

Written evidence submitted by Amnesty International UK and Migrant Voice (COR008)

1. Amnesty International UK is a national section of a global movement of over seven million people who campaign for every person to enjoy all rights enshrined in the Universal Declaration of Human Rights and other international human rights standards. We represent more than 670,000 supporters in the United Kingdom. We are independent of any government, political ideology, economic interest or religion.
2. Migrant Voice is a national, migrant-led organisation working with migrants regardless of their status and country of origin, including refugees and asylum seekers. We develop their skills and confidence, empowering them to speak for themselves about their own lives and issues that affect their communities. Whether speaking out in the media or on public or political platforms, the aim is to create positive change for migrants – countering xenophobia, discrimination and unjust policies, strengthening communities, and bringing social justice – change which benefits the whole of UK society.
3. This submission concerns the Home Office response in relation to its immigration and asylum functions.
4. The Committee’s terms of reference address these functions in relation to operation of contracted services (e.g. detention and asylum accommodation); and effective communication as this relates to such functions.
5. We urge the Committee to consider concerns regarding these functions that do not fall neatly within the terms of reference but have real potential for harm to individual and public health due to the pandemic; and thus to undermine the country’s response to it.

Overview of the response

6. The pandemic does not respect citizenship or immigration status and it is necessary and for the benefit of the whole population that relevant, appropriate and effective safeguarding measures extend to the circumstances of everyone in the UK. In particular, as the action plan highlights, containment and delay in spread of the virus and mitigating its impact are essential to (i) protect life and health; (ii) secure and maintain health and care services’ capacity; and (iii) secure and maintain capacity of other public, social, economic and cultural services and activity, during the pandemic and thereafter.
7. It matters, therefore, that everyone can adhere to guidance or mandatory measures directed to reducing the pandemic’s spread and impact, including those concerning social distancing and isolation, health treatment and care. The more people do not or cannot do so, the greater the risk of illness, spread and impact on essential and other services.
8. Accordingly, it must be considered:

- What powers the Home Office exercises that necessitate social interaction or reduce capacity to avoid or lessen that? Is exercise of these powers, whether in individual cases or at all, necessary, safe and appropriate at this time?
 - What powers the Home Office has that can help reduce need for social interaction? How might these powers be used, whether in individual cases or generally, to strengthen the pandemic response?
 - For what further legislative or other impediments to people following guidance or mandatory measures is the Home Office responsible? What can and should be done to remove these impediments to strengthen the pandemic response?
9. We are not public health experts. We do not at this time, therefore, make discrete recommendations. That caution does not mean we consider unnecessary more precise action than we have specified. We urge the Committee, whether through this inquiry or in exercise of its wider role, to seek Home Office disclosure of advice it has sought and received from medical, health and public health bodies, when it has done so and what information it has given those bodies to evaluate necessary mitigation or moderation of its functions in response to the pandemic; and evaluations it has made.

Home Office powers and practices that risk exacerbating the pandemic:

10. The Home Office exercises several powers that necessitate social interaction, whether by their nature or the manner of their exercise – including detention, reporting, removal and deportation powers – and requires people to attend its and other offices to make certain applications, lodge certain documents, give biometrics and attend interviews.¹
11. People affected by these powers include individuals against whom the power is exercised, staff working in connection with its exercise and other persons (e.g. the general public where people travel to a reporting centre or on non-chartered removal flights).
12. The Home Office has taken some steps to reduce exercise of these powers.² However, it has not made any comprehensive announcement concerning them. Reports that it released some people from detention in response to litigation indicate a failure to comprehensively reconsider these powers and their use.³
13. The pandemic has other impacts raising questions about use of these powers. For example, travel restrictions mean there is no reasonably imminent possibility of

¹ Migrant Voice is aware of appointments that remain outstanding to submit applications and biometrics at Lunar House. This is causing people deep concern about the risk to themselves and others from travelling to submit applications set against the consequences of not doing so.

