



Courts and Tribunals Judiciary

Judge Plimmer, President of the First-tier Tribunal (Immigration and Asylum Chamber)
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Guidance on Immigration Bail for Judges of the First-tier Tribunal (Immigration and Asylum Chamber)

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INTRODUCTION

1. This Guidance Note replaces Bail Guidance Note No 1 of 2018 and its updates.
2. This guidance is directed to Judges of the First-tier Tribunal (“judges”). In response to requests from judges, the guidance seeks to be concise and to focus on practical issues. Judges should familiarise themselves with schedule 10 to the Immigration Act 2016 (“the 2016 Act”).
3. Guidance can never be exhaustive. Judges are expected to adapt the principles and practices described below when deciding whether to grant immigration bail.

GENERAL PRINCIPLES

4. Liberty is a fundamental right of all people and can only be restricted if there is no reasonable alternative. This principle applies to all people in the UK, including foreign nationals.
5. Home Office guidance to staff states that “there is a presumption in favour of immigration bail and, wherever possible, alternatives to detention are used ... (in) cases concerning foreign national offenders ... the starting point ... remains that the person must be granted immigration bail unless the circumstances of the case require the use of detention”¹.
6. Immigration detention cannot be used as punishment, as a deterrent or for any coercive purpose. Immigration detention cannot be used to prevent or restrict the establishment of family or private life, or to prevent or restrict an applicant from pursuing lawful action to remain in the UK.
7. When considering whether to grant bail, judges are not deciding whether continued detention is lawful.
8. It is generally accepted that detention for three months would be considered a substantial period and six months a long period. Imperative considerations of public safety may be necessary to justify detention in excess of six months.
9. Judges should be slow to interfere in cases where a person is detained for the expedited examination of an immigration application, such as a protection claim, where detention can be shown to be necessary and justified and there is no reasonable alternative. However, judges should not tolerate delays in such actions.

The power to grant immigration bail

10. The power of the First-tier Tribunal (hereinafter “the Tribunal”) to grant immigration

¹ Home Office – Detention: General Instructions version 2.0 (14 January 2022)

bail is contained in paragraph 1(3) of schedule 10 to the 2016 Act. A person detained under the provisions listed therein can be granted immigration bail either on application by that person or by reference by the Secretary of State (“auto-referral”).²

11. When considering whether to grant immigration bail, and the conditions of immigration bail, the Tribunal must have regard to the matters listed in para 3(2) of schedule 10 to the 2016 Act, as amended by section 48 of the Nationality and Borders Act 2022. These are:
 - (a) The likelihood of the person failing to comply with a bail condition,
 - (b) Whether the person has been convicted of an offence,
 - (c) The likelihood of a person committing an offence while on immigration bail,
 - (d) The likelihood of a person’s presence in the UK while on immigration bail causing a danger to public health or being a threat to the maintenance of public order,
 - (e) Whether the person’s detention is necessary in that person’s interests or for the protection of any other person,
 - (ea) Whether the person has failed without reasonable excuse to cooperate with any process—
 - (i) for determining whether the person requires or should be granted leave to enter or remain in the United Kingdom,
 - (ii) for determining the period for which the person should be granted such leave and any conditions to which it should be subject,
 - (iii) for determining whether the person’s leave to enter or remain in the United Kingdom should be varied, curtailed, suspended or cancelled,
 - (iv) for determining whether the person should be removed from the United Kingdom, or
 - (v) for removing the person from the United Kingdom, and
 - (f) Such other matters as the Tribunal thinks relevant.
12. The first specified matter in para 3(2) relates to the likelihood of a person failing to comply with a bail condition. Judges will need to take a preliminary view as to what bail conditions might be imposed. Judges are reminded they must always assess and impose the minimum conditions needed because to do more would be to act disproportionately. Any bail condition is a restriction of liberty, albeit less restrictive than detention. A grant of bail cannot be unconditional. On granting bail at least one condition must be imposed³.
13. Detailed guidance on how judges should approach these matters and issues is given below.

The conditions of immigration bail

14. Where immigration bail is granted to a person, a judge must impose one or more

² The duty on the Secretary of State to arrange consideration of bail is contained in para 11 of schedule 10 to the 2016 Act.

