



Mr Michael Clements
President of the First-tier Tribunal, Immigration and Asylum Chamber
Her Majesty's Courts and Tribunal Service,
Field House, 15-25 Breams Building
London EC4A 1DZ

29 April 2020

Dear Michael

Home Office Update – Covid-19 and immigration detention

I wanted to update you on some aspects of the Home Office's management of the current COVID-19 emergency, specifically the SSHD's approach to immigration detention. I thought it would be particularly helpful to provide this information in view of the high level of bail hearings taking place recently and the approach I have asked Presenting Officers to take going forward.

The numbers of those in detention have reduced very significantly since the start of this emergency. On 1 January 2020 there were 1225 individuals detained in the IRCs, 507 of whom were FNOs; and 307 FNOs were detained in prisons. Figures from last week (21 April 2020) show a reduction to 368 persons detained in IRCs and a further 340 detained in prisons under immigration powers. Of the 368 persons detained in IRCs, only 21 are non-FNOs.

The Home Office has, since the emergency began, reviewed the cases of all of those who were detained under immigration powers. This was to ensure that, in our view, detention remains appropriate in the current circumstances. In line with our existing policies, these reviews have considered the level of vulnerability of detainees, with particular reference to Covid-19, and the likelihood of achieving removal within a reasonable period.

As you will no doubt be aware, this approach was recently considered by the Divisional Court in a JR brought by Detention Action. The Home Office was successful in defending this application for interim relief and the Court found the Claimants' arguments for immediate mass release to be inarguable. The Court also made a number of observations about the appropriateness of the approach the Home Office had taken in managing detention and in particular safeguarding those who fall into any of the PHE identified increased-risk categories. A copy of the judgment can be found here: <https://www.bailii.org/ew/cases/EWHC/Admin/2020/732.html>

In light of this judgment, and the reviews that have taken place, the Home Office is somewhat surprised at the level of grants of bail in recent weeks. Where people remain in detention it is because we believe that their removal is a realistic prospect, and continued detention is reasonable in light of their particular situation, the likelihood of their absconding if released, and the level of risk they pose to the public.

In each case we are seeking to consider and balance those risks with the availability of measures that would otherwise be applied to manage any risks of absconding or public safety, especially at a time when they are increasingly being stretched. For example, the Home Office has temporarily suspended regular reporting activity and, as has been well publicised, probation services are under significant pressure at the moment. While electronic tagging is an important risk mitigation, there are limitations around those monitoring capabilities and the system is under pressure from the current increased high levels of release from prisons and immigration removal centres.

On removability, while it is well documented that restrictions are in place on travel to many countries, some short- and long-haul destinations do remain open. It is not the case that all removals have stopped. For instance, we have recently arranged a flight to return Polish nationals and are actively working with other countries where we may be able to introduce similar arrangements. Where routes are temporarily suspended we are proactively liaising with airlines, embassies and missions on a daily basis, some of whom have review points in the coming weeks when they will assess whether their borders will reopen to travellers from the UK. We are also working hard to ensure voluntary return routes remain open for a number of countries. You will appreciate that this situation is fluid and varies from country to country, but we will look to provide the most up to date available travel information as part of bail summaries or through the presenting officer in court.

Where bail is granted, I would also ask you to consider whether Immigration Judges could provide written reasons for this. Whilst I realise this is not a requirement under the Procedure Rules, it would assist the Home Office to fully understand the reasons why bail has been granted, not least to improve our own decision making in the future.

I also wanted to flag the pressures that the current Asylum support system is under. More detail is in the enclosed letter that our Minister recently sent to the organisation acting as the single point of contact for Asylum NGO community. While we will always do our best to comply with any instructions from the court, we want to flag that the current situation may make it difficult for us to source suitable accommodation if stipulated as part of a grant of Bail in Principle. There are particular challenges at the moment in finding properties which meet the Probation Service requirements where a person is subject to licence conditions.

Finally, on a very practical level, you will be aware that a PNC record is available to the Presenting Officer should it be required by the Immigration Judge in court. When hearings are conducted by telephone this has the potential to cause difficulties. We have agreed with NPCC that we will precis the PNC record into a witness statement that will be emailed to the court should it be required in cases where the applicant disputes the PNC record. I hope, in the current circumstances, this will provide an adequate arrangement.

I have copied this letter to the Immigration Law Practitioners Association and the Law Society.

Yours sincerely,



James Stevens
Director of Appeals, Litigation & Administrative Review
UK Visas & Immigration