

ILPA's Public Statement on the Home Office's Consultation on 'Napier Barracks planning application'

Introduction

This is a public statement in response to the Home Office's [planning consultation](#) regarding the continued use of Napier Barracks in Shorncliffe Camp, Folkestone, a former Ministry of Defence military barracks, to provide eligible persons seeking asylum with accommodation whilst their claim is pending. The Home Office has a statutory duty, under the Immigration and Asylum Act 1999, to provide this support. The persons in receipt of this support are not in detention; they are at liberty to leave their accommodation.

The Crown granted temporary use of the barracks for six months from 21 September 2020, under Part 19, Class Q of the Town and Country Planning (General Permitted Development) (England) Order (as amended) 2015. On 3 December 2020, the time limit was extended to 12 months, and ended on 20 September 2021. Throughout this period of time there were serious concerns regarding whether contingency accommodation was COVID-19 secure.¹

However, without consulting the public, the Home Office obtained permission to use Napier Barracks for a further period of five years through delegated legislation: The Town and Country Planning (Napier Barracks) Special Development Order 2021 ('SDO'), laid before Parliament on 27 August 2021. The Order came into force on 21 September 2021 and granted temporary planning permission for a change of use to accommodation for persons seeking asylum to the end of 20 September 2026.

We understand that the Home Office has now decided that this public consultation should run for 21 days, from 10 January 2022, to Saturday, 30 January 2022.

¹ For example, Public Accounts Committee, *Asylum accommodation and support transformation programme* (25th report of Session 2019-21, 9 November 2020)

<<https://committees.parliament.uk/publications/3561/documents/34409/default/>> accessed 18 January 2022;
Home Affairs Committee, *Home Office preparedness for COVID-19 (Coronavirus): institutional accommodation* (4th Report of Session 2019-21, 23 July 2020)

<<https://committees.parliament.uk/publications/2171/documents/20132/default/>> accessed 18 January 2022.

In this response, we raise various concerns regarding the plans for the continued use of Napier Barracks as initial asylum accommodation. Had there been meaningful consultation prior to the Home Office obtaining permission in August 2021, we and others would have raised these issues which would have been relevant to whether permission to use the site ought to have been granted.

In summary, this consultation is too little far too late.

Lack of Meaningful Consultation

ILPA does not consider this to be a meaningful consultation, and it is certainly not pre-legislative:

- It is being done retrospectively, as the Special Development Order to which it relates was laid before Parliament on 27 August 2021;
- The purpose of the consultation is unclear and unspecified;
- It is unclear who will consider the responses, and what the range of possible outcomes are;
- The length of the consultation is unjustifiably short.

Retrospective

The process, conduct, and timing of this public consultation in relation to Napier Barracks leave the Home Office open to criticism.

This consultation is being undertaken four months after a decision was taken to obtain permission to use Napier Barracks for a further period of five years through The Town and Country Planning (Napier Barracks) Special Development Order 2021, laid before Parliament on 27 August 2021. As it used delegated legislation, it did not need to make a formal planning application to a local planning authority.

It is unclear why the emergency powers were needed, and why consultation could not be conducted prior to a decision being taken, given that since 3 December 2020 the Home Office was aware of the expiry of permission on 20 September 2021. This provided more than 9 months for a consultation. No adequate reason has been provided by the Home Office.

The Secondary Legislation Scrutiny Committee² has raised the same critique of this SDO:

- ‘The Explanatory Memorandum (EM)³ accompanying this instrument is thin’ at [2];

² House of Lords Secondary Legislation Scrutiny Committee 13th Report of Session 2021–22, HL Paper 70 <<https://committees.parliament.uk/publications/7347/documents/79400/default/>> accessed 27 January 2022.

³ Explanatory Memorandum to the Town and Country Planning (Napier Barracks) Special Development Order 2021 (2021 No. 962) [10.1] <https://www.legislation.gov.uk/uksi/2021/962/pdfs/uksiem_20210962_en.pdf> accessed 27 January 2022.

- ‘Paragraph 6.3 of the EM says: “The extension of permission through a Special Development Order has been chosen because it allows permission to be secured in a timely manner, in view of the urgent need to continue to use Napier for asylum seekers who would otherwise be destitute when the current planning permission expires.” Since the date that the current planning permission expires has been known for 12 months, we found this reason for laying a potentially controversial instrument when Parliament was not sitting unconvincing’ at [10];
- ‘We also asked why, given the criticisms about the suitability of the premises, the extension was being sought for five years rather than a shorter period’ at [11]; and
- ‘[T]he information that, in the opinion of several authorities, including the High Court, the site was unsuitable and significant improvement was required, should have been disclosed to Parliament given that the purpose of the instrument is to enable continued operation at the site for a further five years. The APPG Inquiry is evidence of parliamentary concern about its operation, that the EM fails to address’ at [12].

