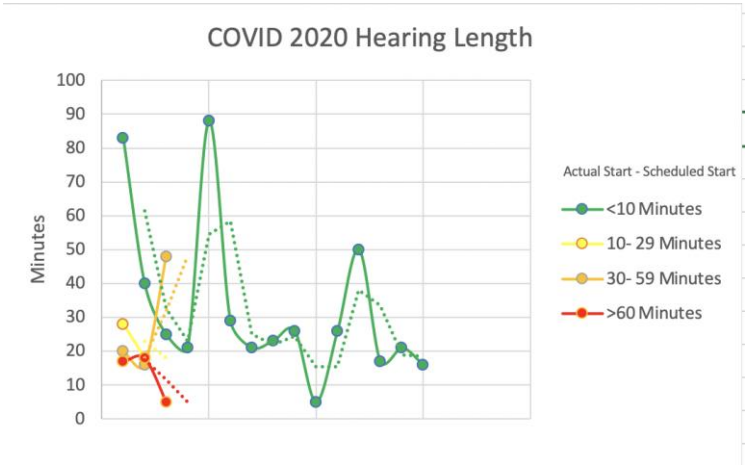


When comparing the duration of hearing against the duration of the delay before starting, we see that the hearings with the longest wait time were often the shortest hearings.

Of hearings that started less than 10 minutes late, the mean duration of the hearing was 32.7 minutes, and the median was 25. Of hearings that started between 10 and 29 minutes after schedule, the mean and median duration of hearings was 25.3 and 28 minutes respectively. For hearings starting 30-59 minutes late, the mean and median duration was 31 and 30 minutes respectively.

The worry here is that those hearings that are already causing angst and frustration through delays to proceedings are the very ones that have the least amount of time spent upon them. This could be down to a multitude of factors, and the delay may indeed have no bearing on length of hearing, but the data would suggest that it does. It may be that the sample size of any category other than the 'less than 10 minutes' is too small to make a valid conclusion.

The scatter graph below shows the data for the duration of hearings categorised by length of delay *only* for hearings observed during Covid. While there are clearly anomalies in the data, the trends (dotted) still demonstrate that shorter wait times regularly correlate with longer hearings.



As stated above, the conclusion has its limitations however. Duration of hearing is dependent on many case related factors, on the procedural element that varies with the judge, as well as other matters. However, the general view of the observers is that hearings with longer delays were rushed.

Legal representation

Applicants had legal representation in 30 of the 36 hearings observed. There were 8 recordings of no legal representation (27%). Legal representatives came from 18 different law firms, only 2 of which – Duncan Lewis & Co (4) and Westkin Associates (2) – represented more than one applicant.

Financial condition supporters (sureties)

Whether or not the applicant had sureties was recorded in 34 of the 36 hearings observed. The applicant had sureties in 18 of the 34 (53%).

11 of the 18 instances when the applicant had sureties were during pre-Covid hearings. Presence of sureties clearly declined in the Covid era. One judge confirmed this to an observer, and it was noted that the difficulty of checking recognizances remotely meant that sureties were less often required. However, there were sureties in some instances in the Covid era.

Pre-Covid, where an applicant had sureties, these were present in court at all times for in 7 out of 10 hearings, present part of the time for in 1, and not present in 2.

For the 7 applicants with sureties in the Covid era, only 1 surety was present at the hearing throughout, 1 was present part of the time, and 5 were absent throughout.

Recognizance were recorded as offered in 12 hearings, for sums ranging from £250 to £3000. The average sum offered was £1277*. The median was £1000. (Some recognizances covered both a fee and an accommodation cost, for example £200 and £2300. In this example, the sum used to calculate the average was £2500.

In 16 hearings observers noted if the amount of the recognizance was an issue. Only in 1 case was it an issue, and this was because the recognizance was not a monetary value, but rather a bank statement that could not be proven real.

The interpreter

One-third of hearings observed required an interpreter (12 out of 36, with 4 before the pandemic and 8 during it). In all these, there was an interpreter of the correct language present. One positive finding from this area was that where there was data recorded on the issue, the judge always ensured that the applicant could understand the interpreter.

However, the most interesting finding was that the quality and extent of the interpretation permitted by the judge increased notably during the pandemic compared to before the pandemic. Pre-pandemic, where there was data collected on the issue, there was a 2:1 ratio of

insufficient time being given to the interpreter to translate, to sufficient time. This ratio flipped during the pandemic: judges were instead twice as likely to allow for *sufficient* time to translate.

