

13th January 2021

Martin Hewitt
National Police Chiefs' Council

By email only

Requirement for urgent clarification to police officers on face covering exemptions

Dear Mr. Hewitt,

We are writing to urge you to issue a clarification to police officers about the restrictions around face coverings under The Health Protection (Coronavirus, Wearing of Face Coverings in a Relevant Place) (England) Regulations 2020 and The Health Protection (Coronavirus, Wearing of Face Coverings on Public Transport) (England) Regulations 2020 (the Regulations).

We understand the challenges police face managing complex regulations during the pandemic. However, it must be the highest priority of officers to ensure that restrictions are enforced lawfully and fairly, without perpetuating discrimination. We are concerned that those who are unable to wear face coverings will be disproportionately impacted by the increased emphasis on enforcement of the Regulations.

We are alarmed by ongoing reports of police officers wrongly claiming that people with disabilities must carry paperwork and show proof on request that they are exempt from the requirement to wear a face covering. This has no basis in law and risks discriminating against those with disabilities.

The Regulations state an individual must wear a face covering on public transport and in certain indoor spaces unless they have "a reasonable excuse" which includes where they "cannot put on, wear or remove a face covering" due to "any physical or mental illness or impairment, or disability" or if doing so would cause "severe distress."¹ This covers a range of conditions, many invisible, including breathing difficulties, learning disabilities, sight loss and mental health conditions. Reasons for severe distress may include traumatic experiences of abuse and sexual violence, which the Survivors' Trust reported affected a third of survivors. Asking survivors to disclose such experiences to strangers is a "a terrifying and humiliating prospect" and for some, "an impossibility".² There are also exemptions for those travelling with or providing assistance to an individual who uses lip reading to communicate, if a person removes their mask to avoid risk of harm or injury, if a person is travelling to avoid injury, or to escape a risk of harm, and does not have a face covering with them, or if a person is reasonably required to eat, drink or take medication.³

The Regulations do not confer a power for police to request health information from individuals, and they make no mention of any requirement for individuals to carry or display proof of their exemption to the requirement to wear a face covering. To the contrary, the Government's guidance on face coverings makes it clear that people who are exempt from the requirement are not required to carry or display proof of their disability:

"If you have an age, health or disability reason for not wearing a face covering:

¹ The Health Protection (Coronavirus, Wearing of Face Coverings on Public Transport) (England) Regulations 2020, Regulation 4(a); The Health Protection (Coronavirus, Wearing of Face Coverings in a Relevant Place) (England) Regulations 2020, Regulation 4(a)

² Covid-19: Are you concerned about wearing a mask? - The Survivors' Trust:
<https://www.thesurvivorstrust.org/covid-19-are-you-concerned-about-wearing-a-mask>

³ The Health Protection (Coronavirus, Wearing of Face Coverings on Public Transport) (England) Regulations 2020, Regulation 4(b)-(f); The Health Protection (Coronavirus, Wearing of Face Coverings in a Relevant Place) (England) Regulations 2020, Regulation 4(b)-(f)

- you do not routinely need to show any written evidence of this
- you do not need to show an exemption card”⁴

Further, the Department for Health and Social Care ran a publicity campaign stating “Remember, you should never challenge anyone for not wearing a face covering. Not all disabilities are visible.”⁵ The College of Policing’s guidance on the Regulations reminds officers that “they should be sensitive to an individual’s confidentiality” when engaging with an individual.⁶

However, we are still witnessing cases where police officers have demanded paperwork evidencing disabilities and health information from individuals who are unable to wear a face covering.

West Midlands Police Force has been forced to apologise twice for its officers, after an asthmatic man was handcuffed and issued with a Fixed Penalty Notice for failing to supply evidence of his condition⁷, and another man was escorted out of a supermarket for having no proof of his exemption.⁸ However, more recently, police have not apologised for their misunderstandings on this issue.

