

# Challenging Reporting Conditions

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GUIDE FOR ADVISERS AND CASEWORKERS

This guide is written by Brian Dikoff, Legal Organiser at Migrants Organise

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Requesting a variation of Bail Condition is considered immigration advice, so only accredited advisers (e.g. under the OISC or Law Society) can request for variation on behalf of someone else. Please refer to the section “What if you are not OISC accredited?” below if you are not an immigration adviser.

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Migrants Organise Ltd Registered Charity No. 1077116  
A Company Limited by Guarantee No. 3673737  
2 Thorpe Close London W10 5XL Te. +44 (0)2089644815  
info@migrantsorganise.org  
www.migrantsorganise.org  
@migrantsorg

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# Help Us Challenge Reporting Conditions!

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Reporting conditions are unnecessary and can be extremely burdensome. Many migrants have to report for years on end while they fight for their immigration status. We hope that this guide will be a useful resource to challenge reporting for individual cases and also to support people to report safely and know their rights.

However, we also firmly believe that efforts to support people reporting and working to challenge individual cases of reporting conditions should sit within an abolitionist framework to dismantle the current system of border controls and policing of migrant communities. We believe that reporting conditions are an act of violence and should be abolished in their entirety.

[Join our Abolish Reporting campaign](#) led by people currently reporting and get involved

Reporting conditions are just one of the many ways in which asylum seekers and migrants are unable to live a dignified life and are part of the brutal Hostile Environment Immigration policy which inflicts violence on our communities. Join our movement to demand a Fair Immigration Movement.

[Sign our Charter now!](#)



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## Background- What is Reporting Condition?

- Under the Immigration Act 2016, the Secretary of State has the power to grant immigration bail if a person is detained or 'liable' to be detained (which is interpreted broadly). The concept of immigration bail replaced and consolidated the previous concept of temporary admission and temporary release.
- When someone is granted immigration bail, the immigration Act 2016 requires at least one condition to be imposed such as no study condition, residence condition, electronic tagging, etc.
- Importantly, however, Immigration Act 2016 also provides that the Secretary of State can impose "any other condition that she deems appropriate".
- Reporting conditions seem to be used very frequently, we believe, almost in a blanket way. It is however important to note that there is no duty to impose reporting conditions: the Secretary of State just has to impose one bail condition, whatever that may be.

## COVID and Reporting Condition

- The Home Office has produced additional policy on how to implement reporting condition during the current COVID pandemic (see below).
  - Individuals identified as suitable for face-to-face reporting may be asked to resume reporting.
  - Individuals are supposed to follow Home Office's instructions - many were told that their reporting condition was suspended due to the pandemic and if they have not been further contacted, then they do not need to report.
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## COVID and Reporting Condition

### Immigration Bail, v 7.0, published 15 January 2021.

- The Immigration Bail policy is the Home Office's overarching policy and guidance on the immigration bail framework under the Immigration Act 2016.
- It provides the aim of the bail condition regime and provides guidance on the different bail conditions which are available and when the Home Office is supposed to impose them (and which condition to impose).

### Reporting and offender management policy, v 3.0, published 19 March 2019.

- The reporting and offender management policy provides the main guidance on imposing and implementing reporting conditions.
- Once reporting conditions are set, this policy should be referred to when deciding on issue of location of reporting, frequency, support and reasonable adjustments.

### Reporting and offender management – interim guidance, v 2.0, 25 January 2021

- This interim guidance provides additional guidance on implementing reporting conditions during the COVID-19 pandemic. Specifically it provides guidance on how to identify cases which are suitable for face-to-face reporting during the pandemic.

Note that below are the most up to date relevant policies at the time this guide is published in June 2021. Please check GOV.UK website for more recent iterations of the policies.



# Is Reporting an Appropriate Condition?

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Note: In this document we use the term 'a reporting condition' to refer to the requirement to report or sign at a Home Office or other premises regularly (occasionally, this is a police station or other government building). We use this language as reporting is one of several possible 'conditions'. When you see 'A Reporting Condition' this is referring to what some call simply 'reporting' or 'signing'.

When considering challenging reporting, the first thing to ask: is this reporting condition appropriate? Below is a list of step by step questions that should be considered to answer this question.

## 1. Should the Person be on Immigration Bail?

Generally speaking, a person can only be put on immigration bail if they do not have any leave to remain, e.g. if they are an asylum seeker or an overstayer, regardless of whether they have a pending application.

- Sometimes a person might still be asked to report even after they have been granted status, for example due to administrative error or delays.
- Before Brexit, EEA citizens and family members with automatic rights to reside were particularly prone to be put on immigration bail wrongly. This is because they often do not have any clear proof of their status in the UK
- It remains to be seen whether issues will arise in relation to individuals with pre-settled or settled status, particularly given the lack of physical proof of status.