This improvement was also seen in the change from, pre-pandemic, the interpreter only ever translating proceedings which related to the applicant to, during the pandemic, the interpreter translating all court proceedings in 80% of hearings where there was data. Specific comments by bail observers highlighted the improved procedure:

> *Judge Simpson would direct the interpreter as to what to say to the applicant – she would sum up all previous proceedings at the end of each discussion topic… and then leave time for the interpreter to translate* for the applicant. A good balance of efficiency and detail/access for applicant.
>
> *Judge Bird made sure the interpreter had enough time to translate. … Judge Bird left time for the interpreter and said the summaries in chunks so that they could be relayed to the applicant.*

However, there is opportunity for further improvement. For example, in one pandemic hearing, the bail observer wrote *how "The judge and the applicant's representative gave the interpreter enough time but the HOPO routinely forgot to and ended up speaking over the interpreter on a number of occasions"*. There was a similar occurrence in another pandemic hearing: "*The interpreter had to interrupt the HOPO and Mr Tarbori in order to have enough time to translate."*

It is not clear why the quality and extent of interpretation improved in the observed hearings during Covid. One possible reason could be that the usage of audio-only phone conferencing during the pandemic rather than in-person hearings resulted in a greater need to ensure that everyone, particularly the applicant, was understanding what was happening. Increasing the time given to the interpreters could be a way of working around a lack of in-person visual cues.

The video/phone link

Pre-pandemic, only half of the 12 hearings observed were recorded to have had a video link, with the other being in person. During the pandemic, there was only one recorded observation whereby the applicant had a video link; all others were done via phone-conferencing. This shift to virtual hearings is unsurprising given the coronavirus restrictions.

Lags in the communication caused by video or phone link

In the majority of observations, there was a lag in the video or audio link used. However, few of the observations with interpreters had significant communication issues. In these instances, the significant lag which affected the proceedings derived from the Home Office presenting officer (HOPO).

Audibility

In 12 out of the 22 hearings where this was recorded, the applicant was audible throughout; in 10 instances the applicant was sometimes audible; in no instance was the applicant rarely or never audible. In some instances where the applicant was only sometimes audible, there was disruption during the proceeding. On a couple of occasions, the sound quality of the HOPO was poor or echoing, in such a way that it was disruptive to the proceedings.

It was rare for the applicant themselves to have difficulty with audibility. There was only one hearing where the applicant was said to have had difficulty with audibility throughout, and one other where an applicant was recorded to have sometimes experienced difficulty.

Disruption caused by the video/phone link

There was only one incident pre-pandemic where proceedings were disrupted because of the video link format. This was because an usher discovered that the applicant was absent from the proceedings.

During the pandemic, there were 7 recorded instances when the proceedings were interrupted because of the phone link. On one occasion, it took 20 minutes to determine who was on the call, and on another occasion, the judge briefly disconnected at the beginning of the hearing. On one occasion, there was disruption due to the interpreter accidentally being on mute. During the pandemic, none of the phone link interruptions was caused by the applicant. Interestingly, there were frequent brief delays caused by a speaker not knowing to whom they were speaking. This could be attributed to a lack of visual cues on the phone conferencing during the pandemic.

Further comments

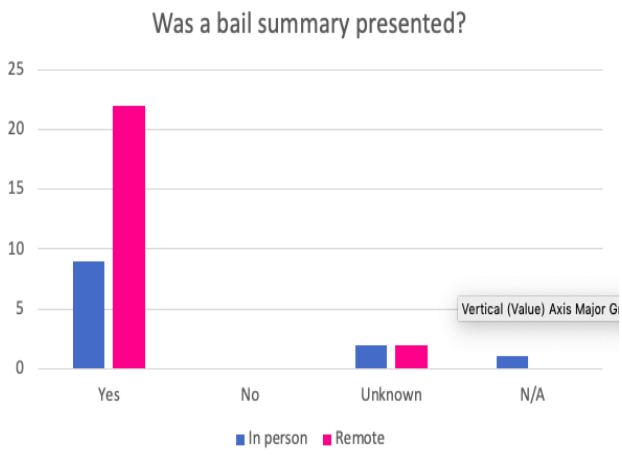
There were recorded incidents of poor organisation between Taylor House and the location of the applicant. In one, an applicant was 40 minutes late due to internal communication issues between Taylor House and Belmarsh Prison. The proceedings began without the applicant, who joined shortly after.

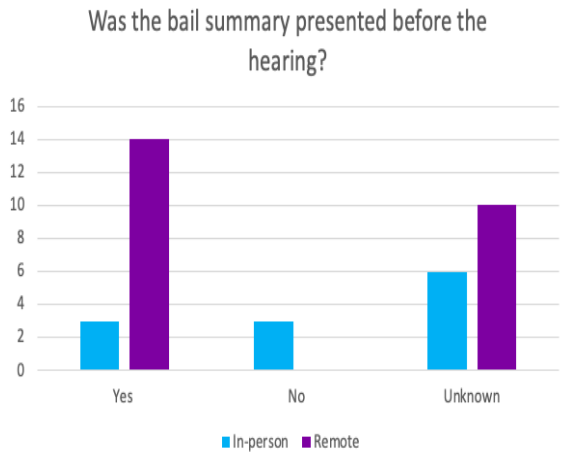
Another incident involved issues with the video link to Birmingham which delayed the hearing, resulting in the interpreter having to leave.

