

No Appeal Project 2021/22

By Jackie Wakefield and Jordan Warren
Criminal Cases Review Commission

Contents Page:

Introduction

Project Overview

- i. Introduction
- ii. Role of the CCRC
- iii. Methodology

Section 1: Quantitative Analysis

Chapter 1 Group 1 Analysis

- 1.1 Introduction
- 1.2 Hybrid Figures
- 1.3 Analysis of Submission Figures
- 1.4 Sentencing
- 1.5 Legal Representation Figure
- 1.6 Diversity and Equality

Chapter 2 Group 2 Analysis

- 2.1 Group 2 Data Figures
- 2.2 Hybrid Application
- 2.3 Use of Easy Read Form
- 2.4 Analysis of Submission Figures
- 2.5 Sentencing
- 2.6 Legal Representation Figures
- 2.7 Diversity and Equality Figures

Section 2: Qualitative Analysis

Chapter 3 Trends

- 3.1 Submissions Trends
- 3.2 Legal Representatives Trends

Project Overview

i. Introduction

This project aims to evaluate the success of the Easy Read Form NG introduced by the Court of Appeal in 2019.

ii. Role of the CCRC

The CCRC reviews potential miscarriages of justice and has the power to refer cases to the Court of Appeal if there is a real possibility that a conviction or sentence will not be upheld on appeal.

It is not the CCRC's role to usurp the functions of the Court of Appeal. Therefore, the CCRC will generally only review cases where the applicant has already appealed either their conviction or sentence. However, where the CCRC identifies exceptional circumstances that prevent an applicant appealing without their help, the case can still be reviewed (see the [CCRC Exceptional Circumstances Policy](#)).

It is rare that the CCRC will identify exceptional circumstances. Therefore, it is important that applicants who are turned down have a clear route to appeal.

This project focuses on the Easy Read Form NG, to determine whether it has assisted such applicants in making appeals. The Form NG was designed to make the appeal process easier for applicants who are not represented, so the data collected for this project focuses on how many applicants appealed after being turned down by the CCRC on the basis that they had not yet taken their case to the Court of Appeal.

ii. Methodology

Two sample groups of 'no appeals' applications were evaluated as part of this project. 'No appeals' applications are those that involve a case which has not yet been appealed to the Court of Appeal. Even if an applicant has appealed their conviction, their application will still be classed as a 'no appeal' if they ask for their sentence to be reviewed or vice versa. No exceptional circumstances were identified in any of the cases from the two samples, and therefore they were all turned down.

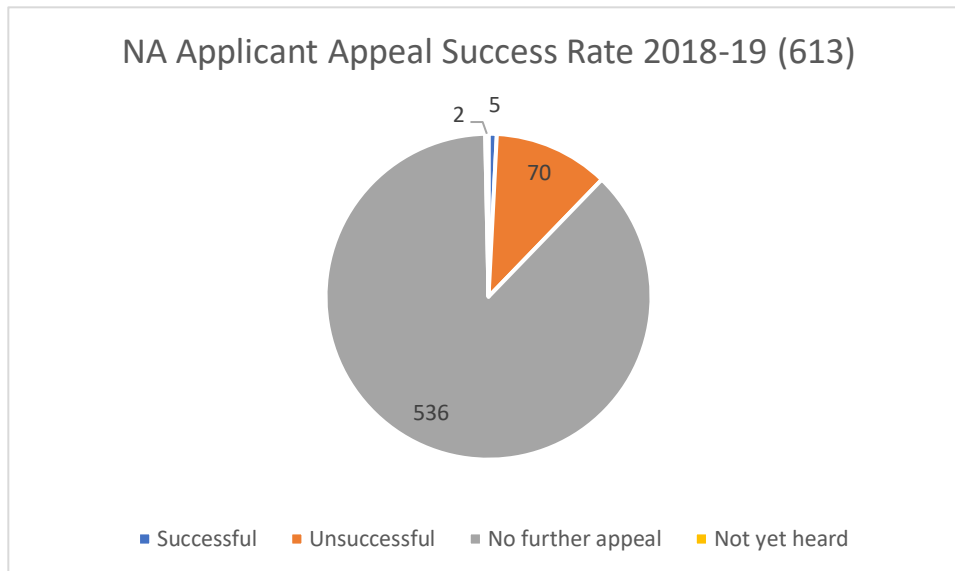
The first sample consists of all no appeal cases between 1st April 2018-31st October 2019, with the second sample including all no appeal cases between 1st April 2020 and 31st October 2021. The first sample therefore consists of cases which predated the introduction of the Easy Read Form NG. This provided us with a baseline to compare against the figures obtained after the introduction of the Form.

After reviewing the information taken from the applications made to the CCRC, we then utilised CATCUS to determine how many applicants went on to Appeal, and how many were successful. We have also performed a qualitative analysis of the submissions made by applicants to the CCRC, along with their grounds of Appeal. This was to evaluate the strength of the submissions made, and to further determine whether there existed any variance between the arguments made to the CCRC and those submitted to the Court of Appeal.

Chapter 1: Quantitative Analysis

1.1 Group 1 Overview 2018-2019

The first group of data was taken from 2018-2019, immediately prior to the introduction of the Easy Read form. This sample includes data from 613 applicants. We relied on this data as a baseline, to be compared with second sample of data which was taken from after the introduction of the form.



Overview (613)		
Successful	5	0.80%
Unsuccessful	70	11%
No further appeal	536	87.00%
Not yet heard	2	0.30%

The vast majority of applicants (87%) do not go on to appeal after the CCRC decides not to refer their case.

Less than 1% of applicants go on to successfully appeal their case, and 11% of the sample unsuccessfully attempted to appeal their sentence.

There are <1% of applicants who are currently waiting on the Court of Appeal to decide on their appeal.

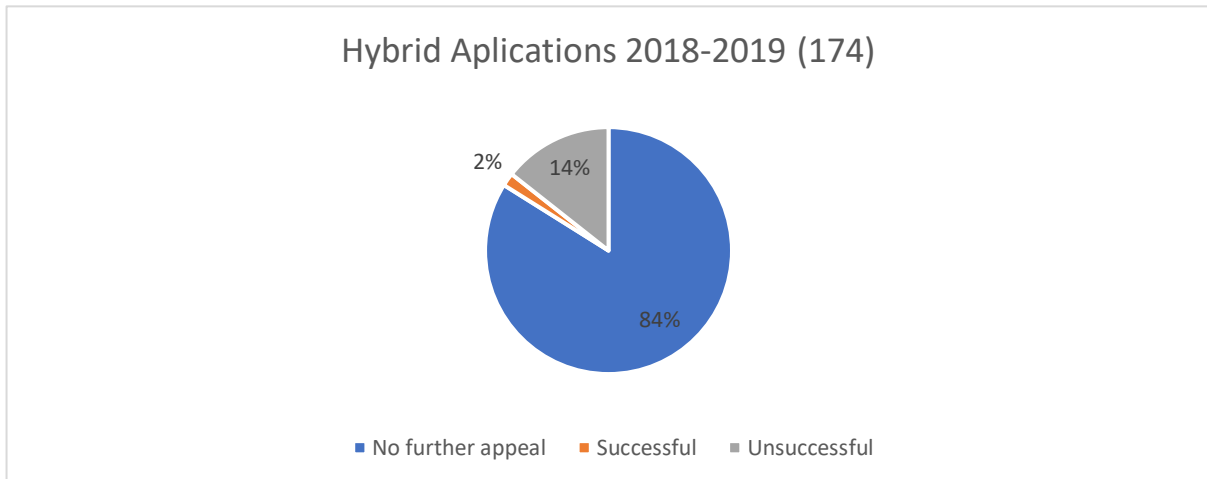
1.2 Hybrid Applications

A significant number of applicants had already appealed before applying to the CCRC. After attempting to appeal either their conviction or sentence, they then asked the CCRC the review both (these are known as hybrid applications). This meant that, whilst the CCRC could fully review part of the application since an appeal had already been made, the other part was treated as a no appeal.

