



THE JOINT COUNCIL
for THE WELFARE
OF IMMIGRANTS

COVID-19: Briefing to the Home Affairs Committee



25 March 2020

Overview

The COVID-19 pandemic poses an immense threat to public health, and particularly to the health of vulnerable minorities including migrants. It also creates insurmountable obstacles to many migrants in complying with the conditions of their leave or of any application they need to make. The current state of affairs is highly dangerous, with many people at risk of death or serious harm. The Home Office response to this situation is insufficient and confused. The helpline has given extraordinarily dangerous advice, for example telling an 80 year old cancer patient to make a trip overland by car to Ukraine at a time when most of Europe is in lockdown, rather than overstay her visa.¹ I bring up this example, not to excoriate the staff member in question, but to emphasise how urgent it is that the Home Office now put in place comprehensive measures that satisfy the following criteria:

1. **They must be as simple and as easy to understand as possible.** The Home Office is a vast bureaucracy with many staff, and training will no doubt be made more difficult by sickness and home working. The people it serves are not legally trained, not entitled to legal aid, and many will now struggle to obtain legal advice as firms wind down new client enquiries. Unless the emergency measures are simple, they will fail.
2. **They must prioritise protecting the health and safety of migrants and the public above all else.** This is self-explanatory. The situation we are in is unprecedented and the potential for unnecessary loss of life is high. The Home Office has shown it has the ability to adapt and to be flexible in its response to the needs of European Union nationals. It must rise to this occasion and ensure that the temporary measures are uncompromising in their goal of protecting individual and public health.
3. **There cannot be any distinction made between migrants with leave and migrants without.** The disease does not care about a person's immigration status. Nor can we. These measures must have universal application.
4. **No one who currently has leave should lose it, for any reason whatever, during this crisis.**

This briefing is restricted to those measures we consider crucial to protecting the public health and which must be brought in immediately. There are of course numerous smaller adjustments that will need to be made alongside these measures. We fully support the submissions of the Immigration Law Practitioner's Association to this inquiry, which deal in detail with some of these issues. We also support submissions made by Refugee Action focussing on the asylum system and by Doctors of the World on healthcare.

Immediate Measures Necessary for the Public Health

Ensure Universal Access to Healthcare

Suspend the NHS Charging Regulations and Section 39 of the Immigration Act 2014

While this is a matter for the Health Minister, the Home Office has always been the driving force behind the NHS Charging Regulations.² The Home Secretary is in a powerful position to make the case to Cabinet colleagues that this suspension is necessary. This will ensure that people in the UK are not deterred from seeking care because of the threat of being charged or falling into debt.

¹ <https://www.independent.co.uk/news/uk/home-news/coronavirus-woman-cancer-home-office-ukraine-a9417171.html>

² Windrush Lessons Learned Review, para 2.3.5,

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/874022/6.5577_HO_Windrush_Lessons_Learned_Review_WEB_v2.pdf

The fact that COVID-19 has been placed on the list of exempt conditions for the purposes of charging is not sufficient to ensure access to healthcare or to preserve public health during this crisis. For example, there is evidence that the current NHS charging policy has a deterrent effect on people with TB, despite TB being an exempt condition. This deterrent effect has led to delay in diagnosis and to the increase in time between diagnosis and treatment. It was estimated that people born outside the UK were 37% more likely to have a delay in diagnosis following the introduction of the current NHS charging policy.³ These findings are supported by a wide body of evidence showing the deterrent effect of healthcare charging and ID checking on migrant populations.⁴

We attach alongside this briefing an as yet unpublished (but accepted for publication) article by Dr Jess Potter which examines the effect of NHS charging on TB patients, finding that *'since the introduction of the CRP [Costs Recovery Programme] there has been a significant delay for TB treatment among non-UK born patients.'*⁵ We emphasise that TB, like COVID-19, is exempt from charging. This kind of delay, in COVID-19 cases, could prove fatal to the individuals concerned. We cannot afford that risk.

The exemption for COVID-19 only applies up until a person receives a negative diagnosis, at which point charging commences for any other condition they may have that does not meet another exemption. People may be treated for non-exempt conditions and incur costs when they are not in a position to consent, or to make a fully informed decision as to the cost-benefit of receiving treatment. For many people, the potential exposure to large bills if they are found not to have coronavirus is likely to be a significant deterrent to them seeking care in a timely way. These charges include emergency care outside of A&E, i.e. in intensive care, and will be demanded upfront if the condition is not urgent or immediately necessary.