The Planning Statement, of Cushman & Wakefield, dated January 2022, states at paragraph 1.17, ‘[i]t is due to these significant pressures on the system that the Home Office *is seeking* the continued temporary use of Napier Barracks for asylum accommodation (*Sui Generis*) from the 21st September 2021 onwards, for a temporary period of up to 5 years.’⁴ Additionally, at paragraph 4.1, the Planning Statement refers to, ‘planning proposals where it is *proposed* to make an SDO under the provisions of sections 59 and 60 of the 1990 Act’. In the conclusion, at paragraphs 6.1 to 6.7, the Planning Statement refers to these as ‘proposals’ and states that it has been prepared ‘in support of an SDO for a temporary change of use of Napier Barracks (C2a) to Asylum Accommodation (*sui generis*) for a period of 5 years’ and that ‘there are no policy grounds or material considerations (whilst not a test in this instance) which should prevent an SDO from being issued to allow the temporary change of use of the Site for asylum accommodation.’

Similarly, the EIA screening letter from Katrina Hulse MRTPI, Partner at Cushman & Wakefield, in Appendix 1 of the Planning Statement is dated 10 January 2022. However, it states, ‘The SDO *will be laid* before Parliament on 26th August 2021 and for the reasons set out below it is considered that the development will not have an environmental impact resulting in significant effects, therefore an Environmental Statement will not be required’.

However, these statements are inaccurate. The Home Office is not ‘seeking’ continued use; it has ‘sought it’. The SDO is not ‘proposed’; it has been laid, and was issued, far in advance of the date of the Planning Statement or the EIA letter.

⁴ Cushman & Wakefield, *Napier Barracks, Shorncliffe Camp, Folkestone, CT20 3HN* (January 2022)

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1045331/Planning%20Statement%20Napier%20Jan22.pdf> accessed 29 January 2022.

If this planning statement and letter were prepared prior to the Special Development Order being laid before Parliament, as their phrasing would suggest, then it is unclear why the Home Office could not have conducted this consultation earlier. Additionally, given that the extension had been granted in December 2020 to September 2021, and given that the Home Office has repeatedly raised concerns regarding pressures placed on the asylum system by the pandemic and the number of small boat arrivals, it is difficult to understand why a public consultation - particularly one so short as this (21 days) - could not have been conducted at an earlier point whilst the proposal to extend the use of Napier Barracks by a Special Development Order was being prepared.

ILPA's position is that this retrospective consultation is fundamentally contrary to Wendy Williams' Recommendations 8 and 13 from her Windrush Lessons Learned Review:

'Recommendation 8 – Improve external understanding and engagement The Home Office should take steps to understand the groups and communities that its policies affect through improved engagement, social research, and by involving service users in designing its services. In doing this, ministers should make clear that they expect officials to seek out a diverse range of voices and prioritise community-focused policy by engaging with communities, civil society and the public. The Windrush volunteer programme should provide a model to develop how the department engages with communities in future. The same applies to how it involves its staff in feeding back their information and knowledge from this engagement to improve policy and the service to the public.'

'Recommendation 13 - Ministers should ensure that all policies and proposals for legislation on immigration and nationality are subjected to rigorous impact assessments in line with Treasury guidelines. Officials should avoid putting forward options on the binary "do this or do nothing" basis, but instead should consider a range of options. The assessments must always consider whether there is a risk of an adverse impact on racial groups who are legitimately in the country. And consultation on these effects should be meaningful, offering informed proposals and openly seeking advice and challenge.'

The Home Office has demonstrated through this process a failure to learn from the past lessons at Napier Barracks, an utter lack of openness to scrutiny, and non-inclusive policymaking. This cannot be rectified *ex post facto*, by carrying out a consultation after a decision has already been made without public consultation.

Purpose of the Consultation

The Home Office has failed to provide sufficient information regarding the purpose of this 'additional consultation on the change of use sought'. It has not put forward any physical development proposals.

The Government's 2018 Consultation Principles states the following:

B. Consultations should have a purpose

Do not consult for the sake of it. Ask departmental lawyers whether you have a legal duty to consult. Take consultation responses into account when taking policy forward. Consult about policies or implementation plans when the development of the policies or plans is at a formative stage. Do not ask questions about issues on which you already have a final view.⁵

It is not clear, having read the 127 page Planning Statement by Cushman & Wakefield on behalf of the Home Office, for what the consultation will be used. As above, the Home Office has already granted itself permission to use the site for a further five years. It is clear these plans are not at a 'formative stage'.

It would be a waste of the resources of many small civil society organisations and individuals to reply to a consultation, which will not have any impact on decision making, given the decision has been made. Therefore, ILPA is concerned that the responses to this consultation will be severely limited and engagement will be diminished with this consultation due to the process the Home Office has chosen to follow in carrying it out. We are concerned that the limited responses received will not be an accurate portrayal of public and civil society's opinion, or represent a diverse range of voices.