Of the 613 applicants recorded in this sample, 174 (28%) had already made an appeal regarding the same offence.

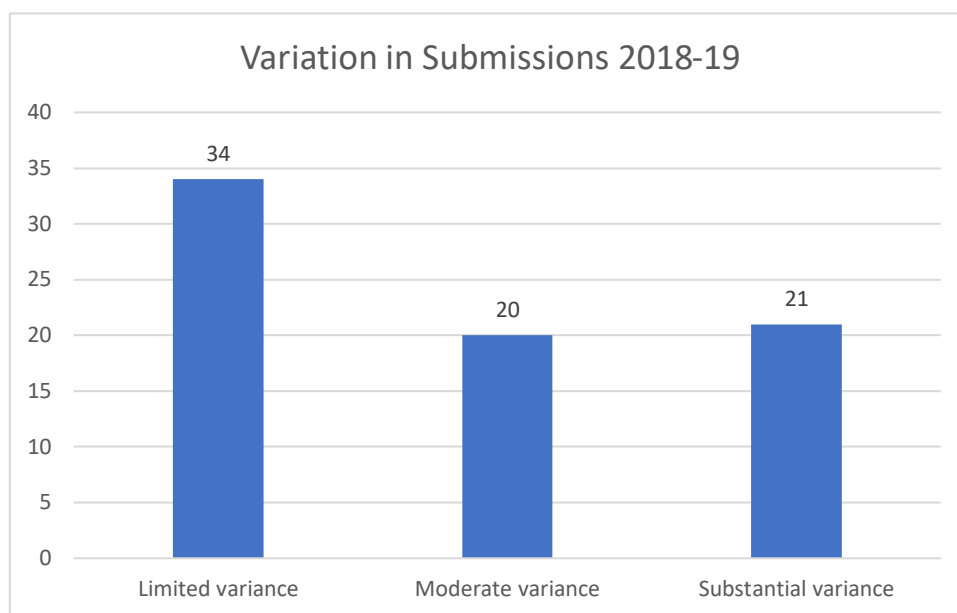
Of those 174 applicants, 84% did not go on to appeal after being turned down by the CCRC, despite the fact that they were already familiar with the appeals process as they had previously been to the Court of Appeal.

2% of the 174 successfully appealed, and 14% were unsuccessful in making an appeal.



Hybrid Applications (174)		
No further appeal	146	84%
Successful	3	2%
Unsuccessful	25	14%

1.3 Analysis of Submissions



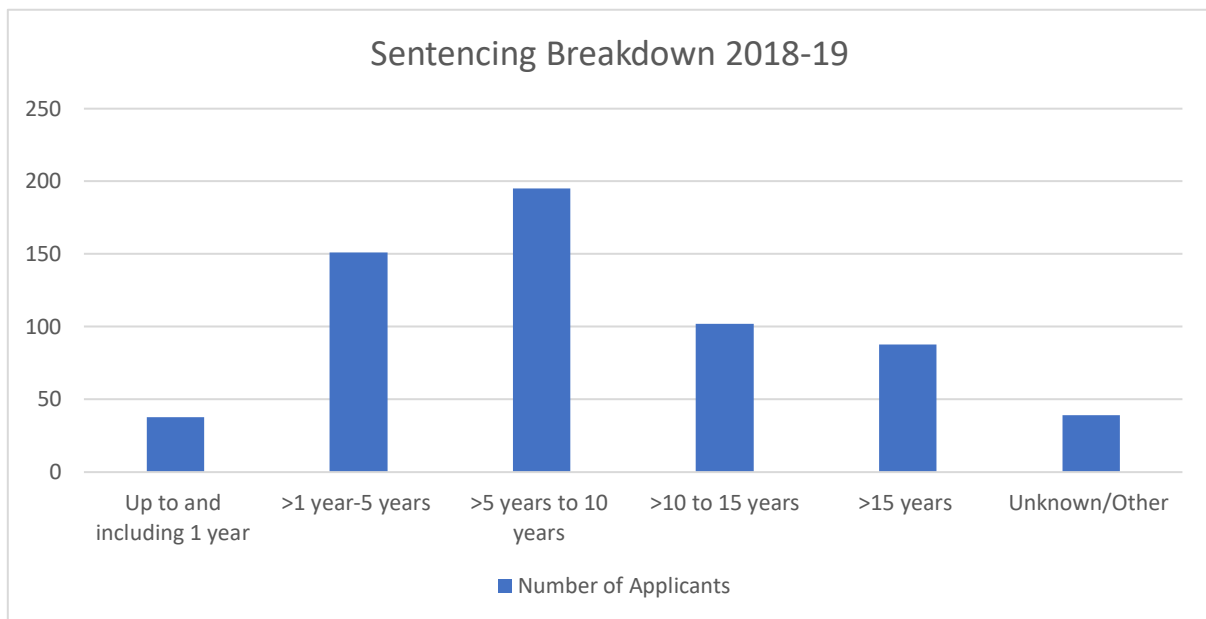
The following table sets out the guidelines used to determine the level of variance between the submissions made to the CCRC and the grounds of appeal submitted to the Court of Appeal subsequently.

Category	Description
Limited variance	<ul style="list-style-type: none"> • All or most of the main submissions are found in both. • Limited variation in peripheral arguments. • If there is a primary argument, this is the same or largely the same in both.
Moderate variance	<ul style="list-style-type: none"> • Several of the main arguments are not present, or new ones have been added to the appeal papers. • Peripheral arguments vary between each. • If there is a primary argument, this is largely the same in both.
Substantial variance	<ul style="list-style-type: none"> • Significant variation in the main submissions. • Peripheral arguments vary between each form. • If there is a primary argument, this may be different in each form.

Our analysis showed that 45% of applicants within the 2018-2019 sample made the same, or very similar, submissions to the Court of Appeal after applying to the CCRC.

There were still a notable number (28%) who changed their arguments to a significant extent when going on to appeal. We noted that a lot of the applicants in this category were legally represented when appealing to the Court of Appeal, and their lawyers had picked out a number of points which they had not identified themselves when making their submissions to the CCRC. This led to their appeal grounds being substantially different from the submissions made to the CCRC.