End data-sharing between the NHS and the Home Office

The Department of Health and Social Care has given no assurance that NHS data will not be shared with the Home Office and used for immigration enforcement, including for those people with a confirmed coronavirus diagnosis. It is well documented that fear of being reported to the Home Office is a significant deterrent for migrant populations.⁶ Simply exempting COVID-19 from charging will not answer these legitimate fears.

This has now been done by the Irish government as part of their response to COVID-19. The Minister for Health, Simon Harris, has said *"On the specific issue of people who are undocumented, and I have heard this a number of times, as the Minister for Health I want to provide an assurance to those people*

³ Potter, J et al (2017). Have recent changes to health policies increased diagnostic delay amongst migrant patients with active tb? British Medical Journals, Thorax (2017);72:A20. Available from: https://thorax.bmj.com/content/72/Suppl_3/A20.1.info

⁴ [2] Legido-Quigley H, Urdaneta E, Gonzalez A, La Parra D, Muntaner C, Alvarez-Dardet C, Matrin-Moreno J M & McKee M (2012). Erosion of universal health coverage in Spain. The Lancet. 2012; 382(9909): p1977. Available from: [https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(13\)62649-5/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(13)62649-5/fulltext)

Seedat F, Hargreaves S, Friedland J S. Engaging new migrants in infectious disease screening: a qualitative semi structured interview study of UK migrant community health-care leads. PLoS One 2014; 9: e108261. doi:10.1371/journal.pone.0108261

Poduval S, Howard N, Jones L et al. . Experiences among undocumented migrants accessing primary care in the United kingdom: a qualitative study. Int J Health Serv 2015; 45:320–33. doi:10.1177/0020731414568511.

⁵ For those reading this briefing online, we have submitted this paper to the Committee. As it is not published as yet, we are not uploading it to our website. If you are an MP please contact us if you would like a copy.

⁶ [Migrants wrongly told to pay for NHS care upfront, minister admits](#)

that the health service will treat them with dignity and with absolute privacy and patient confidentiality". South Korea appears to have taken similar steps.⁷

Mount an information campaign to inform the public and NHS staff of these changes

The current NHS charging regime is characterised by fear, misunderstanding, and misapplication. Leaked evidence from the Government's early review of the charging regulations showed that at least 22 people had been incorrectly charged when their care should have been urgent. JCWI's own research, carried out with YouGov into NHS staff's knowledge of the charging regulations found for example that over half of clinical staff in secondary care did not know that they were ultimately responsible for deciding if treatment was 'urgent or immediately necessary'. As witnessed during the Windrush scandal, the NHS charging guidance is routinely misapplied, often with devastating consequences. For above measures to work to ease the public health crisis presented by COVID-19, they must be accompanied by a clear and widespread information campaign to assure the public - including all migrants - that it will be free and safe for them to access the care they need. NHS staff will also need to be informed of the changes, both to prevent them inadvertently sharing data with the Home Office, and to relieve the administrative pressure that the charging regulations place on them by having to check the immigration status of everyone that attends for care.

Lift all 'No Recourse to Public Funds' conditions

It is essential that no one in the UK is compelled by reason of destitution to go into work where that work is not essential to the continued functioning of society. Everyone, whatever their immigration or employment status must have access to public funds, and to any new funds that are made available to people to allow them to weather this crisis.

1. The Home Secretary must lift the 'no recourse to public funds' condition on all visas;
2. The Government must ensure that migrants with or without leave to remain are not excluded from any benefit that would be available to a British national resident in the UK.

Unless every person resident in the UK can access the same levels of support, can feed themselves, and can have a roof over their heads, we are all placed at risk and no one more so than those left exposed. People cannot self-isolate, cannot stop going to work, cannot report unsafe housing or unsafe and exploitative working conditions, unless there is a real and sufficient safety net available to catch them.

To take one example, asylum seekers currently receive asylum support at well below the rate of current benefits and via an 'Aspen card' which can only be used in certain shops. They cannot be used to order online. In any event, because of the extremely low levels of Asylum Support, most asylum seekers will never have enough money to meet the minimum spend for online deliveries. We have already heard of asylum seekers who have been instructed to self-isolate by the NHS but who cannot do so for these reasons. They are not permitted to work or access any other benefits. This system must be suspended otherwise they are at grave risk of being unable to feed themselves and will be highly vulnerable to exploitation and disease.

