

GPS electronic monitoring of people on immigration bail – briefing by Bail for Immigration Detainees

This briefing presents systemic problems with the government’s use of GPS Electronic Monitoring (EM) of people facing deportation identified by the Independent Chief Inspector of Borders and Immigration (ICBI)¹ alongside testimony evidence from BID’s interviews of people who are tagged.

Background:

In December 2020 the Home Office transitioned from radio frequency electronic monitoring (EM) to a far more intrusive system of GPS monitoring for people on immigration bail. GPS monitoring provides 24/7 real time location monitoring, tracking an individual’s every move. In August 2021, the government laid a commencement order which brought into force parts of Schedule 10 of the Immigration Act 2016, which made EM mandatory for anybody on immigration bail who meets the deportation criteria ² (except where one of two exceptions applies³). Prior to the introduction of mandatory EM, there were 269 people fitted with a GPS tag⁴. Under mandatory EM the Home Office anticipates that 4,500 people will be monitored⁵.

Home Office systemic failings and lack of safeguards

On 7th July 2022 the ICBI published an inspection report into the Home Office’s GPS tagging system. One key finding was that the Home Office lacks the capacity to deliver mandatory EM, and it was evident from the report that when resources are scarce, safeguards and protections are the first to be sacrificed, and enforcement is prioritised. The ICBI found that *‘some fundamental elements required to support operations had yet to be put in place, over 6 months after the duty to implement EM had commenced.’*⁶ A lack of understanding, training and resources on the part of both the Home Office and the private subcontractor – Capita – is highlighted in the ICBI report.

The Home Office failures on the GPS tagging system are extensive. One of the few safeguards in the system is the requirement for the Home Office to undertake 3-monthly reviews of tagging to assess whether EM continues to be appropriate, but lack of resources and administrative failures. The report states *‘managers said they were “unable” to do EM reviews due to lack of resources, and that pre-application protocol letters (PAPS) and judicial reviews (JRs) were prioritised due to the set reply times. The effect of this was that only those persons with access to legal advice would have the benefit of such a review.’*⁷

BID has spoken to 19 people about their experiences of being tagged. Of those, only 2 people were even aware that a 3-month review existed. Given that EM can be imposed for an indefinite period and can last years, all interviewees expressed great concern to understand how to apply to get their tag removed and what the process of this could be, explaining they repeatedly ask the immigration authorities when and how their tag will be removed with no definitive answer. One interviewee stated *‘please show me how and where to make that request*

¹The Independent Chief Inspector of Borders and Immigration (ICBI), ‘An inspection of the global positioning system (GPS) electronic monitoring of foreign national offenders’ report, July 2022 <https://www.gov.uk/government/news/inspection-report-published-an-inspection-of-the-global-positioning-system-gps-electronic-monitoring-of-foreign-national-offenders-march-april-2>

² Any foreign national who received a 12 month sentence or those deemed by the Home Secretary to be a serious or persistent offender

³ Those exceptions are where the Secretary of State considers tagging to be a) Impractical, or b) Contrary to the individual ECHR rights

⁴ Data correct up to 10th May 2021, FOI response provided on 17th May 2021

⁵ This is referred to by the Home Office in various places including their own Data Protection Impact Assessment for the policy

⁶ ICBI report, p.11

⁷ ICBI report, p.29



(review) and I will be shouting from the roof tops'. The hope of any form of re-assessment is what many tag wearers hang onto, as several interviewees told BID:

- 'when I start to second guess, it dampens my mood because that's all I do, I second guess it'.
- 'my mental health is being affected as you don't know what is happening with your life. No date, just waiting, for how long?'
- 'hopefully they will come and take it off, I'm just waiting for the right time with the Home Office...what do they want me to do, I can't stay in life like this just charging something and staying.'

The ICIBI's evidence suggests that waiting for a review of tagging conditions is a false hope that will not materialise.

The report finds that due to Home Office staff focusing primarily on EM legal challenges, people are at risk of their Common Law or ECHR rights being breached and remaining tagged far longer than necessary, presenting 'a risk that a person may remain on a tag even though there may be evidence to suggest that this is no longer appropriate, for example due to a vulnerability or medical condition'⁸. Furthermore, the report finds that when representations are made to remove EM tags, fewer than 3% succeed (2 out of 73).

Those representations appear to be undertaken by staff who are not qualified to assess medical evidence, the necessity and justification of maintaining EM, or potential ECHR rights breaches. 'Among the areas that staff considered they required further training were on responding to representations and legal challenges (pre-application protocol letters and judicial reviews), in particular assessing independent medical evidence, vulnerability, Convention rights and harm levels. Use of harm levels by Hub staff (Home Office) was still in development at the time of the inspection. Managers acknowledged that "The staff have received little to no formal training"⁹. It is no surprise, therefore, that only 3% of applications to have the tag removed are successful.

The report also quotes Home Office staff member saying 'prisons are holding them for even longer [leading to concerns of] unlawful detention'¹⁰.