1.4 Sentencing



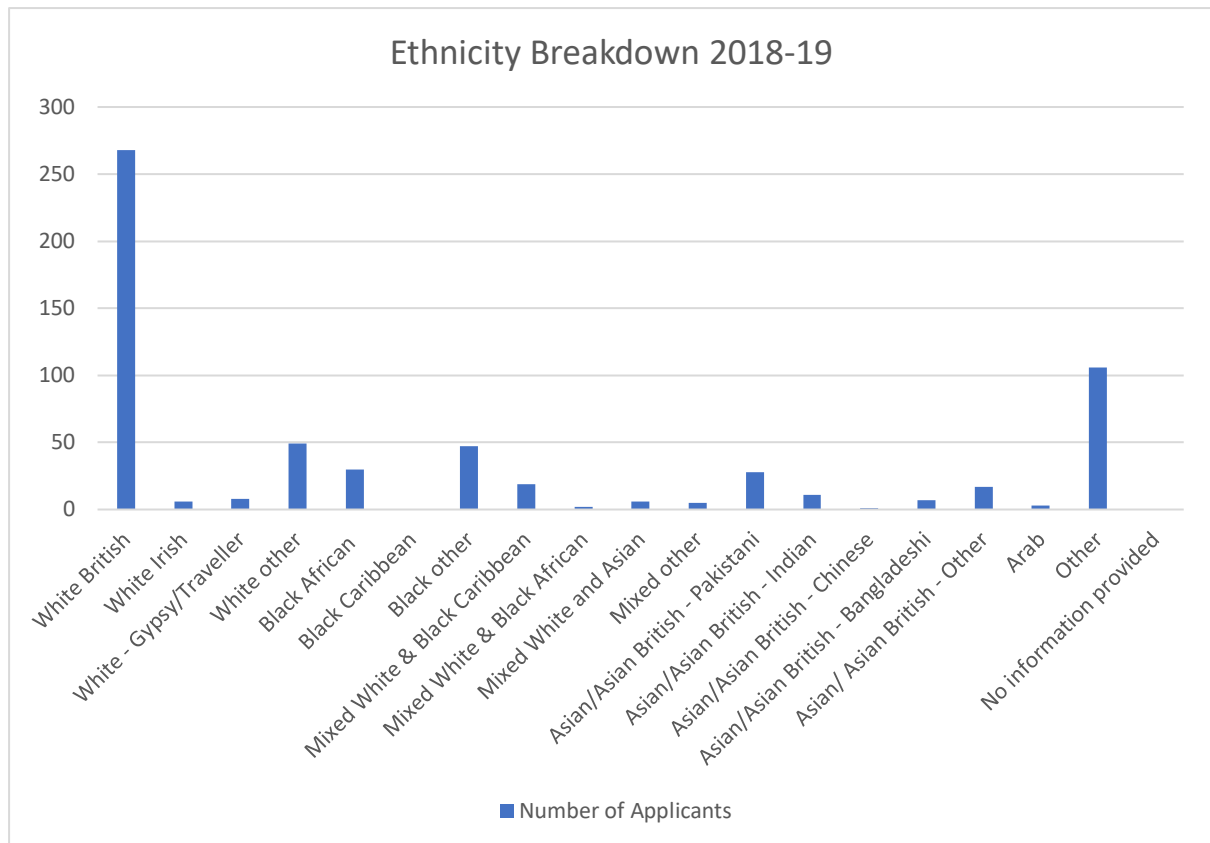
Sentencing		
Up to and including 1 year	38	6%
>1 year-5 years	151	25%
>5 years to 10 years	195	32%
>10 to 15 years	102	17%
>15 years	88	14%
Unknown/Other	39	6%

The largest group amongst NA applicants were those with a sentence between 5 and 10 years (32%). Very few were given short term sentences of less than a year (6%), with 14% receiving the most serious sentences which exceeded 15 years.

1.5 Legal Representation

Out of the 622 applicants in 2018-19 sample, only 23 (4%) had legal representation when making their applications to the CCRC.

1.6 Diversity and Equality



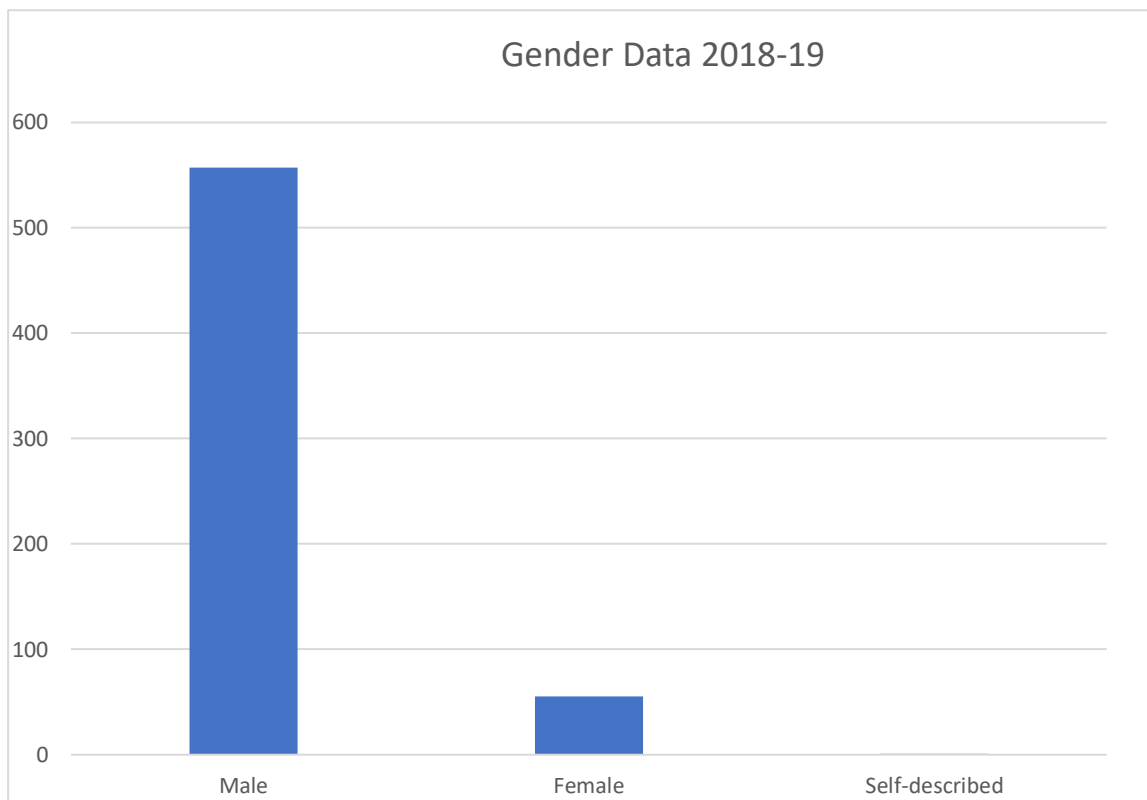
Ethnicity Data (613)		
White British	268	44%
White Irish	6	1%
White - Gypsy/Traveller	8	1%
White other	49	8%
Black African	30	5%
Black Caribbean	0	0%
Black other	47	8%
Mixed White & Black Caribbean	19	3%
Mixed White & Black African	2	0%
Mixed White and Asian	6	1%
Mixed other	5	1%
Asian/Asian British - Pakistani	28	5%
Asian/Asian British - Indian	11	2%
Asian/Asian British - Chinese	1	0%
Asian/Asian British - Bangladeshi	7	1%
Asian/ Asian British - Other	17	3%
Arab	3	0%
Other	106	17%
No information provided	0	0%

Ethnicity Data Comparison 2018-19

	NA CCRC applicants	All CCRC applicants
White	54%	45%
Black	13%	13%
Asian	10%	9%
Mixed	5%	4%
Other	18%	31%

The ethnicity data collected from the NA applicants differed to some extent from the overall make-up of applications across 2018-19.