A person should also only be put on immigration bail if they have the requisite mental capacity (under the Mental Capacity Act 2005) to comply with the conditions imposed

- This issue surfaced in the case of KDE concerning a very mentally unwell man who was unlawfully detained and subjected to reporting conditions.
  - A settlement however was reached and therefore the High Court did not adjudicate on this matter
  - We however believe that there are strong arguments that it is unlawful for the Home Office to put a person on bail when they lack mental capacity to comply with a bail condition.
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## 2. What Conditions are Imposed?

Individuals put on bail will be given a BAIL 201 form, which will include the details of the condition imposed. Everyone who has been put on temporary release or admission will also automatically be on bail (i.e. those who have been given an IS96 form). The BAIL201 form could often be found in the Home Office's Subject Access Request file or contact can be made to the relevant reporting centre.

If the client does not know what bail condition has been imposed and/or has not been complying with the condition as requested (e.g. has not been reporting), priority should be given to assisting the client on their substantive immigration case. In other words, the client should ideally first obtain immigration advice on their options, secure funding and obtain legal representation before dealing with the issue of bail condition.

## 3. Should Reporting be Imposed in the First Place?

As mentioned, when a person is put on immigration bail, the Home Office has to impose at least one bail condition. Reporting condition is however only one option, others being no working, residency condition, no study condition, etc. The Secretary of State also has a wide discretion to impose any other condition which she deems appropriate. The current immigration bail policy does not provide much guidance on how to choose which condition to impose.

It is therefore important to consider firstly whether there are other more appropriate immigration bail conditions.

Two things are relevant here

1. Vulnerability of the client. When assessing whether a reporting condition is appropriate, considerations must be made to the vulnerability and personal circumstances of the client. For example:
  - a. Individuals with disabilities might not be able to withstand the journey to reporting centres.
  - b. It might not be safe for victims of trafficking to travel to reporting centres
  - c. Individuals with children might struggle to find child care or it might not be appropriate for them to bring their children to report when they have to queue for hours. Their children might have disabilities.

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2. Aim of bail condition. More widely, considerations can be made to the aim of bail condition itself as per the Home Office bail policy guidance:

- Enable the Home Office to maintain appropriate levels of contact with the individual
- reduce the risk of non-compliance, including absconding
- minimise potential delay in the Home Office becoming aware of any noncompliance

Take as an example, an individual is already represented by an immigration solicitor and is fully supported by social services under the Care Act. In such a case, the purpose of imposing a reporting condition can be questioned. Home Office can easily maintain contact with the individual through the solicitor or social services, and there is very low risk of absconding.

Arguments based on vulnerability will often be much stronger given that the Home Office has a clear safeguarding duty as well as duties under the Equality Act 2010.

However arguments which question the purpose and aim of reporting conditions should also still be put forward. It might be useful for example, to show irrationality or unreasonableness on the part of the Home Office.

#### 4. Is the Specific Reporting Condition Imposed Appropriate?

Regardless of the above, a reporting condition can become inappropriate if it's too burdensome, there are four things to consider

1. Frequency of reporting condition
2. Distance to reporting centre.
3. Financial assistance (transport or childcare cost)
4. Availability reasonable adjustments\*

For example, if the reporting condition requires a person to report every single day at 8 am, at a reporting centre which is 2 hours away on public transport, then that reporting condition is likely to be inappropriate for any individual.

It might also be that a reporting condition can only be appropriate if there is a reasonable adjustment. For example, a person with physical disability should not be required to queue.

\* Please refer further to the specific section in the Reporting and Offender Management policy. It is important to always check the policy every time given that the Home Office might update it or make amendments. We recommend that in the letter, specific and explicit reference be made to the relevant part of the policy (e.g. copy-pasting it to the letter)



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## Reporting Conditions and COVID Pandemic

Many individuals were asked to stop reporting due to the COVID pandemic. They should follow Home Office's guidelines and they do not need to resume face-to-face reporting unless explicitly told to do so.

- They can update their contact information by emailing or calling relevant reporting centre
- The Home Office's interim guidance on reporting during COVID put emphasis on face-to-face reporting only for the following categories:

(a) foreign national offenders (FNOs)/High Harm/Special Immigration Appeals Commission (SIAC) or other security cases. Persons who are on Restricted Leave.

(b) those who have shown a willingness to return home voluntarily and where reporting will aid the process of return

(c) those who have not returned home and who have not engaged with our Voluntary Return programme – including delivery of a Detention on Reporting (DOR)

(d) those identified for removal

The guidance is clear in saying that if an individual is outside the four categories above, they generally should not be reporting. If they are then this should be immediately challenged.