³ See para 2(1) of Schedule 10 to the 2016 Act.

conditions. These are listed in paragraphs 2(1), 2(3), 2(4) and 5 of schedule 10 to the 2016 Act. These are:

- (a) An *“appearance date condition”*, requiring the person to appear before the Secretary of State or the Tribunal at a specified time and place,
 - (b) An *“activity condition”*, restricting the person’s work, occupation or studies in the UK,
 - (c) A *“residence condition”*, specifying where the person is to reside,
 - (d) A *“reporting condition”*, requiring the person to report to the Secretary of State or such other person as may be specified,
 - (e) An *“electronic monitoring condition”* (meaning a condition requiring the person to co-operate with such arrangements as the Secretary of State may specify for detecting and recording by electronic means the location, presence or absence of the person at specified times or periods), which may be in place of a reporting condition and in some cases will be mandatory⁴,
 - (f) Any other condition a judge granting immigration bail thinks fit.
15. The judge may also impose a *“financial condition”* (meaning a condition requiring the payment of a sum of money by the person to whom immigration bail is granted or another person in a case where the person granted bail fails to comply with another condition of bail). This must only be imposed if a judge thinks that it would be appropriate to do so with a view to ensuring that the person granted bail complies with the other bail conditions.
16. Detailed guidance on how judges should decide what conditions to impose is given below.

APPLICATION FOR IMMIGRATION BAIL

17. An application for immigration bail should be made on form B1. This form is available at immigration removal centres, from the Tribunal and online. The bail application will be listed for hearing as soon as possible, normally within 3-6 days.
18. The respondent (the Home Office) is required to provide a bail summary on the day prior to the hearing, in accordance with rule 40 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014 (*“the Procedure Rules”*), which should include: (i) any concerns in relation to the factors listed in paragraph 3(2) of schedule 10 to the 2016 Act, (ii) the bail conditions being sought should bail be granted and (iii) whether removal directions are in place.
19. The applicant, especially if legally represented, is encouraged to focus on the same factors in the grounds for bail or in a skeleton argument.
20. Certain bail applications can be made online using *“MyHMCTS”* and the intention is that all bail applications will be able to use this facility by the end of 2023.

⁴ See para 2(2) of schedule 10 to the 2016 Act for when electronic monitoring is mandatory.

BAIL HEARINGS

21. Considering the issues to be assessed, a bail hearing differs from an appeal hearing because it is a risk assessment. Although it remains an adversarial setting⁵ the narrow focus and the need for the parties to present their principal arguments in advance means it is open to a judge to ask questions directly of those present to obtain clarification of evidence and information. Bail hearings will often have the appearance of an inquisitorial hearing.
22. Bail hearings normally take place remotely using video-conferencing. If an applicant is unwilling to participate in a bail hearing using such equipment, he/she may request to attend the bail hearing in person and a judge will decide whether the person should be produced at the hearing centre. The applicant may ask for the bail hearing to go ahead in his/her absence.
23. All those involved in an application, including any persons offering to support a financial condition, should be present at the start and at the end of the proceedings. In most cases they will stay throughout but, depending on the issues to be decided, it may be necessary to exclude some persons from parts of the hearing, but this will be a matter for the judge to decide.
24. The judge should ensure that any person offering to support a financial condition is present at the end of the hearing so they hear the decision and reasons.
25. A bail hearing will usually deal with the following elements:
 - (a) Introduction of the proceedings and those present.
 - (b) Practical checks that the video-conferencing equipment is working, that any interpreters are suitable and that both parties have the same documents as held by the Tribunal.
 - (c) Confirmation each party has the grounds for bail and the bail summary, both of which should focus on the matters listed in para 3(2) of schedule 10 to the 2016 Act.
 - (d) Identification of the date the person seeking immigration bail entered immigration detention, if not obvious from the chronology set out in the bail summary.
 - (e) Confirmation that the chronology in the bail summary is accurate and, if necessary, its correction.
 - (f) Removal directions, if applicable.
 - (g) Consideration of any additional documentary evidence or argument, which may be admitted subject to the overriding objective.⁶
 - (h) Time for each party to address the judge on:
 - i. the matters listed in para 3(2) of schedule 10 not already covered in the bail grounds and bail summary,
 - ii. any other matter the judge thinks relevant, and

⁵ See R (AR(Pakistan)) v SSHD [2016] EWCA Civ 807, at 11.

