



Legal options for British Citizens stranded outside of the UK

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COVID-19 has separated families both within and outside the UK. Despite the public efforts of the British Foreign and Commonwealth Office (FCO) to repatriate citizens, approximately 300,000 British citizens remain trapped abroad, almost three months after lockdown began.

It would be incorrect to say that the UK government has done nothing. 5,000 people were flown back from India alone in the first weeks of lockdown and 400 people were returned from Costa Rica and Ecuador at the start of June. The Foreign Secretary has emphasized his department's work on repatriation, claiming that the FCO is "committed to supporting Britons getting home", whether through commercial routes or specially chartered flights operated by the 14 airlines recruited to assist.

Nevertheless, the sheer number of people who remain stranded is a genuine cause for concern. Although the hard borders implemented across the world do present an obstacle to repatriation, numerous countries have fared better than the UK. Indeed, some British citizens have received no meaningful help at all. One recent BBC article explored numerous cases of individuals who felt their country had abandoned them, including two junior doctors stuck in Peru who alleged that the British Embassy had stopped answering the phone and was ignoring their emails. The only response they got was a tweet.

If you or somebody you know is left stranded, there are a number of legal avenues worth exploring. The first port of call is always to request assistance from the local British Embassy. Ordinarily, the Embassy will then approach the domestic government and make representations on your behalf. This is particularly important in countries where exit is contingent on compliance with certain procedures – for example the acquisition of an exit permit.

If a British Embassy fails to assist, they may be breaching their own policy. *Support for British nationals abroad: A guide*, which can be accessed online, describes the consular assistance ordinarily available to British citizens outside the UK. For example, it states that Embassies "may be able to offer assistance" where an individual is prevented from leaving a country or subject to a travel ban; and that they "may also consider approaching the local authorities, taking into account factors such as local law, the reason for the ban and your personal circumstances".

Following from *R (Sandiford) v Secretary of State for Foreign and Commonwealth Affairs* [2014] UKSC 44, established government policy, statements or practices can lead to enforceable rights. Accordingly, an unprincipled failure to assist a British citizen trapped abroad could give rise to grounds for judicial review against the FCO.

In such circumstances, you may also be able to argue breach of your rights under Article 8 of the

European Convention of Human Rights (ECHR). Article 8 protects private and family life. It imposes a positive obligation upon governments to intervene and assist where individuals are separated from their family against their wishes. This obligation is particularly forceful where a couple has been separated or children have been separated from a parent.

Moreover, although it might be thought that the UK cannot be responsible for the welfare of an individual in another jurisdiction, provided at least one member of the family is present *inside* the UK, there will be sufficient connection to engage Article 8 in relation to acts or omissions of the UK authorities *outside* the territory (*Abbas v Secretary of State for the Home Department* [2018] 1 WLR 533). In this case the court held that interference with the family life of one is an interference with the rights of all those within the ambit of the family whose rights are engaged.

Once you establish that you have a claim of this kind, the UK government can only justify refusing assistance where it is in the public interest to do so, and where that public interest outweighs your rights. As always, the refusal to engage or intervene must be proportionate; if it is not, the government will be in breach of Article 8.

In most cases in the first instance it is best to try a non-aggressive approach to resolving issues such as this. This would involve firstly contacting the British Embassy in the country you are in and asking them to approach the local government. If they decline to do so, we have had success by submitting detailed representations outlining the legal framework and the harm that will ensue if our client is left stranded. Only if these methods fail would it be right to consider litigation.

A final important point relating to repatriation is that the government's policy to date has been founded upon a discriminatory distinction between citizens and those with indefinite leave to remain. Soon after the pandemic started, the FCO made clear that it would be prioritising the repatriation of British citizens, and that those with indefinite leave to remain would be rescued only where there was space. As Labour MP Matt Western pointed out, this decision has unsavoury "echoes of Windrush". It can only be hoped that the FCO spokesman's subsequent clarification that those with indefinite leave to remain are also eligible will be borne out in reality.

Our Citizenship & Immigration team can be contacted for specific advice. Please contact one of the partners Kathryn Bradbury or Matt Ingham or your usual contact in the Citizenship & Immigration Team.