When comparing the proceedings of bail hearings held prior to and during the Covid-19 pandemic, there is much that has remained the same. There may be good reason for this: many key elements of a bail hearing, which are essential to its successful running, have remained in place despite the disruption caused by the shift to conference calls.

The bail summary

In all observed hearings a bail summary was presented. In a very few cases the bail summary was not made available to the applicant or their legal representative before the hearing. This suggests that although hearings are now held remotely, this has not impacted the access of applicants or their legal representatives to the reasons why the Home Office proposes that bail be refused.

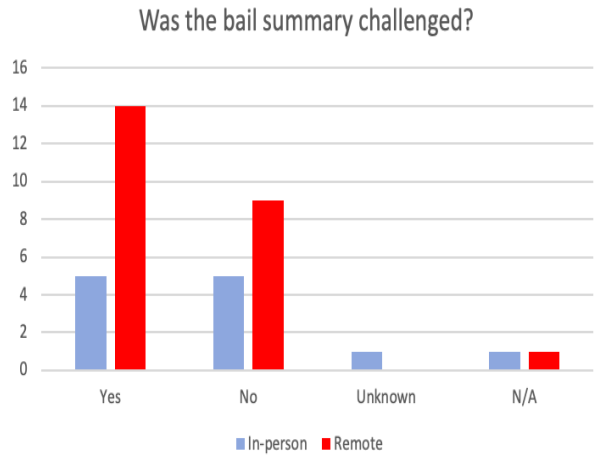




In most hearings (68%) the bail summary was challenged by either the legal representative or judge because it was factually inaccurate. Frequent examples of such factual inaccuracies included:

- incorrect dates of detention,
- incorrect assessment that removal was imminent, and
- incorrect statements about whether addresses have been approved.

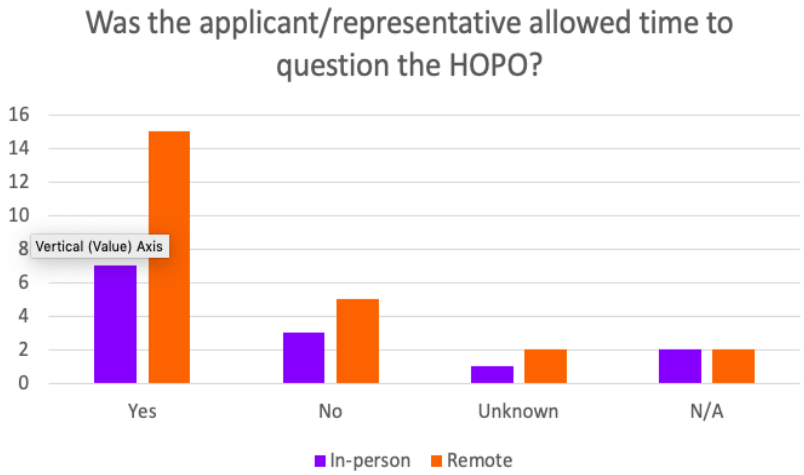
It is also concerning that in the remaining 32% of cases where the bail summary was challenged, this was because information was missing or inconsistent. In one hearing, the judge had to ask the HOPO to clarify where the applicant was from, as they were described as being both a Rwandan and a Somali national in the bail summary.



Though there were some cases where the bail summary was not challenged, this is not necessarily problematic, nor is it necessarily a direct impact of the switch to remote hearings. For example, as in one hearing observed, a legal representative may not choose to challenge a bail summary if it is factually accurate.

Questioning the Home Office presenting officer (HOPO)

In the majority of cases (58% and 63% for pre-pandemic and pandemic-time hearings observed) the applicant or their legal representative was allowed to question the HOPO. Being able to challenge the evidence presented by the HOPO is a crucial aspect of the bail hearing for the applicant, and the similarity between these two percentages does suggest that this has not been negatively affected by the shift to telephone conference hearings.

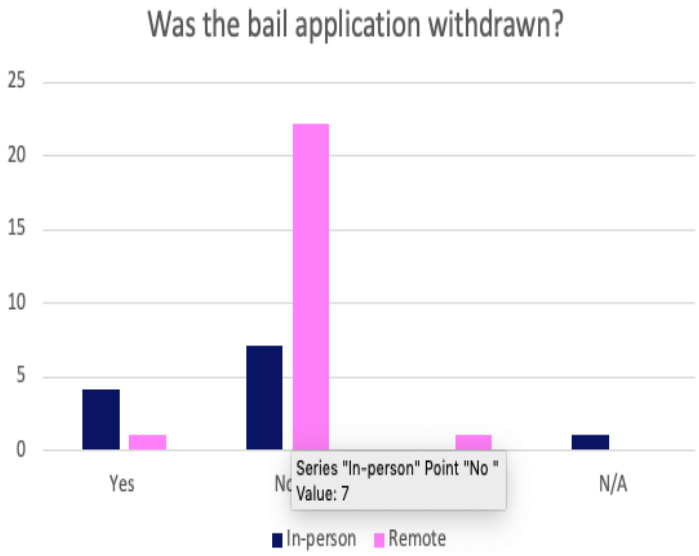


However, it is the judge who is responsible for allowing the applicant or their legal representative the opportunity to conduct the questioning. Therefore, it is concerning that in 42% and 37% of pre-Covid and Covid hearing, it was felt by the observer that the judge failed to perform this task.