⁶ Rule 2 of the Tribunal Procedure (First-tier Tribunal) (Immigration and Asylum Chamber) Rules 2014.

- iii. the minimum bail conditions they think are necessary in this case.
 - (i) Where a person seeking bail does not have legal representation, a judge may ask them for their comments on each of the matters listed in para 3(2) of schedule 10 and in response to any other relevant matter identified by the judge.
 - (j) If the judge decides a financial condition is appropriate with a view to ensuring the person granted bail will comply with other bail conditions, documentary evidence will normally have been provided. Where such evidence is inadequate, or questions remain, an examination of the proposed financial condition and any person supporting the financial condition may be necessary.
 - (k) A decision on whether to grant bail.
 - (l) If bail is granted, a decision on the condition or conditions that are to be imposed.
 - (m) If bail is granted, and after an opportunity has been given to the bail party and any financial condition supporters to make representations, a decision on the transfer of management of bail to the Home Office.
26. An oral decision will be given at the conclusion of the bail hearing and this will be supplemented by a written decision.
27. The written grant of bail will be prepared and issued immediately after the hearing.
28. Written refusals of bail should usually be prepared immediately after the conclusion of the hearing and issued to the parties.
29. Because of the narrow issues to be considered, in most cases it will be unnecessary for examination-in-chief or cross-examination to be undertaken of the applicant or other persons present. Nor will there be a need for closing submissions. The nature of a bail hearing means the judge will take the lead and will expect the parties to co-operate to promote the overriding objective.

DECIDING WHETHER TO GRANT IMMIGRATION BAIL

30. A judge will only grant immigration bail after having regard to all the matters listed in para 3(2) of schedule 10 to the 2016 Act.
31. There is no obvious priority to the matters listed and a judge will reach a decision based on the matters in the round. To grant bail, a judge must be satisfied that no one matter is sufficient to refuse bail and that, when taken cumulatively, the matters are not sufficient to refuse bail.
32. It is for the immigration authorities⁷ to show it is more likely than not that there is no reasonable alternative to detention. In all cases involving people detained under immigration powers, the first reason for detention is to enable the immigration authorities to carry out their functions. Safeguarding is a secondary purpose of

⁷ The term “immigration authorities” is used throughout this guidance to refer generically to Immigration Officers and the Secretary of State for the Home Department, each of whom can exercise the power to detain foreign nationals.

detention and includes preventing a person absconding, if released.

33. Where immigration detention is no longer justified, bail should be granted.
34. The following points provide guidance on how the risks arising from the specific matters listed in para 3(2) may be assessed. Similar principles should be applied to any other matter the judge thinks relevant.

The likelihood of the person failing to comply with a bail condition

35. The first matter listed requires a judge to assess the likelihood of the person failing to comply with a bail condition. This will be assessed in terms of the evidence provided and what is reasonably foreseeable.
36. A judge will consider the evidence and arguments presented in each individual case. Judges will often face a mixture of factors and it will be for them to decide the weight to give the various factors and to balance them.
37. Although not required by legislation, it has long been the practice of the Tribunal to set as the minimum conditions of bail an appearance date condition and a residence condition. A reporting condition is unlikely to be appropriate where management of bail is being transferred to the Home Office because the Home Office will set reporting conditions at the appearance date. A residence condition should only be imposed where a person is required to reside at a particular address for bail monitoring purposes (so may be unnecessary where there is an electronic monitoring condition). Consequently, the minimum is likely to be an appearance condition (paragraph 60-62 below).
38. The risk of absconding, by which is meant a failure to appear or report as required, is likely to be low if the person seeking bail proposes to reside at a stable address, has active support from friends or relatives and there are good reasons to keep in contact with the Tribunal or the immigration authorities, such as a pending immigration application, appeal or judicial review.
39. The risk of absconding is likely to be low where the applicant is subject to criminal licence, which will provide for supervision and monitoring by the probation authorities.
40. The risk of absconding is also likely to be low where there is no imminent prospect of removal. Removal will always be treated as being imminent if scheduled within 14 days of the bail hearing, in which case para 3(4) of schedule 10 will apply (see below, from para 114). A judge may consider removal as being imminent where removal directions have been set, even if longer than 14 days hence, and where there is evidence removal action is actively being sought.
41. Where removal is being progressed but the timescale for removal is unclear the Home Office Country returns guide may help in providing clarity as to the process and