² The Home Office has placed a notice on its website announcing the temporary deferral of all reporting under immigration bail conditions pending a decision on how frequently it may yet require people to report in light of Public Health England advice: <https://www.gov.uk/immigration-reporting-centres>

³ This was reported in *The Guardian* on 21 March 2020: <https://www.theguardian.com/uk-news/2020/mar/21/home-office-releases-300-from-detention-centres-amid-covid-19-pandemic>

removing many people from the country. The risk of infection due to confined space on flights may also preclude such removal. If so, powers whose sole legitimate purpose is removal cannot lawfully be exercised at this time.

Home Office powers that could reduce the pandemic:

14. To effectively socially distance or self-isolate, people must be in safe and secure accommodation and able to adequately maintain themselves and family with supplies of food, medication and other necessities. People are highly likely to be unable to do so if without recourse to public funds or legally excluded from accommodation. Among those affected are people who escaping, or need to escape, domestic violence and trafficking in the UK. Similarly, people need to maintain their and their family's health – particularly in relation to COVID-19 and any health condition rendering someone vulnerable to it.
15. However, for people subject to immigration control, access to accommodation, financial means and healthcare are regulated and restricted.⁴ People without leave to enter or remain are generally excluded from employment, rented accommodation, various social services, welfare support and public funds;⁵ and excluded from much free healthcare (that exclusion does not apply to treatment for COVID-19 but does extend to treatment for many underlying conditions that make someone especially vulnerable to it).⁶ Many people with leave to enter or remain are subject to some of these exclusions where leave is subject to conditions restricting employment and/or recourse to public funds.⁷
16. Accordingly, granting, extending and removing restrictive conditions on leave increases or ensures people's capacity to adhere to guidance and act in ways that support the pandemic response. The Home Office has taken some steps, such as to extend leave to people where it acknowledges they have or may become stranded in the UK due to travel restrictions⁸ However, these have been far from fully inclusive⁹

⁴ Relevant legislation includes section 115 of the Immigration and Asylum Act 1999, Schedule 3 of the Nationality, Immigration and Asylum Act 2002, Part 3 of the Immigration Act 2014 and Part 2 of the Immigration Act 2016.

⁵ The impact of this is wide including, for example, on access for survivors of domestic violence to refuges and specialist support provision.

⁶ The National Health Service (Charges to Overseas Visitors) (Amendment) Regulations 2020, SI 2020/59 made on 27 January 2020 extended the provision of free healthcare regardless of immigration status in the UK to treatment for coronavirus. However, The National Health Service (Charges to Overseas Visitors) Regulations 2015, SI 2015/238 impose charges for a wide range of healthcare services to people subject to immigration control who neither have paid an additional tax (health surcharge) on their applications for leave to enter or remain nor are exempted from charges.

⁷ Section 3(1)(c) of the Immigration Act 1971 empowers but does not require the Home Office to apply these conditions to a person's leave to enter or remain. They are commonly applied.

⁸ The most recent announcement on 24 March 2020 is of potentially wide application but does not apply to anyone whose leave expired before 24 January 2020; fails to address the circumstances of people who may be unable to pay fees or be confused as to what category in the rules they are expected to apply under and cannot access legal advice; and is unclear in its application to everyone who cannot or should not be expected to travel at this time (the short guidance refers specifically and solely to inability to leave due to self-isolation or travel restrictions whereas Government advice is now generally that everyone should where at all possible be self-isolating and practising social distancing):

<https://www.gov.uk/guidance/coronavirus-covid-19-advice-for-uk-visa-applicants-and-temporary-uk-residents>

⁹ For example, a Migrant Voice member currently has leave to remain that expires on 1 May and requires that he find a Tier 4 sponsor before that date. Due to Covid-19, very few university courses are currently running, to

and no comprehensive announcement has been made concerning people in the UK without leave, whether they previously had leave or not; nor concerning restrictive conditions on leave. A further consequence of people being without leave is a need to pursue appeals and other legal remedies which, for example, may necessitate travel and attending lawyers' offices.^{10 11}

17. The Home Office has powers to provide accommodation and support.¹² Their use could be extended. These powers must be exercised to support the release from detention of people, who do not have safe and secure accommodation and support immediately available to them.¹³

Legislative and other impediments to an effective response to the pandemic:

18. Statutory exclusions on access to social services, welfare support and public funds (which apply to many people also prohibited from working), to rented accommodation and to various free healthcare provision effectively exclude many people from means to provide for themselves and family, adhere to guidance and act in ways that support the pandemic response.¹⁴
19. Widespread data-sharing for immigration enforcement purposes also impedes an effective pandemic response. People are deterred from accessing services, including healthcare services, to which they are entitled and/or to which access is necessary.¹⁵
20. Many people affected will be hard to reach, not least because of policies of successive governments that create or exacerbate people's marginalisation.¹⁶ There is an urgent need for the Home Office to address how information, including about changes to the immigration system, is disseminated to ensure it is received and understood by everyone who needs it. One example concerns the exclusion of treatment for COVID-19 from healthcare charges without any visible plan for ensuring that everyone subject to charges knows this treatment is free. Among steps that might usefully be taken is ensuring that televised ministerial statements, such as from the Prime Minister, include clear statements that this treatment is free to everyone.

which he could apply, and very few universities are currently assessing applications for the next academic year.

¹⁰ For example, a Migrant Voice member received a refusal letter on 19 March following an asylum application. She was advised to submit an appeal within 14 days (made very difficult by the current situation) or to leave the country (both difficult and potentially dangerous). The letter also recommended a "face-to-face meeting" with her solicitor, despite the current public health guidelines. Her solicitor has now fallen ill and she is very concerned she will not be able to submit an appeal on time.

¹¹ Courts and tribunals are changing their procedures to avoid the need for people to attend a hearing. The implications for access to justice is a matter primarily for the judiciary, but the Home Office should consider steps it can and should take in light of this such as being more diligent to review and withdraw refusals where appropriate without the need for an appeal to proceed.

¹² Paragraph 9 of Schedule 10 to the Immigration Act 2016 may be of particular importance at this time.

¹³ We are aware of reports that the Home Office continues its practice of releasing people from detention without their having any place to go to.

¹⁴ See fn 4.

¹⁵ This is something to which the Health Select Committee drew attention in its 2018 inquiry on a memorandum of understanding on data-sharing between NHS Digital and Home Office, Fifth Report of Session 2017-19, HC 677, April 2019.

¹⁶ This was especially dramatically exposed by the Windrush scandal but the effect is far more widespread.

21. A further concern is the impact of racism and xenophobia related to the pandemic. The Government is not, of course, responsible for comments of others that receive considerable public coverage and describe COVID-19 as a foreign or Chinese virus.¹⁷ However, this coverage makes it more imperative that the Government response includes attention to how it will combat prejudice and misinformation.

Conclusion:

22. The immigration and asylum systems variously contribute to people's inability to adhere to guidance and act in ways that are necessary or desirable for the pandemic response. The Home Office, however, has considerable discretion to mitigate and moderate these systems to reduce or remedy this. It is urgent and necessary that it does so; and in a comprehensive and clear manner giving confidence to all concerned.
23. We make two final observations.
24. Firstly, as Government guidance recognises, measures such as social distancing and isolation are liable to increase strain on mental health and wellbeing.¹⁸ This needs particular recognition in relation to various matters we raise in this submission because many people subject to immigration controls are already, including for many reasons elaborated in this submission, living with mental ill-health, trauma or under considerable stress.
25. Secondly, we have several underlying and longstanding concerns regarding the immigration and asylum systems – including excessive and unlawful use of powers; measures and practices that cause deprivation and exclusion and enable exploitation and abuse; and exclusion of people, including carers and health professionals, from the workforce and consequent de-skilling. This pandemic has further exposed the individual and wider social harms entailed in that.

March 2020

¹⁷ There have been several such statements made, for example, by the President of the United States.

¹⁸ See e.g. guidance on social distancing published on 16 March 2020:

<file:///pangolin/Users/ssymonds/Desktop/Coronavirus%20COVID-19/Guidance%20on%20social%20distancing%20for%20everyone%20in%20the%20UK%20and%20protecting%20older%20people%20and%20vulnerable%20adults%20-%20GOV.UK.pdf>