ILPA is concerned that from an external point of view it appears that the Home Office is merely going through the motions of a consultation.

Our concerns regarding the undisclosed reasons for the consultation are amplified by the fact that there is ongoing litigation regarding the long term use of Napier Barracks. It is within the public domain that on 8 December 2021, the High Court granted permission for a judicial review to proceed to a full hearing. Deighton Pierce Glynn represents the Claimant, a local resident and a lead volunteer helping persons seeking asylum who are housed at Napier Barracks, challenged the Home Office's decision to continue using Napier Barracks as asylum accommodation for a further five years, using emergency planning powers to avoid planning law controls and consultation.⁶ Landmark Chambers noted that the expedited hearing in this case is to be heard from 29 to 30 March 2022 in their press release of 9 December 2021.⁷

⁵ Cabinet Office, 'Consultation Principles' (19 March 2018)

<<https://www.gov.uk/government/publications/consultation-principles-guidance>> accessed 27 January 2022.

⁶ Deighton Pierce Glynn, 'High Court Grants Permission for Judicial Review in Legal Challenge to Long Term use of Napier Barracks' (8 December 2021)

<<https://dpglaw.co.uk/high-court-grants-permission-for-judicial-review-in-legal-challenge-to-longterm-use-of-napier-barracks/>> accessed 17 Janauary 2022.

⁷ Landmark Chambers, 'High Court grants permission for Judicial Review in legal challenge to long term use of Napier Barracks' (9 December 2021)

Assessment of Consultation Responses

In addition to the lack of information, detailed above, the consultation fails to explain who will be considering the responses, and it is entirely unclear what the range of possible outcomes would be from this consultation.

The Planning Statement only states at paragraph 3.13, '[f]ollowing the completion of the consultation a Statement of Community Involvement will be completed and will be made available on the consultation website'.

This proposed assessment is contrary to Consultation Principle 'I' that a consultation should facilitate scrutiny: *'Publish any response on the same page on gov.uk as the original consultation, and ensure it is clear when the government has responded to the consultation. Explain the responses that have been received from consultees and how these have informed the policy. State how many responses have been received.'*⁸ The Home Office has not made clear that each response will be published on the consultation website and thus inform scrutiny of this process. We expect to see the publication of all responses, an explanation of how these have informed the policy, and confirmation of the number of received.

Length of Consultation

This is not an ordinary local planning authority consultation. As the Home Office states at 3.12 of the Planning Statement: '[t]here is no statutory duty on the Home Office to consult on proposals that are the subject of a SDO'. Therefore, given this was not a formal public consultation, the Home Office has failed to justify the length of the consultation. The Government's 2018 Consultation Principles also states at 'E' that '[c]onsultations should last for a proportionate amount of time' and that 'consulting too quickly will not give enough time for consideration and will reduce the quality of responses'. It notes particularly that at 'G' that '[c]harities may need more time to respond than businesses, for example'.

In our experience, there is an established practice of the Home Office of consultation for longer periods; this consultation is unusually short. ILPA is concerned, as above, that the length of time allotted for this consultation will impact the extent to which the responses received are representative of public opinion, and their quality, and prior to decisions being taken.

For all of the reasons given above, there continues to be no meaningful consultation in relation to the use of Napier Barracks as asylum accommodation.

^{<<https://www.landmarkchambers.co.uk/high-court-grants-permission-for-judicial-review-in-legal-challenge-to-long-term-use-of-napier-barracks/>>} accessed 17 January 2022.

⁸ Cabinet Office, 'Consultation Principles' (19 March 2018)

^{<<https://www.gov.uk/government/publications/consultation-principles-guidance>>} accessed 27 January 2022.

Environmental, Social, Health and Wellbeing Impacts

The Environment Impact Assessment Screening Letter states, ‘any health impacts of the proposals are negligible and can be effectively mitigated.’ However, no evidence is provided to show the resolution of the severe health and wellbeing concerns regarding the use of Napier Barracks as asylum accommodation which have existed from the outset, due to the inadequacy of facilities, the environmental health risks due to COVID-19 and the previous outbreak, and inadequacy of Home Office systems for screening persons unsuitable for residence at Napier Barracks.

Lord Hodgson of Astley Abbots, Chair of the House of Lords Secondary Legislation Scrutiny Committee, stated⁹ the following:

“There have been numerous shocking and distressing issues highlighted about the operational suitability of Napier Barracks as an asylum centre. These include cramped and unsanitary accommodation, outbreaks of COVID-19 at the site and negative mental health effects suffered by residents.”

“Although the Government have informed us it is in the midst of making improvements to the site, it seems particularly reprehensible that it would apply for this length of extension when a High Court judgement has ruled that standards and operational systems at the Napier Barracks are unlawful.”