It therefore could be suggested that the issue of applicants or their legal representatives not being given sufficient time by the judge to question the HOPO was present prior to the disruption caused by Covid-19.

Withdrawals

The change in the nature of court proceedings appeared not to impact on the number of bail applications that are withdrawn. In fact, as demonstrated by the diagram below, a greater number (4of 12), and proportion, of applications were withdrawn pre-Covid. Of the 24 observed hearings conducted remotely, in only 1 was the bail application withdrawn, and this was due to there being no approved address for the applicant.



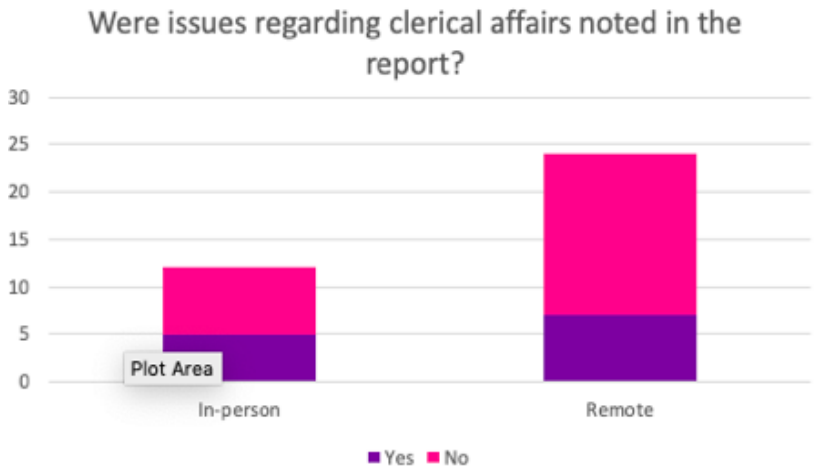
Clerical issues

The outcome of a bail hearing ultimately determines the applicant's future and quality of life. It is a serious issue if hearings do not run smoothly or properly. Clerical issues were noted in 42% of pre-Covid and 29% of remote hearings. Examples of such issues include:

- lack of preparation by the HOPO,
- either of the parties missing documents, or
- a late start to the hearing.

It is the responsibility of the HOPO to ensure that they are sufficiently prepared, which does not always happen. For example, in one hearing, the HOPO did not have a copy of the bail summary. In another, the HOPO was described as being "very disorganised" – she was missing several documents and was unaware of the bail conditions being sought by the Home Office. In a further hearing, the HOPO actually asked for an adjournment to confirm the precise date of the beginning of the immigration detention and whether or not the Home Office had received the applicant's application for asylum.

Given that so much is at stake for each individual applicant, it does appear a failure of justice that the HOPO – presenting the case for bail to be denied – is often not sufficiently prepared to do so.

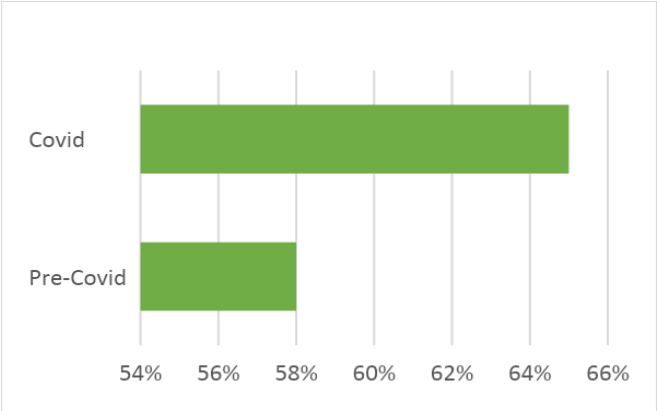


The immigration judge

A total of 13 judges were involved in the 36 observed hearings: Neville (7), Chambers (5), Callow (5), Brannan (3), Cartin (3), Bird (2), Peart (2), Beech (2), Simpson (2), Welsh (1), Burnett (1), Pooler (1), and Ransley (1). A third of these were involved in only 1 hearing. Most of those observed in more than one hearing were involved in in back-to-back cases, such as the 5 observed on one day in 2019.

Explanation of the hearing process

A moderate improvement in the judge's explanation of the hearing process was observed at hearings during the pandemic in comparison to beforehand. Observers registered the judge's explanation as satisfactory in 58% of hearings observed pre-Covid, and 65% during Covid. This is to be welcomed, although it can of course be improved.