One police officer was recorded telling an individual that even supplying evidence of a disability would not prevent officers from issuing a Fixed Penalty Notice and instead an individual would have to prove their exemption in court.⁹ This is an alarming suggestion that fails to respect both the coronavirus regulations and the Equality Act. Instead of correcting this, West Midlands Police Force issued a statement supporting the officer’s actions, stating that the woman provided a “generic document” which was “not specific to her circumstances.”¹⁰

In recent days Ken Marsh, the Chair of the Metropolitan Police Federation, stated on national radio that if someone explained that they were medically exempt from wearing a face covering but lacked paperwork, police should “carry on the enforcement and it’s for them to prove. It’s very straightforward.”¹¹ Mr Marsh repeated these comments to Daily Mail, saying ‘If you have a medical reason for not wearing a mask, you now have to print

⁴ Face coverings: when to wear one, exemptions, and how to make your own – GOV.UK, 4th December 2020: <https://www.gov.uk/government/publications/face-coverings-when-to-wear-one-and-how-to-make-your-own/face-coverings-when-to-wear-one-and-how-to-make-your-own>

⁵Department for Health and Social Care, Twitter, 6th December 2020: <https://twitter.com/DHSCgovuk/status/1335652729004277762?s=20>

⁶ Policing brief in response to the Health Protection (Coronavirus, Wearing of Face Coverings in a Relevant Place) (England) Regulations 2020 – College of Policing, 24th September 2020: <https://paas-s3-broker-prod-lon-6453d964-1d1a-432a-9260-5e0ba7d2fc51.s3.eu-west-2.amazonaws.com/s3fs-public/2020-09/COVID-19-Face-coverings-in-relevant-places-240920.pdf>

⁷ Lidl shopper with asthma fined £200 and claimed he was handcuffed in mask row – Kelly-Ann Mills and Jordan Coussins, the Mirror, 16th November 2020: <https://www.mirror.co.uk/news/uk-news/lidl-shopper-asthma-fined-200-23018441>

⁸ Twitter, 7th November 2020: <https://twitter.com/HappyHarryMedia/status/1325014056198172672?s=20>

⁹ Twitter, Big Brother Watch, 27th November 2020: <https://twitter.com/BigBrotherWatch/status/1332429838309797890?s=20>

¹⁰ West Midlands Police, Twitter, 27th November 2020: <https://twitter.com/WMPolice/status/1332398456577650703?s=20>

¹¹ LBC, Twitter, 6th January 2021: <https://twitter.com/LBC/status/1346883686646603776?s=20>

off a clarification that proves you have an exemption.”¹² However, this would be discriminatory and wrong.

Regulations on face coverings have been in force for six months and as such police should be clear on how they should be lawfully upheld. As long as this widespread confusion among police continues, we are concerned that people with disabilities will risk facing harassment, intimidation and unlawful Fixed Penalty Notices. A survey conducted by Disability Rights UK found that 60% of disabled people “feared being challenged if they did not wear a mask”, with the same amount “not feeling they had the confidence to stand up for themselves if challenged.”¹³

We are calling on you to urgently issue a clarification to police officers about the law on the requirement to wear a face covering and to affirm that people who are exempt from the requirement do not have to carry proof of this exemption.

We look forward to your response.

Silkie Carlo, Director, Big Brother Watch

Fazilet Hadi, Head of Policy, Disability Rights UK

Edel Harris, CEO, Mencap

Roger Wicks, Director of Policy and Campaigns, RNID

Fay Maxted, CEO, The Survivors Trust

¹² How many officers does it take to find out where you are going? FOUR cops surround man outside Tube station, police patrol parks and benches are taped off in town centres as Covid crackdown continues – Martin Robinson, James Tapsfield and Vivek Chaudhary, MailOnline, 7th January 2021: <https://www.dailymail.co.uk/news/article-9121471/Priti-Patel-backs-police-quizzing-people-sitting-park-benches-lockdown.html>

¹³ 40% fear challenge without face masks - DR UK survey – Disability Rights UK, 18th June 2020: <https://www.disabilityrightsuk.org/news/2020/june/40-fear-challenge-without-face-masks-dr-uk-survey>