ILPA submitted evidence to the Home Affairs Committee on the Home Office’s response to Covid-19 which included a section on the use of institutional accommodation, specifically the barracks. In February 2021, ILPA also replied¹⁰ to the call for evidence by the Independent Chief Inspector of Borders and Immigration ('ICIBI') on 'An inspection of the use of hotels and barracks as contingency asylum accommodation' raising issues in relation to:

- the rationale behind the use of the barracks and institutional accommodation;
- access to legal advice;

⁹ UK Parliament, 'Lords take issue with planning application for asylum accommodation at Napier Barracks' (21 September 2021)

<<https://www.parliament.uk/business/lords/media-centre/house-of-lords-media-notices/2021/september-2021/lords-take-issue-with-planning-application-for-asylum-accommodation-at-napier-barracks/>> accessed 28 January 2022.

¹⁰ ILPA, 'ILPA's response to the ICIBI's Call for Evidence: An inspection of the use of hotels and barracks as contingency asylum accommodation'

<<https://ilpa.org.uk/wp-content/uploads/2021/02/2021-02-19-ILPA-response-ICIBI-Asylum-Accommodation.pdf>> accessed 28 January 2022.

- inadequacy of Home Office systems for screening persons unsuitable for accommodation at the camp and detecting vulnerabilities in those accommodated;
- the equality impact assessment, including the disproportionate effect on people of Black and South Asian ethnic groups, and the underlying rationale of the use of barracks for political purposes;
- environmental health risks, including those arising from the Napier COVID-19 outbreak; and
- the way that Clearsprings had been communicating with people accommodated at Napier.

For ease of reference, we have appended our response to the ICIBI's Call for Evidence, to our response to this consultation ('the Appendix'). We would ask that our concerns raised in that response, and our case studies taken from anonymised witness statements, are taken into consideration. A running theme in our response was the failure of the Home Office to inform or consult the NGO sector about the use of military barracks prior to their opening. David Bolt, the former Independent Chief Inspector of Borders and Immigration, specifically wrote to the Home Office on 21 March 2021 to state that '*the failure to consult local stakeholders on whose services and support the camps would be reliant before taking the decision to proceed was a serious mistake and the need to move at speed is not a satisfactory excuse.*'¹¹ Therefore, this is not the first instance of the Home Office failing to adequately consult in relation to the use of Napier Barracks.

The Independent Chief Inspector of Borders and Immigration (ICIBI), with the assistance of Her Majesty's Inspectorate of Prisons (HMI Prisons), inspected the Home Office's use of Penally Camp and Napier Barracks as contingency asylum accommodation from November 2020 to March 2021.¹² Following that inspection, the use of Barracks as accommodation for destitute persons seeking asylum was found to be unlawful and irrational in June 2021 in a judicial review challenge by six residents at the Barracks.¹³ The All-Party Parliamentary Group on Immigration Detention also conducted an inquiry into quasi-detention at Napier Barracks.¹⁴ We raise below a combination of continuing concerns raised in both reports and the High Court decision.

¹¹ Independent Chief Inspector of Borders and Immigration, An inspection of contingency asylum accommodation: HMIP report on Penally Camp and Napier Barracks (22 July 2021) Annex A, page 4 ('ICIBI Report')

<https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1005065/An_inspection_of_contingency_asylum_accommodation_HMIP_report_on_Penally_Camp_and_Napier_Barracks.pdf> accessed 28 January 2022.

¹² ICIBI Report.

¹³ *NB & Ors v Secretary of State for the Home Department* [2021] EWHC 1489 (Admin).

¹⁴ All-Party Parliamentary Group on Immigration Detention, *Report of the Inquiry into Quasi-Detention* (December 2021) ('APPG Report') page 27

<<https://appgdetention.org.uk/wp-content/uploads/2021/12/211209-APPG-on-Immigration-Detention-Report-of-Inquiry-into-Quasi-Detention.pdf>> accessed 28 January 2022.

Safeguarding, Suitability and Legal Advice

The ICIBI reported severe health concerns in Napier, where a third of the respondents said they had felt suicidal, with several self-harm incidents, and all residents who responded expressed they felt depressed during their stay.¹⁵ We have recorded several of these in the case studies in the Appendix:

- Case Study 3: '[d]etainees have lost hope, I have witnessed people trying to commit suicide. I know of four people in the camp who have tried to hang themselves. Someone in my block sliced his neck and wrists with a blade. The ambulance came and took him and he never came back. These are terrible things to witness and I have not been given any support'.
- Case Study 1, a resident stated, 'My mental health has got much worse since I came here and it reminds me of when I was tortured. I have seen bad things here, so many detainees have tried to commit suicide while I have been here, and I have seen the protests outside the camp against us. There is nothing to do here except think of the past. I have given up hope.'