timescale for removal.⁸

42. Where it exists, a person's previous conduct with the immigration authorities, the police, probation, courts or other agencies may be useful indicators of the risk of non-compliance. This is provided for in paragraph 3(2)(ea) of schedule 10 (see above). Conversely a positive history of interaction with such authorities may be a good indication that the risk of absconding is low. Where there is no mention in the bail summary of previous adverse conduct issues it should be accepted that the history of interaction has been positive.
43. The more stable a proposed bail address, the lower the risk of absconding. An address is likely be more stable where there is reliable evidence the person has lived there before, where the person has permission to live at the address, and where other people in the property have an interest in ensuring the person complies with the residence condition. The absence of these factors does not mean the address is not suitable. Each case must be decided on its own merits.
44. Where the release of a person would pose safeguarding concerns, a judge may consider imposing additional conditions. Additional/alternative bail conditions are discussed in more detail below.
45. Such conditions will be appropriate only if there is evidence that there is a safeguarding concern, usually identified from a person's previous conduct in the UK or elsewhere. The likelihood of compliance should be assessed in terms of the person's conduct to date, including any rehabilitation that might address the safeguarding issue.
46. In all cases, a judge can impose a financial condition but should only do so where it is considered appropriate to ensure that the person released on immigration bail complies with one or more of the other bail conditions. As such, a financial condition is a mechanism to reduce the risk of non-compliance to an acceptable level, which means a level where a judge is satisfied it is more likely than not that the person will comply with the other bail conditions. The condition(s) which the financial condition is intended to support should be specified.

Whether the person has been convicted of an offence

47. This is the second factor listed in para 3 of schedule 10 to the 2016 Act. Whether a person has been convicted of an offence will be a matter of fact and will not usually be in dispute. In the absence of any other evidence, a Police National Computer (PNC) printout will usually be sufficient to establish that a person has been convicted.⁹
48. A PNC printout may record convictions in EU member states but may be incomplete.

⁸ <https://www.gov.uk/government/publications/country-returns-guide>

⁹ The National Police Chiefs Council (NPCC) has confirmed the immigration authorities can provide PNC printouts to the Tribunal when relevant for immigration bail hearings.

It will not include convictions elsewhere. The immigration authorities may rely on other evidence or on a person's admissions regarding convictions elsewhere when raising any safeguarding issues.

49. The fact a person has been convicted of an offence may raise a safeguarding issue but, if the person is subject to a criminal licence, the licence conditions should normally be sufficient to address any concerns. It will be for a judge to decide the weight to give to any safeguarding concern, and may include consideration of the date of the last conviction(s), behaviour since, the impact on the public and any risk assessments undertaken by professionals, such as the Probation Service.
50. Where the evidence shows the risk of further offending is low, either because of a professional assessment or because the offence relied upon by the immigration authorities is historical, then a judge is likely to find there is little or no safeguarding risk.
51. A risk assessment by the Home Office is not a professional risk assessment and is unlikely to be afforded any weight.

The likelihood of a person committing an offence while on immigration bail

52. This is the third matter to be considered when determining whether to grant immigration bail. The likelihood will relate directly to the person's criminal history and any professional risk assessments should be produced. In the absence of such assessments, a judge is likely to decide that the risk a person may commit an offence while on immigration bail will be higher where the person has a history of offending, where the history of offending is recent and where the person does not have support or guidance available to reduce the risk of offending. Where support and guidance are present, these factors may reduce the risk.
53. Where the person is subject to a criminal licence the licence conditions should normally be sufficient to address any concerns, particularly as recall is likely to be a stronger sanction than any restrictive bail conditions.

The likelihood of the person's presence in the UK on bail causing a danger to public health or being a threat to the maintenance of public order

54. This is the fourth matter in para 3(2). It is for the immigration authorities to prove that it is more likely than not that a person poses a danger to public health or to the maintenance of public order. In the absence of reliable evidence, judges will find the likelihood of such matters is low and this alone will not be a reason for refusing bail.
55. Where evidence is provided, it will be assessed in ways analogous to the examples already given. Where evidence is considered sensitive, either party may apply for a direction under rule 13 of the Procedure Rules prohibiting disclosure, but the Tribunal will be slow to restrict the evidence available to the other party.

