

Challenging Reporting Conditions

OCTOBER 2022

GUIDE FOR ADVISERS AND CASEWORKERS

migrants
organise



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

This guide is not legal advice. Information and opinions provided do not address specific individual circumstances and are for informational purposes only. They do not constitute any form of legal advice and should not be relied on or treated as a substitute for specific advice relevant to particular circumstances and is not intended to be relied upon to make any specific decisions.

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.

This guide has been updated from the previous version dated July 2021 to reflect the changes to the Home Office's Reporting and Offender Management Policy

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

Published by Migrants Organise Ltd in October 2022


This document is copyright ©Migrants Organise Ltd. Some rights reserved.

Migrants Organise wants to encourage the circulation of its work as widely as possible while retaining the copyright. We have an open access policy which enables anyone to access its content online without charge. Anyone can download, save, perform or distribute this work in any format, including translation, without written permission. This is subject to the terms of the Creative Commons Licence Deed:

Attribution-Non-Commercial-No Derivative Works 2.0 UK: England & Wales. Its main conditions are:

- You are free to copy, distribute, display and perform the work;
- You must give the original author credit;
- You may not use this work for commercial purposes;
- You may not alter, transform, or build upon this work.
- You are welcome to ask Migrants Organise for permission to use this work for purposes other than those covered by the licence.

We are grateful to Creative Commons for its work and its approach to copyright. For more information, please go to www.creativecommons.org



Help Us Challenge Reporting Conditions!

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.

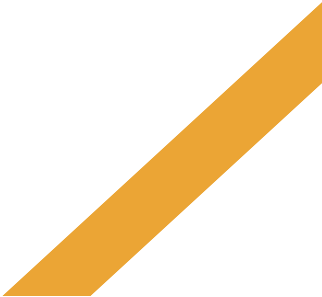
[Sign our Charter now!](#)



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

- During the COVID pandemic, the Home Office produced additional policy on how to implement reporting condition during the pandemic and introduced telephone reporting.
 - Many individuals were told that they did not have to physically report anymore and that they were going to receive a call instead from the Home Office. Some people never receive this call and have not been called back for reporting. Others have now been called back to reporting.
 - In the meantime, the Home Office has now introduced a new Reporting and Offender Management Policy (v5.0) which, in effect, introduce telephone reporting as the standard for most individuals.
- 

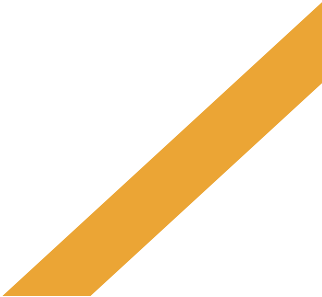
What if You are Not Accredited to Provide Immigration Advice?

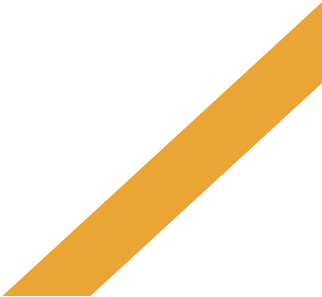
Request to vary immigration bail is immigration advice. As mentioned, the person's immigration representatives should be able to assist with the matter.

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.

You can also assist a person who is reporting to write their own letter, particularly if the issue is around requesting other form of bail condition or a change to telephone / digital reporting.

GENERAL TIPS

- Remember, first time asylum seekers should not be reporting at all. We suggest requesting either a no working condition (which is illegal in any case), or residency condition.
 - Telephone / digital reporting should be the standard now for people unless they fall within the 5 categories of individual suitable for in person. The current policy, while not being explicit, is really quite clear on this. We are however hearing varied practice in different reporting centres which is why it is so important for individuals to continue challenging inappropriate reporting conditions.
 - 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.
- 

Relevant Policies

Immigration Bail, v 13.0, published 30 August 2022

- 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).
- The section on reporting conditions specifies that there are 3 types of reporting conditions: in person, telephone or digital. Most details on digital reporting can be found here.

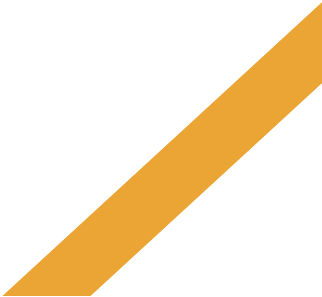
Reporting and Offender Management Policy, v 5.0, published 30 June 2022

- The reporting and offender management policy provides the main guidance on imposing and implementing reporting conditions, particularly in person and telephone reporting
- 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 (no longer in use)

- This interim guidance provided 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.
- This guidance is no longer in place and has been absorbed into the main policy above.

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?

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'.

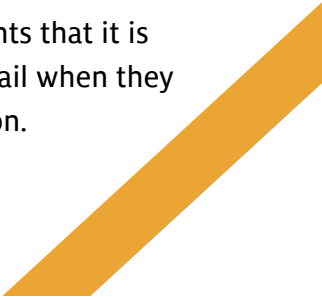
When considering challenging reporting, the first thing to ask: is this reporting condition appropriate? Below is a list of step by step questions that should be considered to answer this question.