The Home Office's solution in its response to the inspection was to publish suitability criteria, provide safeguarding training, telephone mental health assessments, calls to emergency services and to rely on NGOs.¹⁶ These are also referred to in the EIA Screening Letter under the heading 'Aspects of the environment likely to be significantly affected by the development'. The APPG Inquiry asked Clearsprings what it did to ensure its own staff and those of sub-contractors were aware of and could apply the suitability criteria; Clearsprings reported that all staff had "read" the criteria and "understood" that if they had any questions or concerns regarding a resident's suitability, they should inform the site manager.¹⁷

In its judgment, the High Court found that there needed to be 'a better system for identifying those for whom such accommodation is not suitable and for detecting cases where, although suitable when initially transferred, it ceases to be during the course of their stay'.¹⁸ This remains the case.

We remain concerned that those transferred out of Napier Barracks were predominantly those who had legal interventions, and thus, without adequate independent legal advice at Napier, vulnerable residents may not be able to articulate their unsuitability for residence in Napier to the Home Office.

Residents require legal advice and representation relating to both their asylum claim and regarding challenging the decision of the Home Office to accommodate them at Napier. From the outset, we noted

¹⁵ ICIBI Report, 1.11 and S6.

¹⁶ Home Office, *Response to an inspection of contingency asylum accommodation* (22 July 2021) 2.1

<<https://www.gov.uk/government/publications/response-to-an-inspection-of-contingency-asylum-accommodation/response-to-an-inspection-of-contingency-asylum-accommodation-accessible-version>> accessed 28 January 2022.

¹⁷ APPG Report, page 27.

¹⁸ *NB & Ors v Secretary of State for the Home Department* [2021] EWHC 1489 (Admin) [239].

that the Home Office failed to consider the need to facilitate access to lawyers prior to opening Napier Barracks. Prior to opening and accommodating persons seeking asylum at Napier, the Home Office failed to consult with ILPA and other relevant parties regarding the provision of legal advice at Napier Barracks. Since opening, the Home Office also decided to process asylum claims on-site at Napier Barracks. The EIA screening letter confirms that, '[a]sylum interviews have taken place since May, for those who are admissible'.

Numerous times ILPA has raised issues in relation to the capacity of legal aid lawyers to take such cases. The sparsity of providers specialising in immigration and asylum law, resulting in geographical cavities in legal aid provision, has been well documented.¹⁹ At the time of ILPA's evidence to the APPG we reported that Migrant Help (contracted by the Home Office to provide triaging between the Home Office people seeking asylum) at Napier signposted residents to legal representatives, and at the time there were 11 law firms on the list of which five were not currently accepting referrals.²⁰ The APPG noted that concerns were raised that, 'few, if any, face-to-face visits by legal representatives had been possible at the sites, while the remote locations of the sites and very small amount of money residents received each week (£8) meant travelling to law firm offices was difficult'.²¹

The communal facilities listed at 3.4 of the Planning Statement do not mention any private spaces particularly for residents to receive confidential legal advice from representatives. Given the sensitive nature of asylum claims, and the difficulty often found in disclosure, the lack of such space is highly inappropriate and is a further impediment in residents accessing and utilising legal advice.

We remain concerned regarding the provision of legal advice at an early stage at Napier Barracks. Given the Government's proposed changes, in the Nationality and Borders Bill, to create an expedited asylum system, we are particularly concerned that it is ensured there is adequate legal advice. ILPA provided evidence regarding the trialling of on-site substantive interviews at Napier Barracks, via video link, in an expedited process at short notice: 'pushing people through an expedited process at short notice without a lawyer - and sometimes even with one - is a good way to guarantee that relevant information will be missed'.²² Interviews are a crucial component in the asylum claim process; if information is missed it may result in incorrect decision making by the Home Office.

¹⁹ Jo Wilding, *Droughts and Deserts: A report on the immigration legal aid market* (2019) <<https://www.jowilding.org/assets/files/Droughts%20and%20Deserts%20final%20report.pdf>> (accessed 27 November 2021); J. Wilding, M. Mguni, T. Van Isacker, *A Huge Gulf: Demand and Supply for Immigration Legal Advice in London* (2021) <<https://www.phf.org.uk/publications/a-huge-gulf-demand-and-supply-forimmigration-legal-advice-in-london/>> (accessed 27 November 2021).

²⁰ Sonia Lenegan, ILPA, APPG Oral evidence session 1 – Part 1 <<https://appgdetention.org.uk/wp-content/uploads/2021/09/APPG-Inquiry-Oral-evidence-session-1-July-Part-One-Legal-Issues-Transcript-final.pdf>> accessed 28 January 2022.

²¹ APPG report, page 64.

²² (n 20).