Capita's failure to deliver on its contract

Capita has been allocated a lucrative contract worth £114 million¹¹ to carry out the Electronic Monitoring Service (EMS) and it is consistently failing to deliver. The ICIBI reports that Home Office staff raised concerns about Capita's working practices stating 'EMS tagging teams turn up at all times' which is 'not acceptable for people with families'¹². BID has heard from tag-wearers that Capita staff turn up at their homes without warning, often late at night, and many miss the appearance of the Capita staff, subsequently having to wait days and weeks for another visit. A number of interviewees described the difficulty of communication with Capita staff: 'every day I call and they say, "maybe today, maybe tomorrow". I asked can you tell me a day, not even a time, just a day so I can wait, they said no, sorry we can't.'

The report finds that many tags are failing to work properly stating 'instances of faults in December were exceptionally high across the whole of the MOJ contract, with 1,195 devices returned, which included 907 SOLO [EM devices] which [Capita EMS] had to recall and return due to a charging fault which all had to go back for

⁸ ICIBI report, p.22

⁹ ICIBI report, p.26

¹⁰ ICIBI report, p.22

¹¹ <https://www.capita.com/news/capita-extends-moj-contract#:~:text=Capita%20announces%20today%20that%20it,effective%20from%201%20February%202021.16/04/2020>

¹² ICIBI report, p.26



repair¹³. The ICIBI also found widespread failure to contact tag wearers – such as to let them know that the battery is running down.

The comments made by Home Office staff towards Capita are damning: *‘When it’s on 20% battery, they [EMS] should call the FNO, but they don’t call... if they did this, it would reduce the numbers [of breaches] and we could focus on the ones that are properly breaching...EMS don’t communicate¹⁴’*. Home Office staff had escalated matters but were resigned to the fact that *“it won’t go anywhere” and they had become “desensitised to the issues with EMS”¹⁵*. This indicates the dangers of outsourcing a contract of this kind to a private company driven by profit, seeking to push down costs while lacking meaningful public accountability.

Many people that BID have spoken to said that it would be helpful to be informed when the battery is running low so that their daily life can be less disrupted. One client presents the effect of battery failure on their mental health explaining that his tag often beeps out of the blue in a public place stating *‘I don’t feel like a human being, I feel like a car or something, I cannot function like a car without petrol...people look at me. It’s demoralising when it runs out and beeps, I sometimes pretend it’s my mobile phone. It’s really hard. I make my excuse and move away from the place.’*

Lack of Compliance with Data Protection Law

The report finds that there is no data quality framework in place to assure that data is being properly managed, including the sharing of trail data with inconsistencies existing with the management of data, stating *‘currently, staff rely on Excel spreadsheets they have created themselves and information from Home Office IT systems that they told inspectors they did not trust’¹⁶*. The findings show that the Home Office is unable to report on the data of who is exempt from the requirements for EM, quoting a staff member: *‘This data is not currently captured in a way that can be easily reported upon’*. The ICIBI commented that *‘This meant the Home Office could not differentiate cases where consideration had been given to EM from those where it had not.’¹⁷* The mismanagement of data presents a risk to the individual where care and vulnerabilities are not flagged through the data, the report finds, *‘there was no systematic monitoring of trends or themes within the data. For example, to establish if there was a relationship between breaches or compliance, and those with vulnerabilities or protected characteristics’¹⁸*.

Furthermore, the ICIBI criticises the fact that as the data is held internally on Capita’s systems, there is no way of assessing if it is being held in a GDPR compliant way - *‘The Home Office did not have access to these systems, which was a concern as it had limited oversight of how this data was managed, protected and shared’¹⁹*. This lack of data protection and accountability is of utmost concern and reflects a failure to protect the data rights of vulnerable migrants. BID’s interviews reflect the total lack of information to tag wearers on how their data is being processed with not a single person answering yes to indicate that they were told how their data would be processed.

¹³ ICIBI report, p.28

¹⁴ ICIBI report, p.28

¹⁵ ICIBI report, p.28

¹⁶ ICIBI report, p.2

¹⁷ ICIBI report, p.18

¹⁸ ICIBI report, p.18

¹⁹ ICIBI report, p.20



The Home Office collects ‘trail data’ through EM and states that this will be used in immigration decision-making²⁰. BID has previously set out its concerns about the use of this data in immigration decision-making, which goes far beyond the purpose of EM of making sure people stay in touch with the authorities and entitles the state to trawl through highly sensitive and personal data if you submit an immigration application. Those concerns are aggravated by the ICIBI’s findings about the careless way that such highly sensitive data is being handled.

Expansion of EM to initial asylum seekers

With the visible widespread issues that exist throughout the GPS monitoring system, the Home Office’s 12 month pilot scheme to apply GPS tags to asylum seekers –who have recently arrived in the UK is not only disproportionate and potentially unlawful but also represents expansion of a system that is riddled with systemic failures.²¹

²⁰ The Home Office’s policy states that trail data collected through EM “will be collected, processed and retained by the private subcontractor – Capita – and may be accessed by the Home Office under certain circumstances, including “where it may be relevant to a claim by the individual under Article 8 ECHR”

²¹ ‘Outrage over scheme to electronically tag asylum seekers arriving in UK’ Guardian, 19/06/22; <https://www.theguardian.com/uk-news/2022/jun/19/outrage-over-scheme-to-electronically-tag-refugees-arriving-in-the-uk>