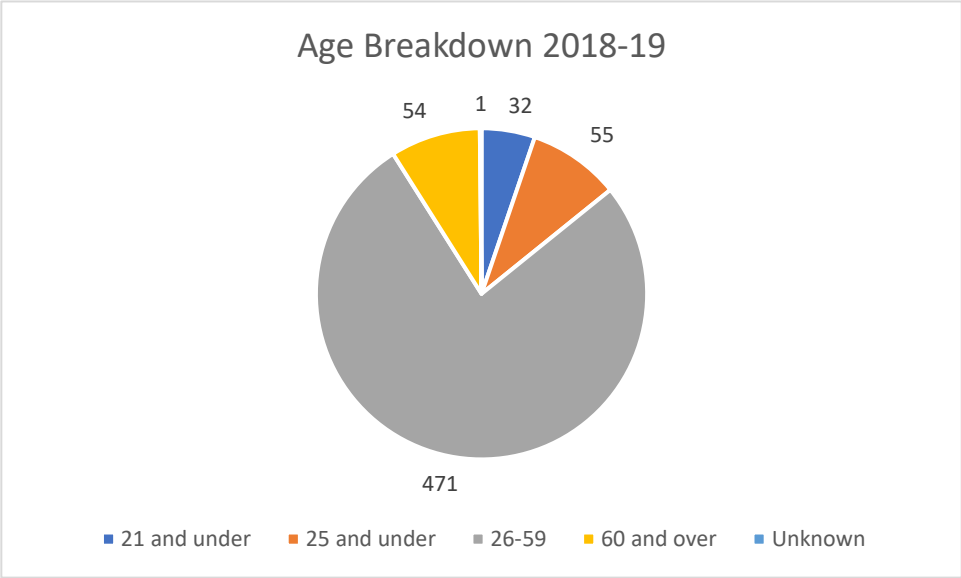
There were less NA applicants in the Other/unknown category (18%) compared to the proportion across applications generally (31%). As a result, the percentage across all other categories was higher than the average.



Gender data

Male	557	91%
Female	55	9%
Self-described	1	<1%

These figures are consistent with the overall gender data from 2020-2021.



Age		
21 and under	32	5%
25 and under	55	9%
26-59	471	77%
60 and over	54	9%
Unknown	1	<1%

The majority of our figures for age were consistent with the figures for CCRC applicants as a whole in 2018-19, however the number of NA applicants aged 60 or over was considerably lower than the overall figure (9% in our sample compared to 14% across the whole CCRC).

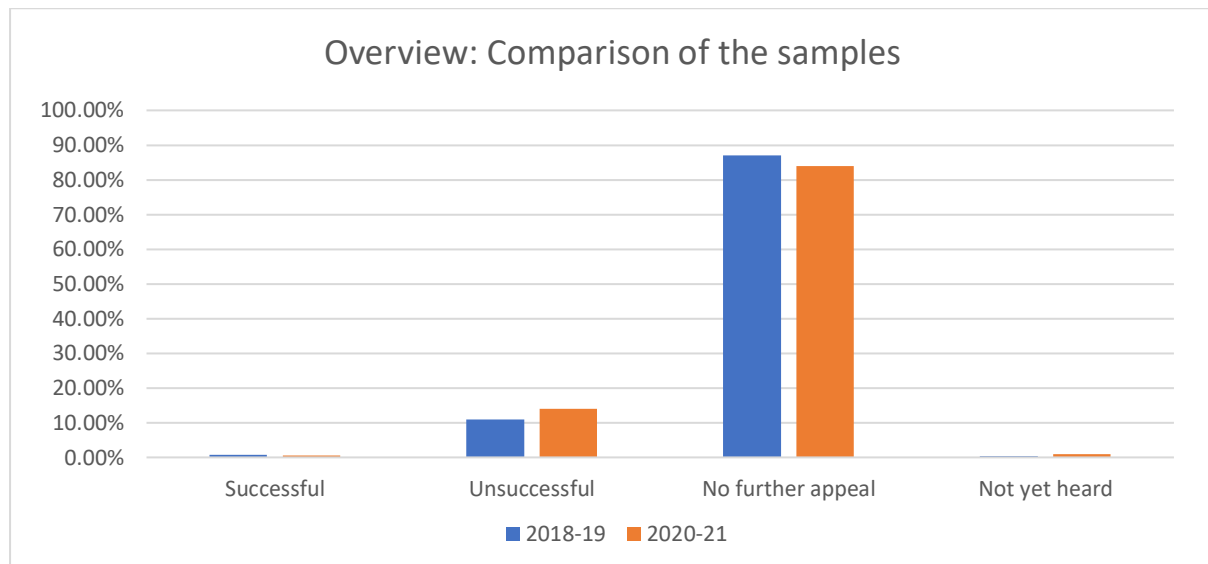
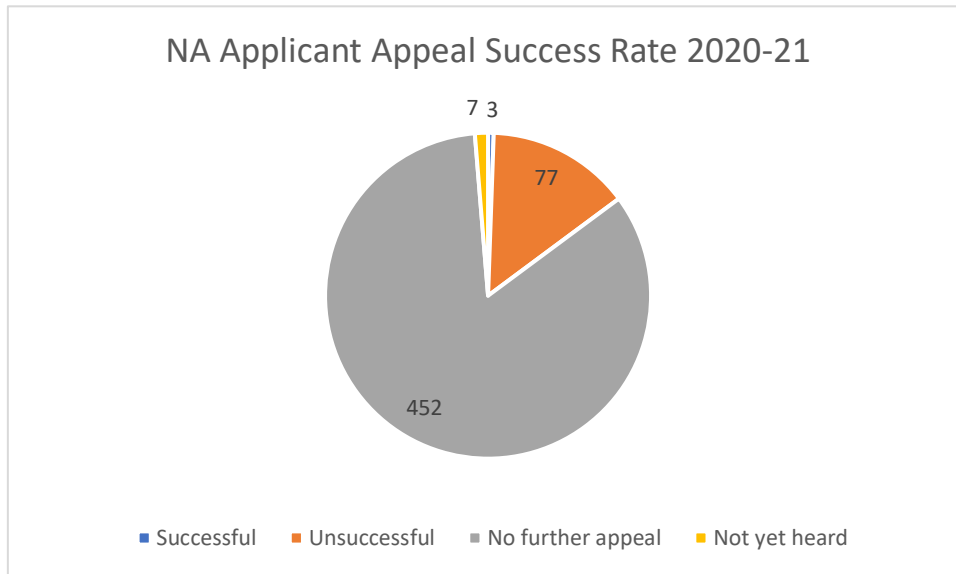
Special Help

24% of applicants in the 2018-19 sample asked for special help with their applications. A number of applicants had difficulty reading and writing, and many stated that they had learning difficulties and mental health issues.