Release All Immigration Detainees

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<https://translate.google.com/translate?hl=&sl=ko&tl=en&u=https%3A%2F%2Fwww.yna.co.kr%2Fview%2FAKR20200305142400064>

The legal power to detain immigrants in immigration detention is restricted to that period of detention necessary to effect removal. It is not a punishment, and the loss of liberty involved is only justified insofar as it is necessary. The prospect of removal must be 'imminent'. The Home Secretary cannot say with any degree of certainty whether she will be able to effect a person's removal during the current crisis. Border restrictions are increasing globally, flights are cancelled daily, and it cannot be said that any person's removal is 'imminent'. Meanwhile, we understand that bail hearings are now being carried out over the telephone with detainees unable to address the tribunal. This is totally unacceptable. Access to lawyers, which is a problem in any case from within the detention estate, is now further compromised by providers, including JCWI, who have had to move staff home, and restrict new client enquiries.

Conditions, and access to medical care, in detention centres are insufficient at the best of times; at present they represent a danger to the health and lives of all those detained. We have heard from Detention Action, who are in direct contact with detainees at Yarl's Wood, Harmondsworth, Colnbrook, Morton Hall and Brook House that:

- a. There is no soap or insufficient soap;
- b. No information has been provided them about COVID-19;
- c. Centres are unhygienic with insufficient cleaning materials available;
- d. Rooms have multiple occupants, with toilets inside the rooms;
- e. Hundreds of individuals are in close contact daily, including staff and visitors.

Detention Action report that 'following Government advice on hygiene, self-isolation, and social distancing is impossible for those in detention'. We understand Detention Action has shared with all MPs an expert report by Professor Robert Coker warning that detention centres may act as 'epidemiological pumps'. These centres are a humanitarian disaster in motion, and all those detained within them must be released before it is too late.

Automatic Extension of Leave for All & Suspension of Visa Conditions

Every person whose leave expires during this crisis should receive an automatic visa extension. Without this provision, people will fall out of status and become vulnerable to the Compliant Environment. Although there is a policy providing for a limited automatic extension of visas, it only applies to Chinese nationals, this is no longer tenable in light of the global nature of the pandemic. The policy should apply to all migrants. It is not satisfactory or desirable to operate a complex series of exemptions or 'reasonable excuses', or to ask people to rely on the Home Office guidance around 'exceptional circumstances'. Migrants cannot trust that discretion will be applied fairly, however sincere the intent currently present in the Home Office. The independent Windrush Lessons Learned Review findings are proof of that. Simplicity and efficacy, combined with cast iron guarantees are key.

The Home Office is overstretched as it is, and the Windrush Lessons Learned Review has revealed the huge amount of work that will be required to return it to effective function. It is in the department's interests to create a clear and simple system whereby absolutely no one will fall out of status during the crisis, and for a period thereafter. Similarly, it must suspend all work, earning, or other requirements during this period, so that no one is penalised for failing to attend work, or for earning below an income threshold. It must also give a blanket assurance that no one will be penalised for remaining out of the country for too long.

Any failure to do so will create perverse incentives for individuals to travel or work, when it is not safe to do.

Kim is a self-employed TV producer. Her husband Danny* is Canadian, and is also self-employed. They met the Minimum Income Requirement for her husband's spouse visa using her income. Now, after living and working here for 5 years, he can apply for Indefinite Leave to Remain. However, the pandemic means that they are both out of work. And since Danny has No Recourse to Public Funds as a condition of his visa, the couple are receiving just £94 a week in financial support.*

Both suffer from asthma, and as such are in the high-risk group. Therefore, any effort to take up alternative work would be going against medical advice, as they have been strongly advised by the NHS to self-isolate for 12 weeks. However, they fear that if they do not, not only will they not have enough money to live on for the duration of the pandemic, but they also will not be able to fulfil the requirements for Danny's new visa, and risk being split up.

*Names have been changed.

NB. The discretionary scheme announced by the Home Secretary does not meet the criteria. Not only is it discretionary, rather than automatic a person who applies for a discretionary extension of leave does not get an automatic extension of leave under section 3c. If their application is rejected they may become an overstayer. Nor is it clear what form of leave is granted. Immigration lawyers are wary of the scheme, and those without access to legal advice risk falling foul of its gaps.