Prison-like Conditions and Community Ties

Furthermore, there are fundamental problems with the use of the barracks, which are not addressed by the Home Office's measures, and which the High Court accepted made it feel like a prison:

'Access to the site was through a main gate which was controlled by security guards and, until on or about 26 February 2021, was padlocked. There was also a logbook which the residents were required to use to record the times of their exits from, and entries to, the Barracks. I accept that these features, the perimeter fence and the overall nature of the accommodation and lay out of the site, meant that the Barracks felt, as M put it, "like a detention centre or prison camp". This is a clear theme in the Claimants' evidence.'²³

Similarly, we record similar accounts in the case studies in the Appendix:

- Case Study 2: 'We are not allowed to go outside the camp. There are security staff controlling the outside and the gates are always locked. Security previously allowed us to go outside the camp for two hours at a time. The environment is like a prison and the situation in the camp reminds me of the difficult experiences I have been through, so I stay in my room most of the time'.
- Case Study 4: 'The gates to the camp are kept locked. Before, we could ask security to open the gates and we were allowed outside until 10pm. Now we are not allowed to go outside at all. There are security guards on both sides of the gate and the police are outside. It feels like a detention centre or prison camp. When you are surrounded by such an environment it makes you feel down all the time. I want to live a normal life somewhere where I can move around freely without guards controlling me. I want to choose how to spend my days, where to go and what to eat. I hope I can be moved out of the camp to stable accommodation and that I never have to come back to this place again'.

Although they were free to come and go otherwise, the ICIBI noted that '[a]t both sites, residents described feeling trapped in poor conditions because of the negative consequences of leaving; some told us they were afraid of jeopardising their only source of financial support; others were concerned that their asylum cases might be negatively affected.'²⁴ Additionally, one reason they did not want to leave the Barracks was 'because they had been shouted at and intimidated by protesters and members of the public who objected to their presence.'²⁵ The APPG noted that '[a]t the time of gathering evidence (late

²³ *NB & Ors v Secretary of State for the Home Department* [2021] EWHC 1489 (Admin) [74].

²⁴ ICIBI Report, S9.

²⁵ ICIBI Report, S10.

June – early July 2021), there had been an increase in reports of residents being racially abused and harassed'.²⁶

The Home Office's answer to intimidation is merely that it will be dealt with by Kent police.²⁷ However, given the reaction of local communities to the accommodation of persons seeking asylum at Napier, consultation with these communities prior to the extension of its use was crucial to ensure community cohesion and the avoidance of discrimination. Damian Collins, MP for Folkestone and Hythe, has previously called for its closure, and stated his 'opinion that creating a hostel style open camp for over 400 asylum seekers in the heart of a residential community was the wrong decision'.²⁸

In Napier Barracks, residents are isolated from community and local ties and become an easily identifiable focal point for protestors. While there is a need for adequate services to be available on site, such as legal advice and medical services, this must be balanced with a need for those seeking asylum not to be isolated and disenfranchised from the community in a 'ghetto'. In addition to restrictions on freedom of movement, harassment and abuse from those outside the site, stigmatisation due to being identifiable as a resident of the barracks, lack of money to pay for phone data, poor wi-fi, limits on visitors, the APPG notes, '[w]hile the town centre could be accessed by bus from the site, meeting the cost of the journey was difficult for residents, who received only £8 per week in financial assistance'.²⁹ Accordingly, this can impact their ability to seek independent legal advice or mental health services in the community.

Health Risks including COVID-19 and Fire Risks

There have been significant environmental health concerns at Napier Barracks. There was a 'major COVID-19 outbreak at Napier, when over a hundred people were confined to their billets for approximately four weeks and unable to go outside except to use the mobile toilets or showers' during which residents 'were warned that they might be arrested if they left the camp. In at least one case, a resident was forcibly returned to the camp by the police'.³⁰ Positive tests rose in this period exponentially from 6 cases to 128 within a period of four days in January 2021.³¹ An example is contained in the Appendix in Case Study 3: 'I slept outside for six nights in January with around five other detainees, as we were so worried about contracting Covid-19, however I eventually did contract the virus.'

Napier was found not to be COVID-19 safe, in part due to its cramped communal conditions, and that once one person was infected a large-scale outbreak was virtually inevitable. The High Court stated,

²⁶ APPG Report, page 50.

²⁷ Home Office, Response to an inspection of contingency asylum accommodation (22 July 2021) 2.4.

²⁸ Damian Collins, 'Napier Barracks 2' <<https://damiancollins.com/napier-barracks-2/>> accessed 29 January 2022.

²⁹ APPG Report, page 34.

³⁰ ICIBI report, S8.

³¹ *NB & Ors v Secretary of State for the Home Department* [2021] EWHC 1489 (Admin) [116]-[117].