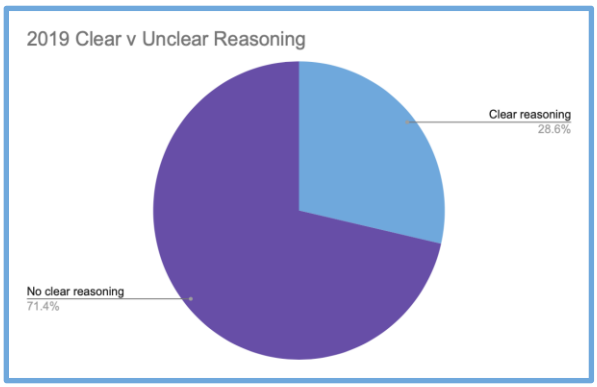
In at least 5 of the 24 hearings observed during the pandemic, the judge offered a step-by-step explanation of the proceedings to the applicant, and in at least one further hearing the applicant was told to interrupt if they did not understand anything.

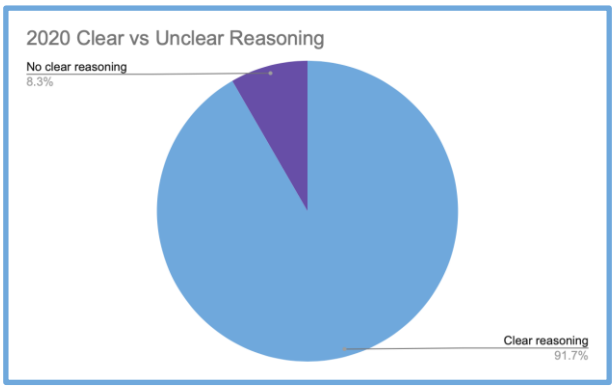
Given the disadvantage of being on a telephone hearing, where the applicant, judge, Home Office presenting officer and applicant's representative cannot see each other or gauge body language, it is certainly beneficial that judges took time to explain the proceedings.

In a particularly shocking hearing observed in 2019, despite the applicant not having legal representation, the judge did not take time to explain the proceedings to the applicant. This is particularly concerning.

Explanation of the decision reached

There has been significant improvement on the provision of clear reasons for the judge's decision. The provision of clear reasoning observed increased from 28.6% pre-Covid to 91.7% during Covid.





The data from 2019 is surprising: out of the 3 bail grants, in none of them did the judge provide clear reasons for their decision. For one grant of bail, the judge only said that he was "satisfied on the balance of probabilities that all the tests had been met". This is a small sample, but it contrasts with observations that clear reasons were provided by the judge in 22 out of 25 of the hearings in 2020.

There is no obvious reason for this dramatic difference. It may be due to the introduction in 2020 of phone conferencing due to the pandemic. Communication was no longer face to face and so judges may have made more of an effort to be clear. Alternatively, it could be because the effects of the pandemic (delays to appeals and the inability to deport) made continued detention harder to justify, so that clearer reasons had to be provided to explain why an applicant should or should not have their liberty restricted during this exceptional period.

The decision

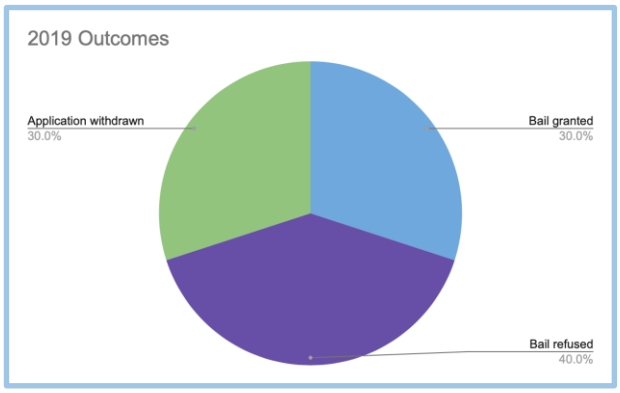
This section looks at the actual decision reached by the judge. It is split into three parts: The decision; Reasons given; and Bail conditions and sureties.

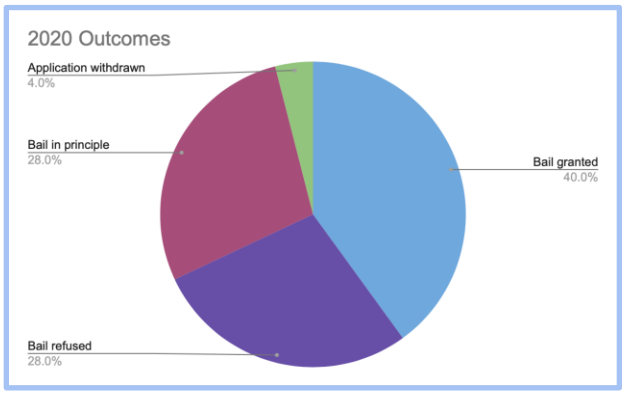
The decision itself

In the hearings observed, there was an increase in the proportion of bail applications granted (from 30% in 2019 to 40% in 2020). This is likely to be because it became harder to justify prolonged detention when there was a backlog of appeal cases as well as restrictions on deportation flights. For example, a judge reported that there was a wait pf between 9 months and a year for some deportation hearings. This can be seen in the most common reasons provided for the granting of bail: no imminent removal and unreasonableness of length of detention. The most common reason for refusing bail was risk to the public, compared to poor