Whether the person's detention is necessary in that person's interests or for the protection of any other person

56. Judges should avoid immigration detention being used in place of other powers of detention, such as on remand or under the Mental Health Acts but it is possible for a person to be "dual detained", by which is meant that they may be detained by more than one authority and for more than one purpose.
57. Where a person is dual detained, if the judge decides immigration bail should be granted (for example, because there is no longer justification for continuing immigration detention), the person will not be released because they will remain detained by the other authority.

Whether the person has failed without reasonable excuse to cooperate with any process

58. The bail summary will detail any issues regarding the bail applicant's conduct that respondent considers should be taken into account.

DECIDING THE CONDITIONS OF IMMIGRATION BAIL

59. Immigration bail is an alternative to immigration detention and the conditions of immigration bail must provide sufficient reassurance to the judge that the person released will maintain contact and cooperate with the immigration authorities and Tribunal as required.

Appearance date condition

60. It has long been the practice of the Tribunal to set as the minimum conditions of bail an appearance date condition and a residence condition because these were considered necessary to monitor a grant of bail and to minimise the risk of absconding. For the reasons given below (paragraphs 63 and 64) a residence condition is no longer always required.
61. An appearance date condition will be a date when the bail conditions can be reviewed by the Home Office and onward reporting conditions imposed.
62. Where management of bail is transferred to the Secretary of State there is no need to impose a reporting condition (see below, from para 107).

Residence condition

63. A residence condition may be imposed to ensure the person granted bail can be located. Judges should distinguish a 'bail address' from a 'residence condition'. The Home Office position is that where a stable bail address is available a condition requiring the person to live at that address will not normally be appropriate.

64. Judges should not automatically impose a residence condition. This fits with the general principle that bail conditions should be the minimum necessary. Judges will remember that it is for an applicant to show that a proposed bail address is a stable address. The factors outlined in paragraphs 38 and 43 may be relevant in deciding whether a bail address is stable.
65. Where a person who has an outstanding asylum application cannot offer a bail address, a judge may consider whether they might be eligible for support under schedule 11 to the 2016 Act. If the applicant is so entitled, the judge can grant bail conditional upon an address being provided within a suitable period and the applicant being released immediately the address is available.¹⁰ The period can be extended on application, and by consent, if necessary. If the likelihood of a bail address becoming available within a reasonable period is low, then it will be appropriate to consider whether other conditions can be applied in the meantime rather than refusing bail.
66. The Secretary of State must be notified of the proposed bail address as soon as possible to enable the immigration authorities to carry out checks so that they can decide if they consider the address is suitable. The immigration authorities may advise the Tribunal they have not had sufficient time to carry out background checks. If a judge is satisfied that is the case, then it will be for a judge to decide whether there is sufficient other evidence about the suitability of the address to make a decision about a residence condition. If there is insufficient other evidence, then it will be unlikely a residence condition can be imposed and the judge should consider whether other bail conditions will be sufficient to address the risk of absconding before refusing bail.
67. If the immigration authorities oppose a proposed bail address, they must provide evidence to substantiate their objection. Speculation or generic arguments will not be sufficient. Judges will examine concerns raised by the immigration authorities about the suitability of a bail address but should not make decisions based on suspicion or speculation.
68. In the absence of any evidence to the contrary, judges will assume:
- (a) landlords will give permission for an applicant to live in a property, and
 - (b) where a person is subject to a licence that a probation officer will approve the bail address if the immigration authorities have no specific concerns about that address other than the absence of express approval from a probation officer.
69. Foreign National Offenders who have completed their custodial sentence are usually subject to licence conditions requiring them to live at an address approved by a probation officer. It should usually be unnecessary to impose such a condition as a requirement of immigration bail (the purpose of which is of course to ensure the immigration authorities can effect immigration control) and therefore unnecessary to have a review hearing and unnecessary to continue the person's immigration

¹⁰ Paragraph 3(8) of schedule 10 to the 2016 Act permits a grant of immigration bail being conditional on arrangements being put in place.

detention. This is because the approval of the address and therefore the release of the applicant is a matter for the criminal authorities.

