

## **Media Release**

### **Re: Legal Action Against Department of Home Affairs. (Breach of European Convention on Human Rights Case)**

1. In respect of those Claimants currently represented by Mr Ian Kermode Advocate regarding their treatment on the *Isolation Wing* of the Isle of Man Prison during April/May 2020, we confirm the matters as set out below.
2. The significant elements of the Claimants' case were as follows:-
  - i) That for a period of up to 14 days they were confined to their cells;
  - ii) They were denied showers;
  - iii) They were denied any outdoor exercise;
  - iv) They were denied any social visits or phone calls to family and friends;
  - v) They had their food delivered only once a day;
  - vi) Medication was delayed/altered;
  - vii) Men and women were incarcerated on the same Isolation Wing.
3. It was alleged that such combined conditions all occurring simultaneously constituted a breach of *Article 3* European Convention on Human Rights (the right not to be subject to inhuman or degrading treatment), *Article 8* (the right to respect for private and family life) and also negligence by the Department of Home Affairs (breach of duty of care).
4. Following the commencement of civil legal action but before the final Court hearing of the case listed for May 2023, all such Claimants (a number of men and women) accepted financial settlement proposals offered by the Department.
5. Such monetary settlement proposals made by the Department were without any admission of liability.
6. Additionally, the amount of monies now satisfactorily paid to each respective Claimant by the Department is subject to Confidentiality Agreements (a form of Government Non-Disclosure Agreement).
7. In view of the financial payments attained, further legal action was no longer necessary.
8. Although there were common features between all Claimants' claims, individual personal circumstances varied (such as the length of detention and the nature of expert evidence of psychiatric harm) and differed including in relation to the separate detainee (not currently represented by Mr Kermode) whose particular legal case against the Department was dismissed in a High Court judgment dated 15<sup>th</sup> June 2023.
9. For the avoidance of doubt, the claims only related to the *Isolation Wing* (not other wings at the Prison) and only for the period April/May 2020.
10. A distinct but directly linked issue concerns the arrest of persons for breach of Coronavirus Regulations, such as the *Prohibition on Movement Regulations* (restrictions on leaving home) and the *Prohibition on Gatherings Regulations* (restrictions on who to meet).
11. The Isle of Man and the UK had essentially identical 2020 Regulations save that in England, Wales, Scotland and Northern Ireland breach of such Regulations was

only punishable by way of a fixed penalty notice (on-the-spot fine of approximately £100 in the first instance), whereas in the Isle of Man breach was punishable by a fine of up to £10,000 or up to **3 months' jail**.

12. A fixed penalty notice in the UK is not treated as a recordable offence, whereas in the Isle of Man breach of Coronavirus Regulations was recorded as a criminal conviction.
13. Remarkably, between 1<sup>st</sup> March 2020 and 1<sup>st</sup> April 2022, there were a total of **248 arrests** and **70 custodial sentences** handed down for breach of Coronavirus Regulations in the Isle of Man (see Freedom of Information response dated 10.10.22).
14. Significantly, in the UK **no** person was jailed for breach of similar Regulations (or under the amended Forgery Act 1981 in respect of false information on passenger locator travel forms).
15. Additionally, whereas the UK Coronavirus Regulations only applied to persons aged *18 or over*, in the IOM the Regulations also applied to children. Controversially, in the IOM there were **22 juvenile** arrests (persons under the age of 17) and **2 juvenile custodial sentences** handed down by the Court for breach of Coronavirus Regulations. In sharp contrast, **no** children in the UK were arrested or sentenced for breach of Coronavirus Regulations.
16. The DHA in its media release last week pointedly made reference to the cost to the public purse of legal proceedings against the Prison.
17. Whilst we do not comment on the Court judgment, fundamentally if the Manx Government had made 2020 Coronavirus Regulations punishable only by way of a fixed penalty notice (as in the UK), it is likely that no person would ever have been arrested, sentenced by the Court, or served a custodial sentence at IOM Prison for breaching such Regulations.
- 18. Most of the considerable costs to the taxpayer of Police arrests and detention, criminal court appearances, Prison incarceration and consequential civil litigation (including settlement monies) that have in fact been incurred would therefore have been avoided.**
19. Finally, we note that several jurisdictions around the world have in fact quashed convictions for breach of Covid rules.
20. For example, Spain's highest constitutional Court ruled in July 2021 that all fines imposed on Spanish citizens for breach of Covid rules during the State of Emergency (March to June 2020) were unlawful. The rules were deemed to represent an unconstitutional suppression of human rights and the Spanish Government has subsequently reimbursed members of the public for fines amounting to approximately €134 million.
21. Is there any prospect of Covid convictions being quashed on the Isle of Man?