Chapter 2: Group 2

2.1 Group Data 2 Overview: 2020-2021

The second sample of data was collected from the period of 1 April 2020-31 October 2021 (after the introduction of the Court of Appeal’s Easy Read Form). This sample included a total of 539 applicants.

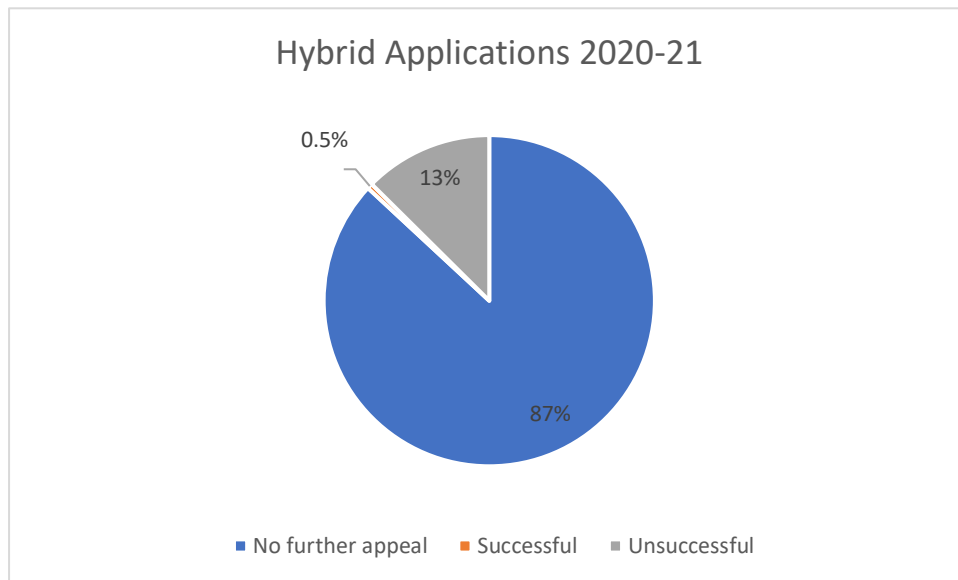


The data from the second sample, 2020-2021, shows little variance from the first sample. The number of applicants who went on to appeal after making a ‘no appeal’ application to the CCRC did increase slightly following the introduction of the form, but this was only from 12% to 15%.

The form may have a greater impact going forward as awareness increases. However, the data may also indicate that NA applicants are discouraged from appealing for other reasons.

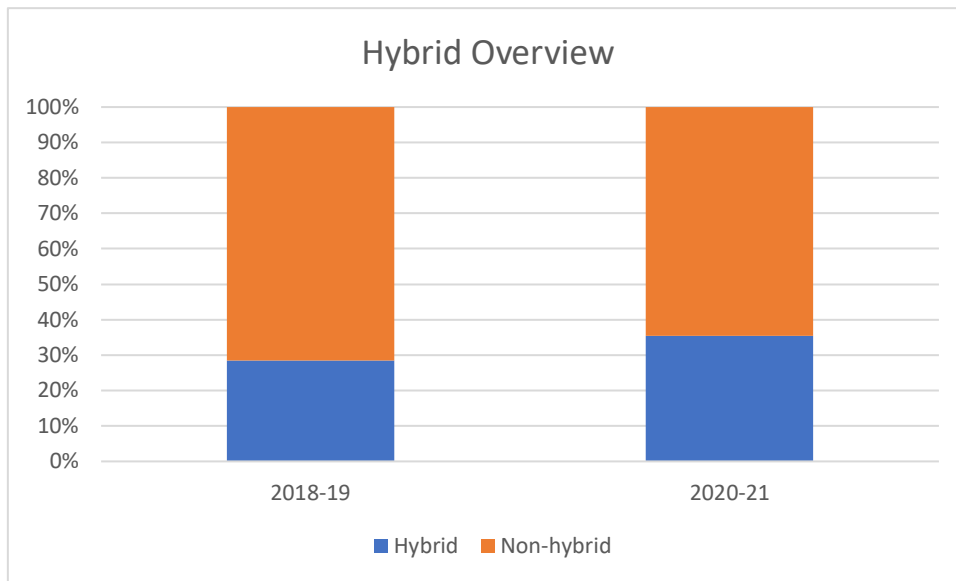
There were more applicants waiting for their appeal to be heard in the second sample, but this is to be expected given that less time has passed since their application to the CCRC.

2.2 Hybrid Applications

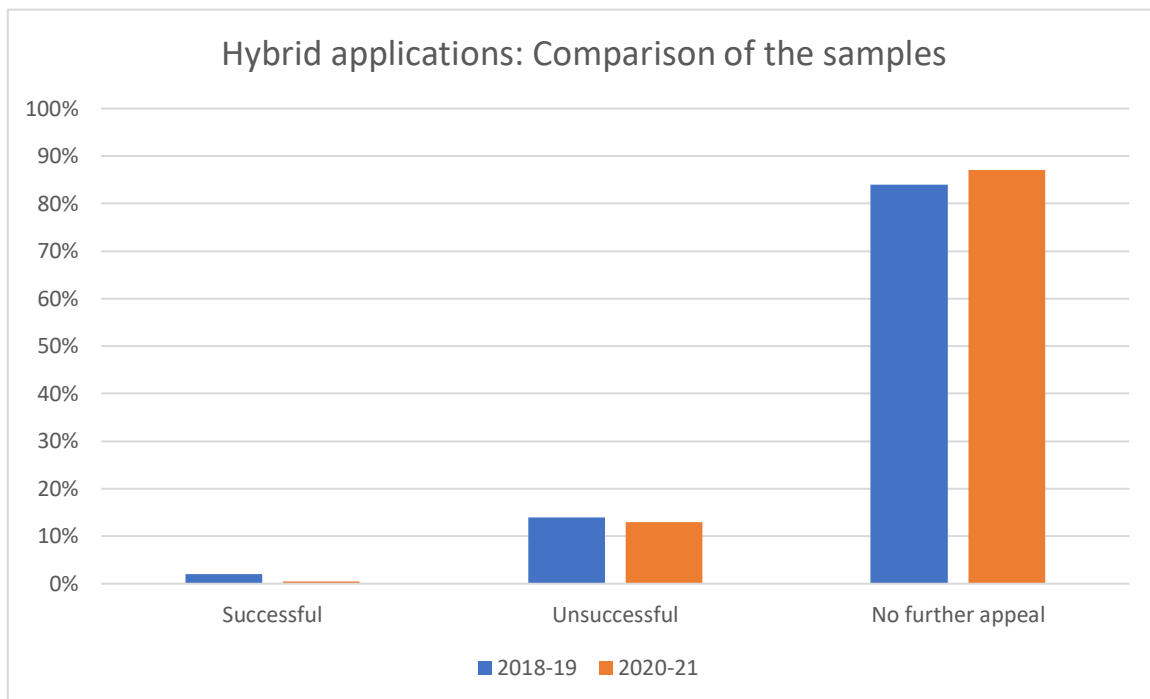


Hybrid Applications (191)		
No further appeal	166	87%
Successful	1	0.50%
Unsuccessful	24	13%

The data from 2020-21 is similar to the previous sample. Despite the introduction of the Easy Read form, most hybrid applicants do not go on to appeal after being turned down by the CCRC. This is surprising given that they have previously made an appeal.