Grant Leave to Remain for All Victims Of Trafficking

There are many recognised victims of trafficking who have not been granted leave. In the current circumstances it not reasonable to expect these people to return to their country of origin. All those with positive Conclusive Ground decisions should be granted leave to remain.

Support for those housed in shared Asylum Accommodation

This is essential to enable safe access to medical services, testing, and where necessary, rehousing for particularly vulnerable people.

Asylum seekers housed in shared accommodation are similarly at risk from often overcrowded and unhygienic conditions. Independent health assessments of all asylum accommodation and relocation of persons at heightened risk from the virus must be urgently implemented alongside increased specialist healthcare provision for people in accommodation, including mobile clinic services.

The above measures must be accompanied by a wide-ranging public information campaign to ensure that migrants are able to safely access the healthcare they need during a public health crisis.

Compliant Environment

The Compliant Environment is made up of a series of measures aimed at making life and access to basic services, including healthcare and housing, as difficult as possible for migrants without leave to remain in the UK. By definition, therefore, it is an inappropriate set of measures to be in operation at a time where access to safe isolation conditions and unfettered access to healthcare for all are of the utmost importance to protect public health. We want everyone in the UK to be able to approach the police, social services, or any other official body and provide them with information about problems. The compliant environment makes that impossible.

While the need to protect all migrants, including those who are undocumented, from the spread of infectious disease is necessary to protect everybody's health, it is important to note that it is not only undocumented migrants who are impacted by Compliant Environment policies. The risk implied

by the barriers to services put up by these policies therefore goes much beyond the estimated one million people living in the UK without status. This is reflected in the findings of the Windrush Lessons Learned Review, *“Failure to listen to warnings resulted in [the Home Office] pursuing the implementation of Hostile Environment measures on the assumption that they would only affect people who were in the country illegally. It seems to have given little consideration to the possibility that the measures might unintentionally bear down on people for whom it was not intended... Instead the evidence suggests that the measures... create the risk of exacerbating or increasing discrimination.”* WLLR, p.140

The Compliant Environment measures that restrict migrant access to healthcare directly are exhaustively covered in the sections above. However, numerous other measures in this programme add to and compound the risk that migrants and people who may find it difficult to prove their status face. In order to adequately protect these groups and by extension the entire population, all measures making up the Compliant Environment must be suspended for the duration of the crisis.

Right to Rent

Right to Rent checks have been found in the courts to produce discrimination making it more difficult for non-British nationals and ethnic minorities to access private rented accommodation. This creates opportunities for rogue landlords to exploit migrants and ethnic minorities who struggle to find alternatives. Damp, unsanitary and overcrowded rental conditions are especially dangerous environments for the spread of infectious disease. Suspending Right to Rent checks may be of limited use for those already in these conditions, but for some migrants and ethnic minority British nationals who are currently looking for accommodation, it could prove the difference in finding somewhere safe to live for themselves and their family.

For migrants who are coming to the end of a period of leave, the uncertainty created by the current situation could leave landlords who are concerned with playing by the rules, confused about whether or not they can continue to rent to them. Landlords may seek to remove migrant tenants if they are worried of falling foul of Right to Rent conditions as the crisis continues and exceptional extensions or other unclear visa conditions are in place.

Employer checks & other

The criminalisation of working for undocumented migrants and checks and fines imposed on employers who take them on have already forced many people into destitution and reliance on charity or into work in the grey economy. The risk now is that employers who are concerned about additional government checks on their workforce in the context of applying for COVID-related emergency state support will simply sack any employee who is unable to easily prove their status. This could result in many more people left destitute at a time when food banks and charities that usually support people in these situations are also being forced to close.

Migrants who are unable to prove their status and are forced to work in informal employment will not have recourse to effective complaints mechanisms and state support if they are forced to work in unsafe or unsanitary conditions. There is a real risk that, as the economy shrinks and so does the grey economy, increasingly desperate migrants will be forced by unscrupulous employers or traffickers into ever more dangerous and exploitative conditions. Immediately suspending the criminal offence of working while undocumented and lifting sanctions on legitimate employers who do not check immigration status is the only way to ensure migrants are protected from this extremely serious risk.

Other Compliant Environment measures, including limiting access to bank accounts and drivers' licences, should also be suspended at this time. All measures that make it difficult for sections of the population to access vital services, to self-isolate, or to use private means of transport make it more difficult for them to abide by health recommendations designed to keep all of us safe.

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JCWI is an independent charity campaigning for justice and fairness in immigration, nationality and asylum policy since 1967.