- Likewise vulnerable individuals (such as those who are “clinically vulnerable”) should not be reporting either
- If an individual falls within the four categories above, but is also vulnerable (or living with someone who is), the guidance states that consideration will be given on a case by case basis. Requests to stop reporting should be made in this case, considering the factors mentioned above.

# Steps to Challenge Reporting Condition

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If after going through the questions above you believe that the reporting condition is inappropriate, then this needs to be challenged. Below are the steps that needs to be taken to do so

## 1. Discuss Issue with Immigration Representative who is Dealing with Substantive Case

It is important that immigration representatives who are dealing with the substantive immigration case are involved when challenging a reporting condition. In most cases, they should be the one assisting the client with the issue with the reporting condition (particularly if the case is legally aided).

At the very least the immigration representatives should have a chance to look through and comment on any requests made to the Home Office. This is to ensure that all of the information provided to the Home Office is consistent.

If the client does not have a representative yet, then ideally priority should be to obtain one first before challenging reporting condition (unless it is an urgent situation).

## 2. Obtain Evidence

A request to stop or vary a reporting condition should be evidenced as much as possible. This is particularly important if the request relies on the person's vulnerabilities or disabilities.

Good evidence can be in the form of a supporting letter from the person's GP, health professional or social worker. Ideally, requests for evidence should be put in writing. You should explain the circumstances in as much detail as necessary. Some healthcare professionals may consider waiving charges which ordinarily apply for these services.

Likewise if the request is to ask for financial support, then a google map screenshot of the distance between the person's address and the reporting centre, or a receipt of the transport cost would be helpful.



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### 3. Send request to the Home Office: ask for BAIL406 and provide deadline

Requests should be sent to the relevant reporting centres. Their contact details can be found [here](#).

The Home Office immigration bail policy states that any refusal to vary a bail condition should be done using the BAIL406 forms. However, in practice, this seems to be rarely done. Instead the Home Office often does not respond to requests or provide their decision orally and informally to the person during their next reporting event. Explicit requests should therefore be made to ask the Home Office to issue a BAIL406 if the request is refused or reissue the BAIL201 form to reflect the new condition.

If the request raises safeguarding concern / is urgent, the safeguarding team can also be included. This is the email for the asylum safeguarding team: [ashlse@homeoffice.gov.uk](mailto:ashlse@homeoffice.gov.uk)

Providing a deadline for the Home Office to respond is also always useful. This depends on the urgency of the situation such as whether the person can still attend the next scheduled reporting event. In general however, it would be reasonable to provide the Home Office 2 weeks to respond to the initial request, and further 3-5 days to respond to a follow up request.

### 4. Refer to a Public Law Solicitor for a Judicial Review challenge

Should the Home Office refuse the request or fails to respond after a given deadline, the case can be referred to a public law solicitor for a challenge.

Some immigration solicitors (or their firm) carry out public law work as well and therefore might be able to also assist. Legal aid will be available (subject to merits and financial assessment by the solicitor).

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## What if You are Not Accredited to Provide Immigration Advice?

Request to vary immigration bail is immigration advice. As mentioned, the person's immigration representatives should be able to assist with the matter.

In theory it is always better when a person has an immigration representative before any representations are made to the Home Office. However, certain reporting conditions are very clearly inappropriate or a person might really struggle to comply with the reporting event. In such a case a letter of concern can still be sent to the Home Office (reporting centre and safeguarding team) and an urgent referral should be made to an advice organisation or immigration firm.

The letter should focus specifically on the client's vulnerabilities and the difficulties that they face complying with the current reporting condition.

## TIPS

- Obtaining strong evidence is always key, particularly medical evidence. When there is strong evidence, any refusals to vary reporting conditions will be more easily challenged by way of judicial review.
- Ask about reporting conditions when working with a new individual. In our experience, people don't often talk about their reporting condition or their struggle to comply.
- There are very strong arguments that children should not be reporting. The Home Office has a duty under s55 borders and immigration act to safeguard and promote children's best interests, and it is quite unlikely that regular reporting conditions would ever be in a child's best interest. Unaccompanied children also should be under the care of social services which means the purpose of reporting condition is questionable
- Similar arguments can be made for victims of trafficking and individuals who are supported by local authority, such as under the Care Act or s117 of the Mental Health Act.
- We suggest that requests for transport costs are made for individuals who are on asylum support. The Home Office policy is not very clear on this point (see reporting and offender management policy), but given how an individual need to be destitute before they can access asylum support, they should be provided transport cost to attend reporting events.