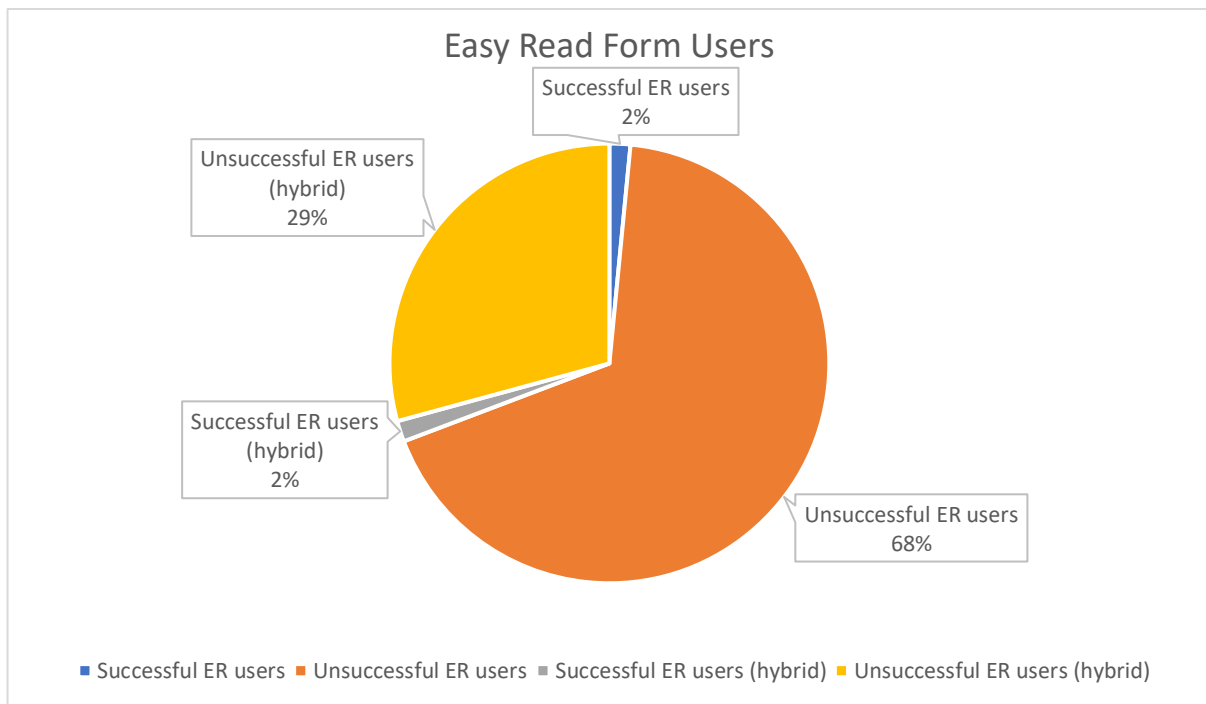


Hybrid applications constituted a higher proportion of applications following the introduction of the ER Form (28.3% in 2018-2019 up to 35.4% in 2020-21).



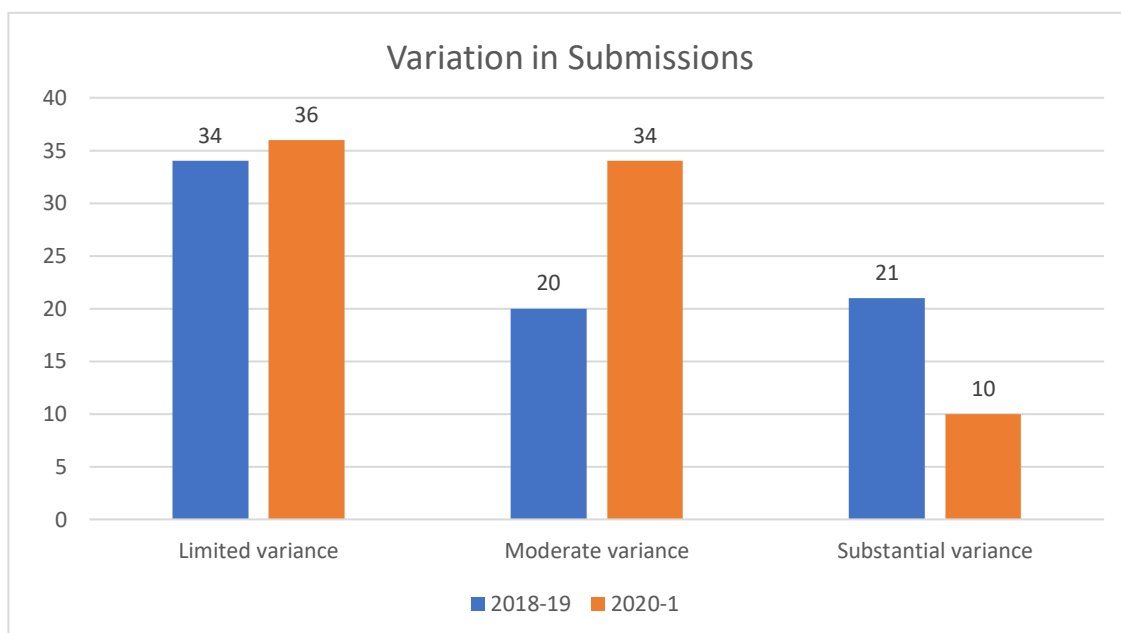
This group of individuals were already familiar with making an appeal to the Court of Appeal, and had access to the Easy Read Form, yet most still chose not to appeal after being turned down by the CCRC. This appears to indicate that there are other factors dissuading applicants from appealing their conviction/sentence apart from the appeal forms.

2.3 Use of the Easy Read Form



65 of the 80 applicants (81%) who went on to appeal after making a NA application to the CCRC used the Easy Read Form. Above is a breakdown of appeal outcomes amongst those that used the Forms.