70. Judges should not be concerned as to whether release will breach licence conditions. The criminal authorities will not release a person in breach of licence conditions. This is not a matter that should affect immigration bail.
71. Licence conditions are designed to mitigate the risk of reoffending and/or the risk to the public and it will only be in exceptional circumstances that immigration detention could be justified to prevent reoffending or risk of harm.

Reporting condition

72. A reporting condition is imposed to ensure the person granted bail maintains regular contact with the immigration authorities or the Tribunal. This serves to remind the person that they remain subject to immigration control. A reporting condition will only be appropriate where management of bail is not transferred to the Home Office.

Activities condition

73. A judge can impose a condition restricting the person's work, occupation or studies in the UK. Judges should not impose such conditions where the law already restricts such activities, such as where the person has no right to work, because a judge should impose the minimum bail conditions necessary and, if a person's activities are already restricted by law, there can be no need for such a bail condition (cf Lauzikas v SSHD [2016] EWHC 3215 (Admin)).
74. Where a person's activities would not be restricted upon release, a judge may impose an activities condition where there is a safeguarding issue. An activities condition restricts a person's liberty beyond what would normally be expected.
75. A judge may wish to bear in mind that employment and studying may be factors that establish that a person is unlikely to abscond.
76. In most cases an activities condition will not be appropriate unless there is specific evidence from the Home Office that such a condition is necessary to ensure that a person maintains contact with the immigration authorities.

Electronic monitoring condition

77. An electronic monitoring condition can be imposed on any person granted bail and **must** be imposed where a person is pending deportation (see para 2(1)(e) and para 2(3) of schedule 10 to the Immigration Act 2016). In practice this applies from a stage 1 deportation decision onwards.
78. Judges must not impose an electronic monitoring condition if informed by the Secretary of State that such a condition would be impractical or contrary to the

person's protected human rights (see para 2(7) of schedule 10), even if the person is to be deported. Where electronic monitoring is mandatory judges have no power to decide whether an electronic monitoring condition would be impractical or contrary to a person's protected human rights.

79. In cases where an electronic monitoring condition is not mandatory, before imposing such a condition, judges should consider the following factors:
- (a) Is such a condition necessary? Where there are no significant safeguarding concerns, which might include a serious risk of absconding or of future criminality, then such a condition will usually be unnecessary.
 - (b) Is such a condition practical? Where the immigration authorities do not have facilities for electronic monitoring, then such a condition should be avoided.
 - (c) Would such a condition be contrary to the person's protected human rights? Electronic monitoring is unlikely to be appropriate where such monitoring may aggravate a physical or mental health condition.
80. Para 4 of schedule 10 to the Immigration Act 2016 specifies the requirements that must be in place for an electronic monitoring condition. Paragraph 4(1) requires the person on whom an electronic monitoring condition is imposed to co-operate with such arrangements as the Secretary of State may specify for detecting and recording by electronic means the person's location, presence or absence from a location during or at specified times and locations.
81. Electronic monitoring is based upon a GPS system supported by mobile telephone SIM technology and does not require an installation at the applicant's proposed residence. A standard electronic monitoring condition (agreed by the Tribunal with the Home Office) allows detention to be maintained for up to 72 hours to facilitate the fitting of the monitoring device.

Financial condition

82. Paragraph 5 of schedule 10 to the 2016 Act permits the Tribunal to impose a financial condition. Paragraph 5(2) states that a financial condition "may be imposed on the person to be granted immigration bail only if the person imposing the condition thinks that it would be appropriate to do so with a view to ensuring that the person complies with the other bail conditions". Accordingly a financial condition should be the exception and not the rule.
83. Paragraph 5(1) explains that a financial condition is a condition requiring the payment of a sum of money by the person to whom bail is granted or another person in a case where the person granted bail fails to comply with another condition to which their immigration bail is subject.
84. A financial condition is not a pre-requisite of immigration bail. In each case, if a judge is satisfied that a person will comply with the conditions of bail, a financial condition will not be required. Where there is some doubt that a person will comply with the bail conditions, a financial condition might provide additional weight to permit the

judge to be satisfied the person is more likely than not to comply with the other bail conditions.