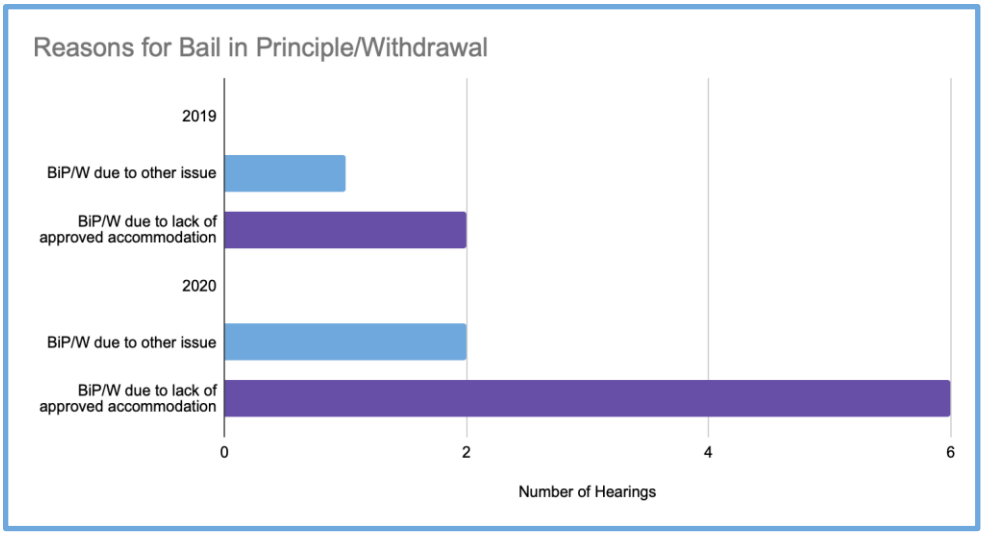
immigration history in 2019. This can be interpreted to mean that poor immigration history alone was not sufficient to justify prolonged detention due to the effects of coronavirus (delays and flight restrictions). More justification was needed, and risk to public safety was one example of a suitable justification.

The proportion of withdrawn applications decreased considerably (from 30% to 4%) whilst the granting of bail in principle, unseen in 2019, represented 28% of outcomes observed in 2020 to form the joint-second largest category after bail granted (40%) and joint with bail refused (28%). It appears that if there was no approved accommodation, the judge was now more likely to grant bail in principle rather than recommending withdrawal.

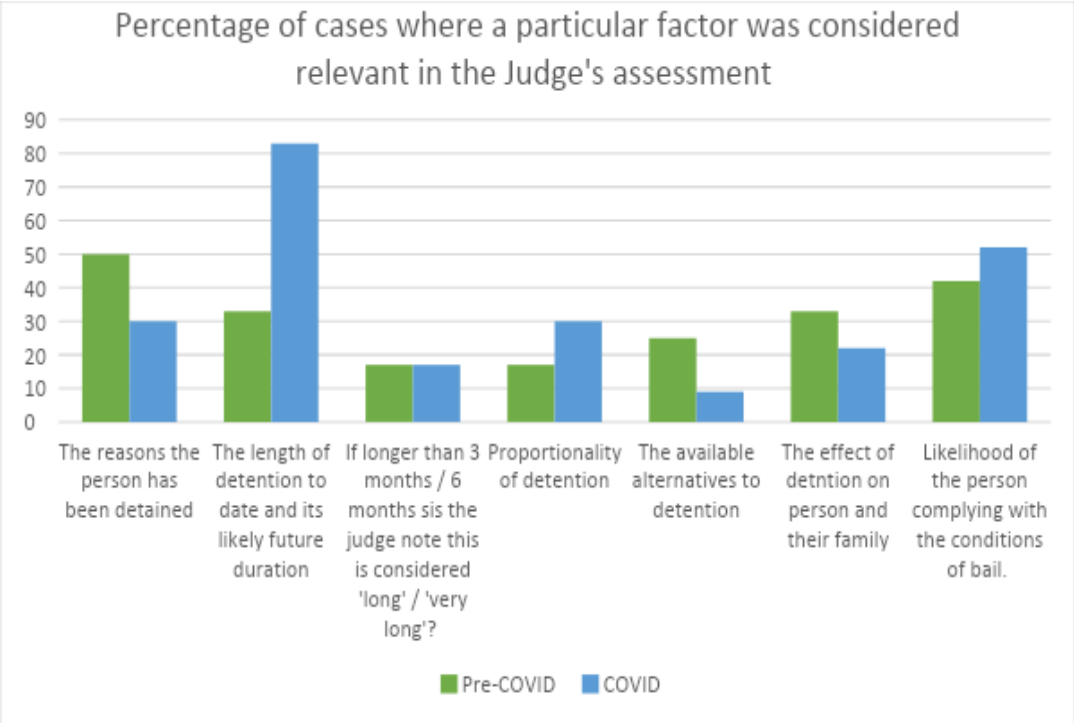




Lack of approved accommodation was still a problem: it is concerning that this was still proving to be a barrier to applicants having bail granted. In 2019, the most common reason for there being no bail grant was because of no approved accommodation. There was the same finding for 2020.