'[t]he effect of the Defendant's decision was that it was virtually inevitable that large numbers of residents would contract Covid-19, a disease which was capable of causing hospitalisation and long-term harm and/or death. [...] Moreover, the issue is not merely one of physical health. As noted above, there is evidence that fear of contracting Covid-19, given the cramped conditions, was causing anxiety amongst residents.'³² Despite the introduction of the measures for COVID safety, in the Home Office's response to the ICIBI in July 2021, the APPG reports that '[f]urther Covid-19 cases were reported at Napier in August 2021, and the Home Office confirmed that five people tested positive at the site during that month' and that further concerns have been raised about extremely careless testing.³³

The ICIBI found the 'environment at both sites was impoverished, run down and unsuitable for long-term accommodation. Cleanliness at both sites was variable at best and cleaning was made difficult by the age of the buildings'.³⁴ Additionally, '[d]espite a large fire at Napier, inadequate action had been taken to address ongoing serious fire safety concerns at Napier'.³⁵ The High Court explained the fire risk caused in the dormitories, where 'residents were generally sleeping 12-14 to a dormitory. Plywood partitioning divided the sleeping spaces, albeit this did not reach from floor to ceiling, and sheets and/or curtains were used to cover the entrance to each space so as to achieve a degree of privacy. For this and other reasons, according to a report of the Crown Premises Fire Safety Inspectorate ("CPFSI"), dated 30 November 2020, the arrangements at the Barracks failed to protect the occupants from serious or significant risk of harm and action was required to ensure their safety'.³⁶

The Response to the ICIBI's report by the Home Office states only that they are 'supporting Clearsprings to ensure they prioritise work on fire risk management. Significant work has been undertaken and we are ensuring fire safety reviews are built into ongoing tasks. Clearsprings are rectifying any defects and have put on additional staff as a fire risk mitigation whilst the work is being completed'.³⁷

The APPG noted there was evidence in July 2021 that 'there was no indication that one of the key fire safety concerns, the combustible plywood partitions in the dormitories, had yet been removed'.³⁸ The Planning Statement only refers to the 'management of fire risks' as part of the Operational Management Plan. However, these are not detailed in the planning consultation and thus their adequacy cannot be assessed. Additionally, according to the Planning Statement at 3.3, one block of accommodation remains out of use due to fire damage. Unless and until we receive confirmation of the resolution of the fire safety concerns, we query the safety of residence at Napier for any person, including single adult males under the age of 65.

³² *NB & Ors v Secretary of State for the Home Department* [2021] EWHC 1489 (Admin) [169].

³³ APPG Report, pages 21 and 41.

³⁴ ICIBI Report, S11.

³⁵ ICIBI Report, S24.

³⁶ *NB & Ors v Secretary of State for the Home Department* [2021] EWHC 1489 (Admin) [4].

³⁷ Home Office, Response to an inspection of contingency asylum accommodation (22 July 2021) 1.3.

³⁸ APPG Report, page 41.

Inadequacy of Facilities and Improvements

Furthermore, there remain continued concerns regarding the adequacy of facilities on site including medical services and cooking facilities. The Planning Statement states at 3.6 that there is a ‘Nurse practitioner’ and ‘canteen’ (both in the singular). However, the APPG notes that the ‘Royal College of Psychiatrists explained that one nurse for a population that reached more than 400 people was insufficient’³⁹ that the nurse had reported struggling dealing with mental health issues of the residents, and that there were concerns about residents queuing outside without shelter to receive their food. Above, we have also raised our concern regarding private spaces for the provision of legal advice.

We are also concerned regarding the safety of the site. For example, the Planning Statement states at 5.26 that ‘the Site is at High Risk of unexploded ordnance’. However, there are no proposals in the Planning Statement to secure the safety of persons accommodated at the Barracks, or other visitors including volunteers, representatives and staff, if there are unexploded bombs on the site.

Furthermore, as explained at 4.7 of the Planning Statement, Napier Barracks forms part of the larger Shorncliffe Garrison Site for wider redevelopment on which work has commenced. The Planning Statement at 5.34 refers only to a ‘recent visit’ in determining whether issues arise from the proximity of the construction area to the Barracks. Given that in the High Court case, noise and disruption of sleep were both matters raised in relation to the adequacy of accommodation, further information and consultation is required regarding the impact of future development on the suitability of accommodation.

We are concerned that the Planning Statement does not outline any structural or substantive changes to the dormitory arrangements, environment, or facilities. The Home Office’s only stated improvements are to cap the length of stay for those at Napier between 60 and 90 days and to reintroduce sports/recreational and NGO activities, introduce furniture and recreational indoor and outdoors, weekly meetings between the Home Office and Clearsprings, remove barbed wire and install perimeter wrap, night-time courtesy patrols to reduce noise in the accommodation, visiting dentistry and free travel to medical appointments, provide electrical sockets and individual lights, install CCTV, and create a joint general risk register and issues log.⁴⁰ In December 2021, the APPG Inquiry Panel reported that, ‘Changes have been made at Napier in recent months, but based on the evidence received during this APPG Inquiry - including the distressing testimonies from people still accommodated at the site – the changes fall far short of the “substantial improvements” required by the High Court in its ruling in June 2021’.⁴¹

³⁹ APPG Report, pages 55-56.