85. Judges will bear in mind that it is rarely appropriate to impose a financial condition on the person to be released on bail because they will rarely have the means to pay anything but a notional sum and indeed where the person has absconded the condition cannot be enforced.
86. Where a judge decides that a financial condition is necessary to reduce to an acceptable level the risk of non-compliance with the other bail conditions, they will evaluate the level of the financial condition and the ability of the person supporting the financial condition to meet that sum. The bail condition that the financial condition is intended to support should be specified to enable the financial condition supporter to understand the risk they are guaranteeing.
87. Because the financial condition is an additional mechanism for reducing the risk of non-compliance, it will rarely be necessary to question the person supporting the financial condition about whether they have any influence over the person to be released on immigration bail. Their suitability will depend on any adverse evidence about their character, such as a criminal record, and whether there is reliable evidence they would be able to cover the financial condition or their part thereof.
88. In all cases, judges must be cautious about imposing a financial condition simply because one is offered. A judge must only impose the minimum bail conditions necessary and do no more because bail conditions are themselves a restriction of liberty.

Payment Liability (formerly known as forfeiture)

89. Liability to pay Financial Conditions will be dealt with by the Secretary of State unless there has been no transfer of the management of bail.
90. When considering any question of liability, the Tribunal has power to order the whole sum to be paid or a part thereof. This is implicit in the provisions of paragraph 5(6) of schedule 10, which require the person who is liable to make a payment to be given an opportunity to make representations. It is also possible for the Tribunal under para 6, if it retains management of the bail conditions, to vary the financial condition at any time, including in relation to a question of liability to pay.

Other common issues relating to bail conditions

91. Judges should ensure they do not impose an immigration bail condition that conflicts with other restrictions on an applicant, such as those of a criminal licence. Similarly, where an applicant is already subject to restrictions as a matter of law, for example relating to their permission to work, there will be no need for a judge to impose such a condition.

92. Because judges must impose the minimum bail conditions, they should not adopt the restrictions imposed by another authority, most commonly licence conditions, as bail conditions. To do so will be unnecessary since the applicant is already subject to those conditions. In addition, imposing such restrictions as immigration bail conditions might introduce confusion as to who is responsible for monitoring compliance and the consequence of any failure.
93. Judges may remind parties that the decision not to impose such restrictions as bail conditions does not remove the duty on the applicant to comply with the other restrictions.

FURTHER MATTERS

Bail reviews

94. Where a judge has found it necessary when granting conditional bail to give directions for a review to ascertain whether a condition material to release has been satisfied the review may, at the discretion of a judge, be listed 'on the papers'.

Bail decisions (including withdrawals)

95. As in all judicial decisions, the parties are entitled to know not only the judge's decision but the reasons for that decision. A record of the decision and reasons also assists the Tribunal in relation to any subsequent application or other matter related to bail.
96. To ensure clarity, any written reasons, including reasons for accepting an application is withdrawn, must be typed.
97. Where immigration bail is granted, written reasons are not usually issued to the parties. A judge should, however, explain to the parties why bail has been granted and should record brief typewritten reasons in the record of proceedings.
98. Typewritten reasons for proposing to grant immigration bail must be given where directions are in place for the applicant's removal from the UK within 14 days. This is to ensure the Secretary of State can consider whether to consent to grant immigration bail (see para 3(4) of schedule 10 to the Immigration Act 2016).
99. Typewritten reasons for refusing immigration bail must be given in all cases.
100. Judges should not encourage the withdrawal of bail applications as an alternative to refusing bail. The giving of any preliminary view should be for the purpose of crystallising a decision, enabling the parties to provide any counter evidence or argument. In other words, the giving of a preliminary view must not be used as an alternative to deciding the application.
101. These principles are needed because the provisions relating to repeat bail applications

(see para 12 of schedule 10) can only be effective if the Tribunal is robust in its handling of bail applications. Written reasons for refusing bail will assist a person to focus a fresh application and will help the Tribunal, where applicable, to decide whether there has been a material change in circumstances since a previous application. Addressing the reasons for refusal will almost always be evidence of a material change.

102. Where an applicant seeks to withdraw an application on the day of the hearing, either prior to the bail hearing commencing or during the hearing, judges may have more regard to the above principles because it is likely at that stage in the proceedings that it will be in the interests of justice to refuse bail rather than accept the withdrawal.
103. Where the immigration authorities release a person prior to a bail hearing, the Tribunal has no jurisdiction to entertain a bail application because the person is no longer detained and such situations must not be treated or recorded as a “deemed withdrawal”.
104. In all cases, reasons should be succinct and objective, and must be based on the individual circumstances of the person’s bail application. The reasons should be brief and address as far as necessary the issues specified in paragraphs 3(1) and 3(2) of schedule 10 to the 2016 Act.