The reasons given



Shift in focus to the length of detention

The most obvious change in factors considered by the immigration judges was the marked increase in consideration of the length of detention. Before Covid, this featured in 33% of all hearings observed; however, during the pandemic it was considered in 83%. This may indicate that the duration of detention likely increased during the pandemic. This increase appears to have taken place in several ways:

1 In at least one hearing there had been delay between the applicant being detained and the bail application hearing. The judge in this particular case was clearly aware of the problem and commented that services were strained during the pandemic.

2 In at least two hearings (both in July 2020), the applicant had already had "bail in principle" approved but had not been released because of delays by the Home Office in approving the accommodation (in one case bail in principle had been granted three times already). From remarks made by the judges this appeared to be the result of reduced/strained resources during the pandemic.

3 In a number of cases, judges commented that as there were limited flights leaving the UK, if bail was denied detention would extend for a disproportionate period.

A by-product of the emphasis on the length of detention appears to be that other factors that judges normally weigh up in making decisions have been given less consideration.

> **Conversation with a judge regarding the length of detention [from an observer]:**
> *"After the hearing had finished, the judge let us both stay on for a while to ask questions. I asked about the situation where accommodation has not been approved or finalised due to the applicant being released on licence and why in some situations bail is granted in principle but in others the judge recommends that the bail application is withdrawn. She said that the* ***judge decides this on a case by case basis*** *and according to their own judgement. From her perspective,* ***she grants bail in principle when she believes that it is possible in practice for accommodation to be finalised within a fixed time****. She points to this case as an example of when bail is granted in principle but there is a delay in fixing accommodation and the issue is just ongoing and the HO misses deadlines. She directs applicants to withdraw where she believes it isn't practicable for accommodation to be approved and finalised in a set time. This prevents bail being repeatedly granted in principle when accommodation cannot be fixed (as is the current case)."*

Acute awareness of the impact on applicants

In a number of hearings the immigration judge in commented on the particular situation of the applicant and how the pandemic had affected this.

In one, the judge took into consideration the impact of detention on the applicant and his family. Particularly relevant was that his wife had been furloughed during the pandemic. In determining the reporting conditions to be imposed on the applicant, the judge was acutely aware of the difficulty in reporting to a probation officer during the national lockdown.

In 12 out of 23 cases observed during the pandemic where this awareness of the judges was recorded, the judge explicitly mentioned the impact of Covid in their consideration of the factors that affected the question of bail.

This is encouraging to see as it shows immigration judges were dynamic in adapting to the hardships created by the pandemic.

Sureties and reporting conditions

In the bail hearings observed, in 2019, sureties were always required for the granting of bail. However, in 2020, sureties were never essential for the granting of any bail and a lack of sureties was never a reason for refusing bail.

A Taylor House judge explained to us the reason for the removal of the surety requirement. The pandemic meant that there could be no in-person visits from sureties for them to sign documents and there had been increased delays with requests to banks for financial documents. In cases where there was doubt about the applicant's future compliance with bail conditions, judges may have asked sureties to go with the applicant when reporting, but we have no data on this.

In the bail hearings observed, the nature of reporting conditions also changed dramatically when comparing 2019 to 2020.

While reporting conditions were always imposed when bail was granted in both 2019 and 2020, the nature of the conditions changed because of pandemic restrictions on movement and the requirement of social distancing. In 2019, the applicant would be expected to report regularly to the authorities. However, in 2020, when the type of reporting condition was captured in the data (on 7 occasions), the judge most commonly imposed a generic appearance condition for a specific date and time (6 times out of the possible 7).

In one hearing, a surprising comment from a judge was recorded, that the Home Office *"doesn't know what to do regarding the lockdown"*, and as such, the imposition of a reporting condition had to be delayed in this instance.

Unrepresented applicants

Of a total 36 hearings observed, there were 8 (27%) where the applicant was unrepresented.

7 out of the 8 unrepresented applicants were present (either in person or on the phone) for their hearing.

In one hearing, which lasted only five minutes, only the judge and the HOPO were present on the phone conference. The judge stated that the applicant was not expected – his detention centre had not been able to arrange a phone for him. Bail was swiftly refused after the HOPO's submissions, though removal was not imminent. The judge did not state clear reasons for refusing bail, but the implication (taken from the HOPO's submissions) was that the applicant's risk of reoffending and breaching conditions of bail was high, given that he had committed multiple offences over the past 18 months.

