

Rt Hon Priti Patel MP
Secretary of State for the Home Office

Sent by email to: whitammp@parliament.uk and public.enquiries@homeoffice.gsi.gov.uk

17 March 2020

Dear Home Secretary,

Urgent: Immediately Suspend Immigration Bail Reporting Conditions

Following updated Government guidance regarding COVID-19 issued on 16 March 2020, we request that you immediately suspend all immigration bail reporting conditions.

We are charities that provide support to migrants subject to immigration bail reporting conditions. We are gravely concerned about the welfare of our service users and the wider public health implications of requiring them to report during the ongoing public health emergency.

The Government's latest guidance provides, *inter alia*, that all individuals should:

- Avoid non-essential use of public transport.
- Avoid both large gatherings and non-essential gatherings in smaller public spaces.

In line with the Government's guidance, all immigration bail reporting conditions should be immediately suspended.

Individuals subject to immigration bail reporting conditions must attend Home Office reporting centres at set dates and times. This entails using public transport and waiting in confined spaces with others who are reporting. This constitutes a serious risk of infection and is contrary to the Government's own guidance.

In ordinary circumstances, immigration bail reporting conditions are physically exhausting or painful for individuals with physical disabilities and distressing for those with mental health conditions. The impact of reporting for immigration bail on vulnerable groups is set out in the recent report by Migrants Organise, which is enclosed with this letter. This impact is exacerbated during the present public health emergency.

Many of our service users are asylum seekers with Post Traumatic Stress Disorder (PTSD), depression and/or other serious mental health conditions. Requiring them to continue to report during a public emergency would have a grave impact on their mental health.

Many of our service users also live in overcrowded asylum support accommodation. Exposing them to an increased risk of infection creates a significant risk for the people that they live with, many of whom have underlying health conditions that make them vulnerable to COVID-19.

There is no good justification for requiring immigration bail reporting conditions to continue. Any public interest in managing the risk of individuals absconding is far outweighed by the

public interest in managing the serious health risks posed by COVID-19 (to our services users and society at large).

We consider that continuing to require individuals to report during this public health emergency would be unlawful for at least five reasons:

First, it constitutes an unlawful risk of breaching individuals' Articles 2 (right to life), 3 (prohibition on torture and inhuman or degrading treatment or punishment) and 8 (right to private and family life) rights under the European Convention on Human Rights (ECHR). Knowingly putting individuals at risk of increased exposure to COVID-19 is a serious and unjustifiable risk to their health. The European Court of Human Rights has repeatedly held that States should take measures to limit individuals from being exposed to health risks (see, for example, *López Ostra v. Spain* (1995) 20 EHRR 277). Requiring individuals to expose themselves to a high risk of a potentially fatal infection is not lawful.

Second, it is unreasonable. The Government's guidance provides that individuals should be social distancing to reduce the risk of infection. Continuing immigration bail reporting entirely undermines this. It exposes a disproportionately vulnerable cohort to a heightened risk of infection that will then return to overcrowded accommodation where they risk infecting another disproportionately vulnerable cohort.

Thirdly, it is in breach of the Government's stated policy (see *R (Lumba) v Secretary of State for the Home Department* [2011] UKSC 12; [2012] 1 AC 245). In short, reporting is *not* essential.

Fourthly, any decision to continue immigration reporting conditions without considering the public health implications arising from overcrowded asylum support accommodation would be in breach of the duty of inquiry (see *Secretary of State for Education and Science v Tameside MBC* [1977] AC 1014) and thus irrational.

Fifthly, continuing to require individuals to report would constitute a systemic failure to make reasonable adjustments. Having no due regard for the needs of people with disabilities would breach the Public Sector Equality Duty in section 149 Equality Act 2010 (see *Bracking and others v Secretary of State for Work and Pensions* [2014] Eq LR 60; [2013] EWCA Civ 1345).

By no later than 4pm Friday 20 March 2020, please confirm that you will be immediately suspending immigration bail reporting conditions. Please provide confirmation by email to Brian@migrantsorganise.org and Jennifer.blair@helenbamber.org. If we do not receive such confirmation by that time, we will consider bringing legal action on the above and/or alternative grounds.

Yours sincerely,

Brian Dikoff, Legal Organiser, **Migrants Organise**
Jennifer Blair, Head of Legal Protection, **Helen Bamber Foundation**

cc.

- Kevin Foster MP: kevin.foster.mp@parliament.uk



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- POCorrespondence@homeoffice.gov.uk
- Home Office Asylum Safeguarding Team: ashlse@homeoffice.gov.uk