2.4 Analysis of Submissions

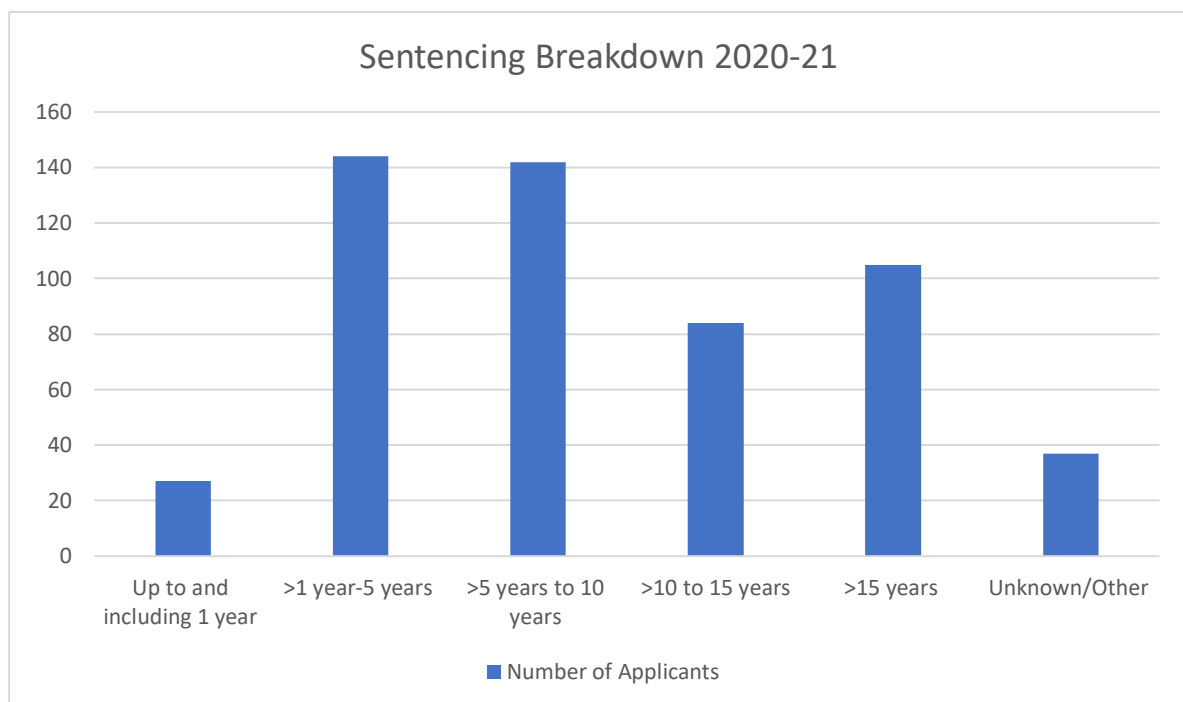


The same proportion of applicants (45%) were placed in the 'limited variance' category across both of the samples.

However, the 'substantial variance' category decreased considerably from 2018/19 to 2020/21 (28% down to 13%). The percentage of applicants in the 'moderate variance' category thereby increased as a result of this (from 26% to 43%).

We believe that this could be the result of the widespread usage of the ER Forms, as there were far fewer applications made by legal representatives. Therefore, the applicants were largely including the same points in the appeal as in their application to the CCRC, rather than having new points added by their representatives.

2.5 Sentencing

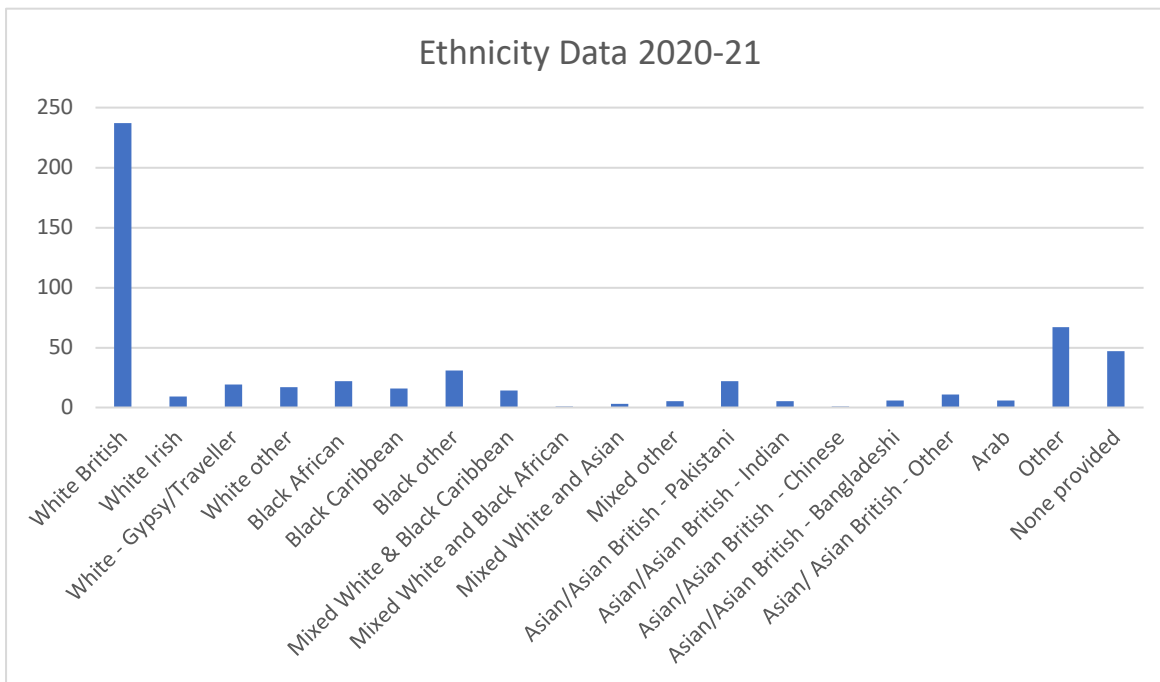


These figures are largely consistent with the figures from 2018-2019. However, there was a notable decrease in applicants serving sentences between 5 and 10 years in length (32% in 2018-19 to 26% in 2020-21), with an increase in the proportion of applicants with a sentence of more than 15 years (14% in 2018-19 up to 19% in 2020-21).

2.6 Legal Representation

As in the first sample, the number of applicants who were represented when applying to the CCRC is low. Only 16 (3%) of the 539 applicants were represented.

2.7 Diversity and Equality



Ethnicity Data (539)

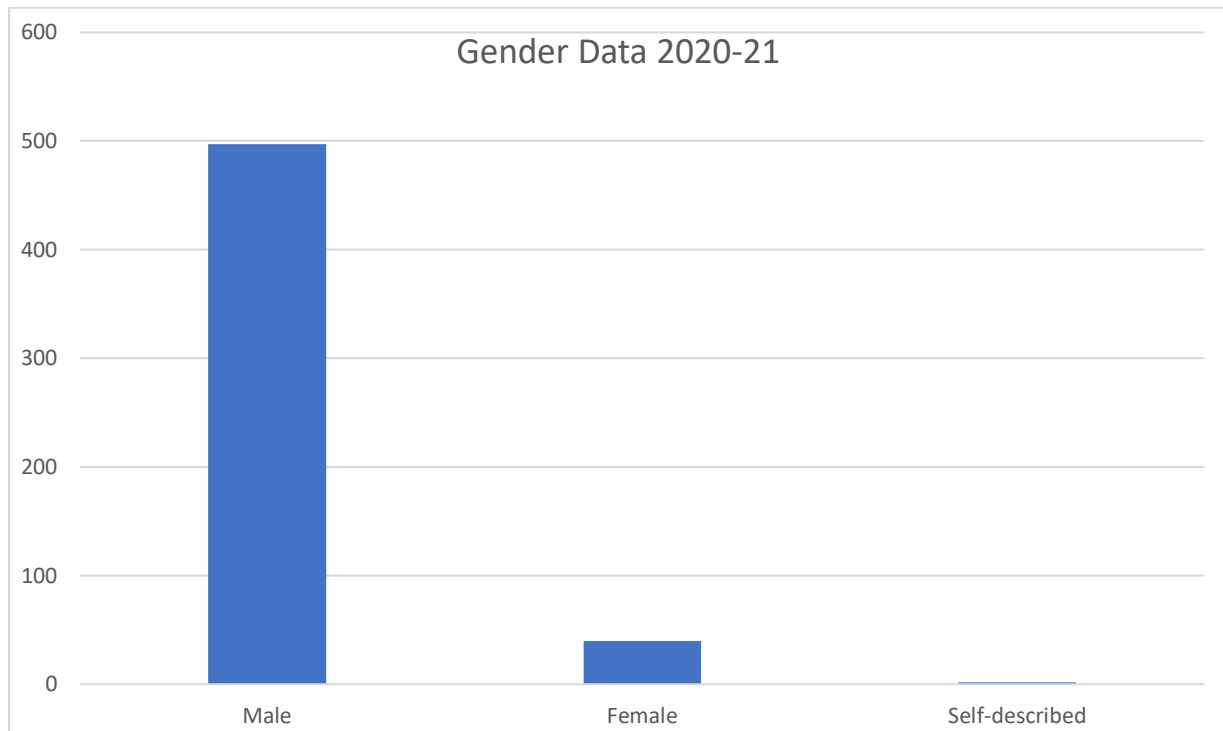
White British	237	44%
White Irish	9	2%
White - Gypsy/Traveller	19	4%
White other	17	3%
Black African	22	4%
Black Caribbean	16	3%
Black other	31	6%
Mixed White & Black Caribbean	14	3%
Mixed White and Black African	1	<1%
Mixed White and Asian	3	<1%
Mixed other	5	1%
Asian/Asian British - Pakistani	22	4%
Asian/Asian British - Indian	5	1%
Asian/Asian British - Chinese	1	<1%
Asian/Asian British - Bangladeshi	6	1%
Asian/Asian British - Other	11	2%
Arab	6	1%
Other	67	12%
None provided	47	9%