Auto-referral

105. Judges should be alert to the fact that the Secretary of State in certain circumstances has a duty to arrange consideration of bail and must arrange a reference to the Tribunal to decide whether to grant bail (see paragraph 11 of schedule 10 to 2016 Act).
106. Judges should approach such cases in the same way as if a person applied for immigration bail. Judges will have special regard, however, to the length of detention since the duty on the Secretary of State is only engaged after a period of four months’ detention. It is generally accepted that detention for three months would be considered a substantial period of time and six months a long period. Imperative considerations of public safety may be necessary to justify detention in excess of six months.

Transfer of bail to the Secretary of State

107. Paragraph 6(3) of schedule 10 permits the Tribunal to direct that the Secretary of State exercises the power to amend, remove or impose new conditions of bail. Where the Tribunal so directs, bail is transferred from the Tribunal to the Secretary of State. Transfer of bail can be directed in all cases.
108. Judges must consider the overriding objective when deciding whether to direct bail to be transferred to the Secretary of State. A judge must balance issues relating to justice with those of efficiency.

109. The Tribunal may not give a direction to transfer bail without first giving the bail party and any other person subject to a financial condition an opportunity to make representations.
110. The fact that a person opposes bail being transferred to the Secretary of State is not sufficient reason not to transfer bail. It is for a judge to decide what is in the interests of justice, having regard to the overriding objective.
111. In general, where a judge imposes bail conditions equivalent to those requested by the immigration authorities, it will be appropriate for a judge to direct that bail is transferred to the Secretary of State. This is because there will be no realistic prospect of the Secretary of State imposing more stringent conditions.
112. Where a judge directs that bail is to be transferred to the Secretary of State, there is no need to impose a reporting condition in addition to an appearance date condition because any reporting conditions will be imposed by the Secretary of State at the appearance date.
113. Where bail is not transferred, it is likely that reporting conditions will need to be imposed.

Consent of Secretary of State where removal directions are in force

114. Under sub-paragraph 3(4) of Schedule 10 a person must not be granted immigration bail by the Tribunal without the consent of the Secretary of State if directions for the person's removal within 14 days are in force.
115. Where an application for bail is made, the Tribunal is required under the Procedure Rules to list and hear the application. If the Tribunal decides to refuse bail, then a refusal decision can be made and the Secretary of State's consent is not required. If, however, the Tribunal considers that bail should be granted the judge should immediately prepare and issue a typed note setting out reasons bail should be granted. The Home Office Presenting Officer will pass on the contents of this typed note to an official of the Secretary of State who will decide whether to consent to the grant of bail. A copy will also be provided to the bail applicant. If consent to the granting of bail is refused, the Tribunal will then issue a decision to this effect, indicating that bail is refused because the consent of the Secretary of State has been refused. If the Secretary of State delays in responding to the note it should be assumed that consent is refused and this should be noted in the refusal decision.
116. The refusal decision in these circumstances should state both the reasons why the judge would have granted bail and also that refusal of bail is a mandatory requirement under the legislation (Schedule 10, para 3(4)) because the Secretary of State has refused consent.
117. If the Secretary of State gives consent then the Tribunal may proceed to issue a notice

granting bail in the usual way. The grant decision notice will not contain reasons and there will not be any need to reference the consent of the Secretary of State.

118. Care should also be taken in ascertaining whether a person is subject to directions for their removal. There are specific powers to give removal directions at paragraphs 8-10A and 12-14 of Schedule 2 to the Immigration Act 1971. It would seem questionable whether all removal arrangements made by the Home Office involve the use of removal directions. The judge must be satisfied that removal directions are in place for removal within the next 14 days and can expect to see evidence of those directions.
119. This is an important point because, where individual liberty is affected, the extent of any statutory powers being exercised should be precisely observed. The Home Office may not wish to produce removal directions before the Tribunal, or may have none to produce, and if this is the case the Home Office will not be able to show that the person applying for bail is subject to directions for their removal within 14 days. The restriction on granting bail will then have no effect. The Tribunal's decision should make a finding to this effect.