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.
- 

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

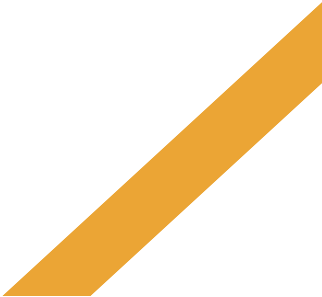
1. Vulnerability of the client. When assessing whether a reporting condition is appropriate, considerations must be made to the vulnerability and personal circumstances of the client. For example:
 - a. Individuals with disabilities might not be able to withstand the journey to reporting centres, or be able to use electronic communications properly for telephone or digital reporting.
 - 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.

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 at page 12, any conditions imposed "must":

- Take into account the facts of the individual case
- 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
- Be in furtherance of facilitating individual's return.

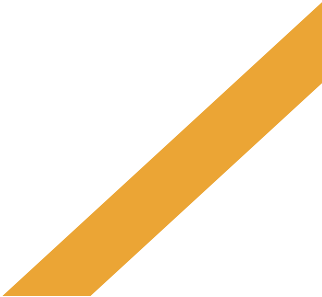
Take as an example, an individual is already represented by an immigration solicitor and is fully supported by social services under the Care Act. In such a case, the purpose of imposing a reporting condition can be questioned. Home Office can easily maintain contact with the individual through the solicitor 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. Further Guidance on the Appropriateness of Imposing Reporting as the Bail Condition

The current Reporting and Offender Management policy v5.0 also provides more useful guidance on considering whether reporting condition should be imposed. Specifically:

- At [page 8](#) : "The purpose of reporting is to ensure that those without leave to remain in the UK and illegal entrants remain in close contact with the Home Office. A reporting requirement of bail is used to enable case progression, interviews, offers of voluntary departure and travel document applications to be conducted to support removal actions. A person on a reporting regime will be considered for a variety of methods to report including in person within a Centre or a combination of telephone reporting, digital bail or electronic monitoring."
 - At [page 8](#) : "there must be a reasonable suspicion of liability of removal, have been served with a notice of liability of administrative removal, or deportation from the UK, before being required to report" and
 - "New asylum applicants will not be required to report until a negative decision is made on their application, unless exceptional circumstances apply, for example the applicant is also a foreign national offender (FNO), a restricted access case, a TCU case, these will be decided on a case by case basis."
 - The above is repeated again at [page 11](#): "When a person makes a new claim for asylum, either in-country or at port, **they should not be immediately put onto reporting restrictions** unless exceptional circumstances apply" [bolded in the policy].
 - And again at [page 27](#) : "New asylum applicants will not be required to report until a negative decision is made on their application or inadmissible cases have a return agreement in place, unless exceptional circumstances apply, for example the applicant is also a foreign national offender (FNO), a Restricted access case, a TCU case, these will be decided on a case-by-case basis."
- 

5. In Person, Telephone or Digital Reporting?

The current Reporting and Offender Management guidance proposes a "blended" approach to reporting between in-person, telephone or digital. Digital reporting is when the Home Office sends a link to the person through text or e-mail to allow the individual to check-in with the Home Office digitally.

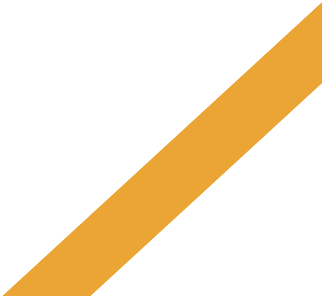
The guidance provides much more detailed consideration as to when telephone reporting should be used instead of in person. In effect, telephone reporting should be the standard for most individuals. At [page 14](#), the guidance states that decision makers "MUST" ensure that individual falls within the 5 categories below when considering if an individual should "commence or recommence" in person reporting:

- (a) foreign national offenders (FNOs)/High Harm/Special Immigration Appeals Commission (SIAC) or restricted access cases or 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.
- (d) those identified for removal
- (e) those who are not immediately removable but have failed to comply with telephone reporting and are currently 'out of contact'

The guidance also states that "for those already on face-to-face reporting, should representations or evidence be submitted, and the individual does not fall under categories (a) to (e), reporting can be considered via telephone or digital system unless there are exceptional circumstances."

At [page 15](#), it states that a "senior caseworker or manager must approve any continuation of face-to-face reporting and ensure the justification is evidenced on CID (Person Notes)/Atlas accordingly).

The Immigration Bail policy provides detail on digital reporting at [page 22](#): "There are no general exclusions to any individuals in relation to a Digital Contact bail condition. However, it is more likely to be suitable where a person has demonstrated continued compliance with immigration bail and processes. When making a decision whether to impose this condition, decision makers must first consider all forms of reporting conditions."



6. Is the Specific Reporting Condition Appropriate

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

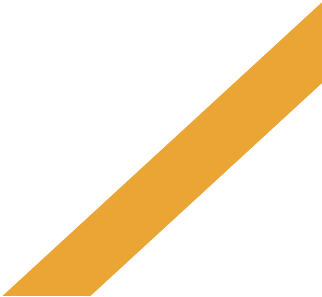
- Frequency of reporting condition
- Distance to reporting centre.
- Financial assistance (transport or childcare cost)
- Availability reasonable adjustments*

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.

While for most individuals telephone or digital reporting might be the least onerous options, some individuals might actually struggle with phone calls or checking in digitally through links sent by the Home Office (via email or text message). In such a case, you should consider again whether reporting, in any form, is truly appropriate.

* 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)



Steps to Challenge Reporting Condition

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.

In straightforward cases where the person falls outside of the 5 categories for in person reporting, we suggest that representations be made immediately focusing on the fact that the person should be on telephone / digital reporting.

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.



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, at [page 80](#), 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

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).