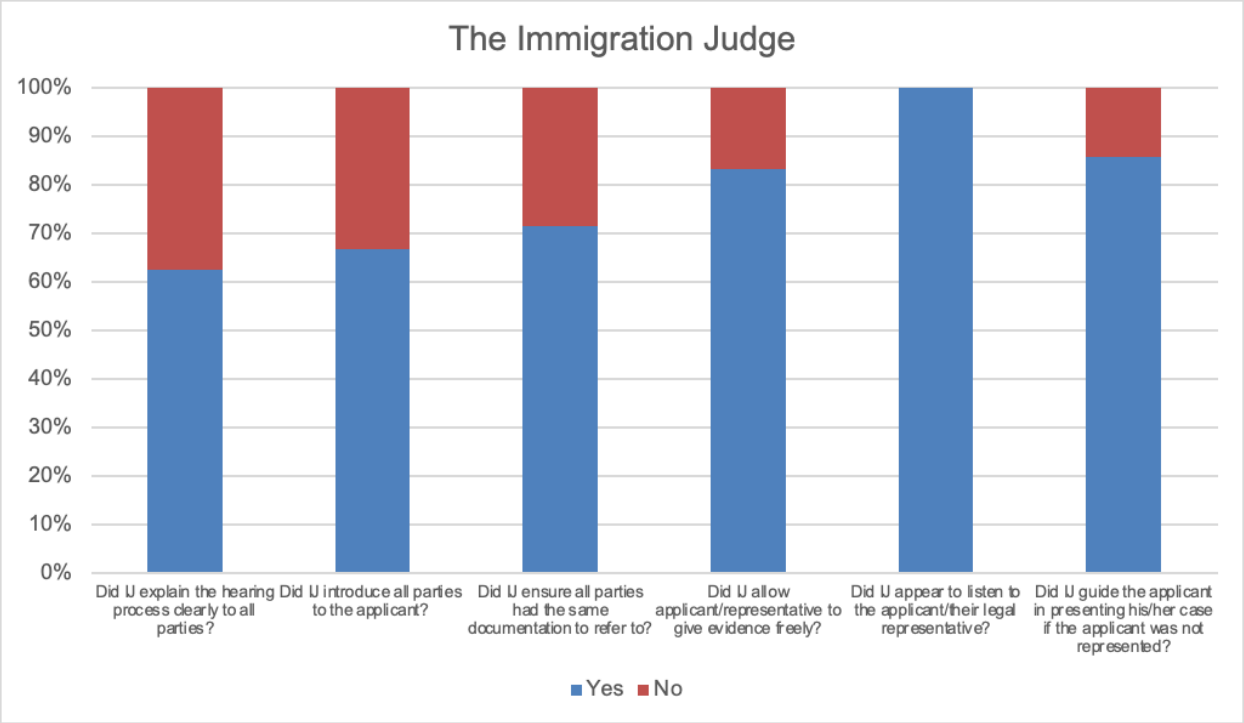
In another hearing, the applicant stated that he had not been able to get hold of a lawyer because the hearing was at such short notice. The judge confirmed that he had received an email stating that the applicant wanted someone to speak on his behalf.

In a third hearing, the applicant stated that he did not have legal representation because lockdown restrictions (as a result of the ongoing Covid-19 pandemic) made it difficult for him to access a solicitor.

Discussion

There were issues regarding whether the immigration judge (IJ) explained the hearing process clearly to all parties, introducing all parties to the applicant, and ensuring all parties had the same documentation to refer to. The Oxford Bail Observation Project questionnaire was, in part, intended to help assess whether the judge ensured that the hearing was conducted in a clear and courteous manner and that the applicant had a proper opportunity to make their case for a grant of bail. In other words, it was intended to help assess whether the judge complied with the Bail Guidance for First-Tier Tribunal Judges (May 2012), which states: *"If the applicant is not represented, the Judge's role may need to be more proactive – i.e. taking positive steps to ensure fairness."*

The following chart does not record instances whereby withdrawal of the bail application or the applicant's absence from the hearing meant that a question could not reasonably be answered.



The Guidance also states: *"The Judge should ensure that the applicant understands who is attending the hearing; and what procedure is to be followed. Given the importance of the bail summary, the Judge ought to ensure that the applicant has received the bail summary and understands what it says. The Judge should ensure that the applicant has an opportunity to say if there is anything inaccurate in the bail summary; and that opportunity should be clear – e.g. by the Judge directly asking whether the applicant understands what is written there; and whether the applicant agrees that what is written there is correct. Whether or not the bail summary is correct, the Judge should ensure that the applicant has an opportunity to explain why he or she says bail should be granted. Again that opportunity needs to be clear, so the Judge may need to ask some direct questions – essentially directing the applicant's mind to why he or she says bail should be granted."*

Our findings – statistical as well as narrative – suggest that in some instances the Guidance with regard to unrepresented applicants was not followed. Regardless of how often the Guidance is breached in this way, the fact that it has been observed to have been in at least one case indicates flaws in the immigration bail hearing process. Our findings suggest that proceedings at the Immigration and Asylum Tribunal must be improved to ensure fairness for all parties.

It must be noted that these findings are based on only 8 observed hearings. The small sample size decreases the statistical power of this study, so more cases would need to be analysed in order to reliably detect a trend when there is one to be detected.