Ethnicity Data Comparison 2020-21

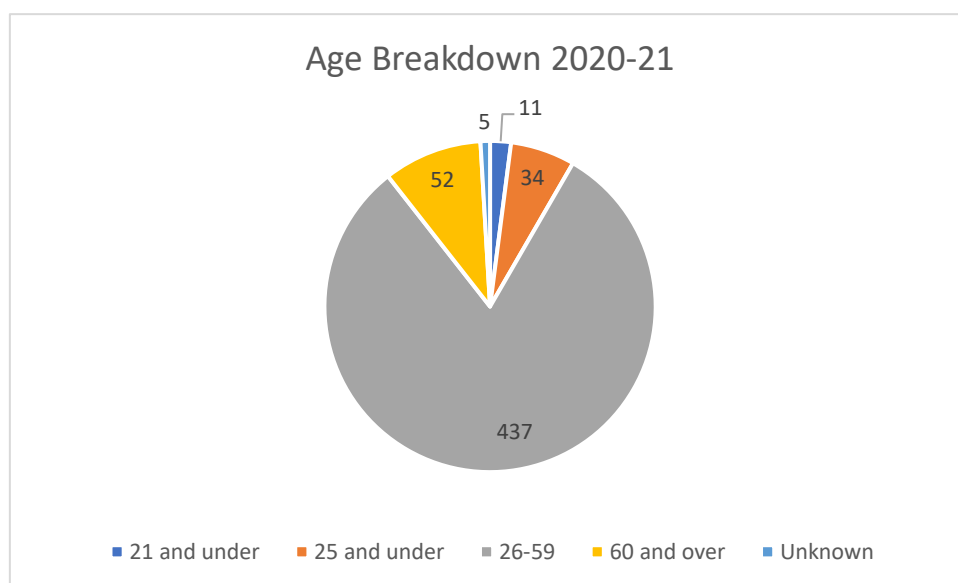
	NA CCRC applicants	All CCRC applicants
White	53%	44%
Black	13%	9%
Asian	9%	6%
Mixed	5%	4%
Other	22%	36%

The ethnicity data collected from the NA applicants differed to some extent from the overall make-up of applications across 2020-21.

Following a similar trend to the NA data from 2018-19, there was a smaller number of NA applicants within the Other/Unknown category than in the overall figures for 2020-21 (22% compared to 36%). There was therefore a higher proportion of applicants in the remaining categories.



The gender data collected from the NA cases across 2020-21 is consistent with the data collected from applicants as a whole during that period.



Age		
21 and under	11	2%
25 and under	34	6%
26-59	437	81%
60 and over	52	10%
Unknown	5	1%

Most of our statistics for NA applicant age mirrored the age figures across applicants as a whole for 2020-21.

As in the previous sample, the only notable variance was in NA applicants aged 60 and over. Whilst in our sample they constituted 10% of applicants, the age group made up 18.9% of all applications to the CCRC in that year.

Special Help

We also noted that 29% of NA applicants in the sample had filled in the box for 'special help' on the application forms. This was a slight increase from the 24% of applicants who asked for special help in the previous sample.

Chapter 3: Trends from both samples

3.1 Submission Trends

Whilst collecting the data from the two samples, we also reviewed the submissions made by applicants to determine if any recurring themes emerged. We have not produced separate sections for each sample, given that the nature of submissions were similar across both of the time periods.

We noted the following:

- Several applicants felt that they could not appeal after negative advice from legal representatives. It appeared that a number of applicants felt the negative advice was a bar to them appealing, and they were apparently unaware that they could initiate appeal proceedings themselves.
- A significant number of applicants criticised their legal teams, for either not following their instructions or failing to utilise specified evidence and witnesses.
- A large number of applicants argued against the findings made by the court. In some cases these were accompanied by other points, but some applications were simply an account of the applicant's evidence at trial.
- A large number criticised the accounts given by complainants and witnesses.
- Several applicants asked for both their conviction and sentence to be reviewed, but then only raised points regarding one of the two in their application form.

3.2 Legal Representatives Trends

We also conducted a review of the cases involving NA applicants who were represented. This involved looking at the application forms and case records of those cases, in order to determine whether there were any trends. Specifically, we wanted to determine why legal representatives were submitting the applications in question, given that they could have assisted the applicants to appeal instead.

As there was no significant variation in the cases across the two samples, the following analysis covers represented applicants across both sets of data.

We made the following findings:

- In many cases, the representatives were not initially involved in the application. It appeared that several solicitors were unaware that an application was ongoing until they received a DYR (Do You Represent) letter. Some solicitors only responded after the case had been closed.
- In several cases it is unclear how the legal representatives assisted the applicant. Even when representatives were involved from the start of the application process, the easy read forms were often filled in by the applicant. Whilst the solicitors seemed willing to assist in the event the CCRC had any questions, they did not seem to be closely involved in the making of the application.
- In the vast majority of applications, whether completed by the applicant themselves or by a legal representative, exceptional circumstances are only briefly mentioned. It was rare to find an application that contained a well-developed submission regarding exceptional circumstances.
- Where the CRM working on the case did consider a potential EC to determine whether it justified a full review of the case, it was rarely a point that was put forward by the applicant,

or their representative, as an EC. It tended to be a submission that was included amongst the others, which the CRM then identified as a potential EC.

Conclusion

In total, this project has examined 1,152 cases that have been identified as 'No Appeal' when received by the CCRC. We hope that the quantitative analysis of this collection of applicants has also created an in-depth evaluation of the type of Applicants we are receiving under the 'No Appeal' category.

END OF REPORT