⁴⁰ Home Office, Response to an inspection of contingency asylum accommodation (22 July 2021) 4.2.

⁴¹ APPG Report, page 75.

Thus, any additional support or improvements by the Home Office have not rendered the barracks suitable for asylum accommodation.

It is noted that there are *no* firm plans in place for any improvements before the Home Office intends to vacate the site in March 2025 to allow Taylor Wimpey to proceed with its development of the site.

In light of the above environmental, health, social and wellbeing concerns, ILPA does not consider Napier Barracks to be suitable accommodation for any person seeking or refused asylum. As stated by the High Court, '[g]iven the experiences of many asylum seekers, and particularly those who had travelled here over land and in small boats, as many of the asylum seekers who were transferred to the Barracks had, the likelihood was that they would be more vulnerable in terms of their mental health, and therefore more likely to be undermined by the conditions there.'⁴²

Pilot for Accommodation Centres

In paragraph 7.7 of the Explanatory Memorandum to the SDO, it is confirmed that the motivation for the use of Napier Barracks is not merely to address an emergency crisis with accommodation, but rather to assist the Government test and pilot its political agenda: 'The use of the Napier site may also form part of the Home Office's longer-term plans to reform the asylum system, as set out in the New Plan for Immigration published on 24 March 2021. The plan includes the provision, through the Nationality, Immigration and Asylum Act 2002, for the greater use of accommodation centres to provide housing and other services to asylum seekers and failed asylum seekers who would otherwise be destitute. The continued use of the Napier site may enable the new processes to be tested and piloted, and so inform the final design of how accommodation centres will operate'.

The Secretary of State for the Home Department has confirmed her intentions to use accommodation centres 'to provide housing and other services to asylum seekers *and failed asylum seekers* who would otherwise be destitute' via the Nationality, Immigration and Asylum Act 2002, and that Napier may form 'part of the Home Office's longer-term plans to reform the asylum system'.⁴³ The Nationality and Borders Bill also includes the introduction of 'accommodation centres' to house those seeking asylum.

The All-Party Parliamentary Group on Immigration Detention has stated that '[t]hese developments suggest it is the government's intention to make large-scale, institutional, quasi-detention facilities – including the site at Napier and the new accommodation centres – into a permanent and widespread feature of the asylum accommodation system'.⁴⁴

⁴² *NB & Ors v Secretary of State for the Home Department* [2021] EWHC 1489 (Admin) [167].

⁴³ Home Office, 'Letter from the Home Secretary regarding Extension of Home Office's tenure of the Napier Barracks' (27 August 2021) <<https://committees.parliament.uk/publications/7159/documents/75641/default/>> accessed 28 January 2022.

⁴⁴ APPG Report, page 13.

However, nowhere in the Planning Statement is it mentioned that Napier Barracks may be used for these trial purposes, nor that “*failed asylum seekers*” will be held within the barracks.

There has been a significant lack of clarity since the introduction of the SDO. As stated by the Secondary Legislation Scrutiny Committee regarding the SDO, ‘[i]t is not clear whether this piloting would happen at Napier itself or the additional capacity at Napier would allow sufficient leeway in the overall estate for piloting to happen elsewhere. Nor do the responses of the Home Office make the explicit link to the potentially controversial nature of these pilot programmes.’⁴⁵

Given the issues that have been raised regarding the safety and suitability of Napier Barracks for accommodating any person, we are concerned that future accommodation centres may be modelled upon it. In the Home Office’s own Guidance it is accepted that ‘[w]omen and dependent children are not suitable to be accommodated at Napier’.⁴⁶ Similarly, Napier Barracks is not deemed by the Home Office to be suitable for persons with serious mobility problems or physical disabilities, persons referred to the National Referral Mechanism where there are reasonable grounds to believe they are a victim of modern slavery or a decision on this matter is still pending, and those with complex health needs. The Government has not confirmed that these groups of people will be excluded from accommodation centres; at this time their commitment only extends to children.⁴⁷ Therefore, it is entirely unclear how Napier Barracks can be a ‘test’ site for future centres accommodating those with additional vulnerabilities.

The Secretary of State has expressed her intention in the Planning Statement that the Barracks will only be used to accommodate suitable single adult males seeking asylum, who are eligible, with accommodation and subsistence support whilst their asylum applications are being considered. This is also her stated intention in her Guidance⁴⁸ and during the judicial review in the High Court.

However, the Town and Country Planning (Napier Barracks) Special Development Order 2021 goes further than that. Article 4(1)(A) of the Order provides that ‘failed asylum-seekers and their dependants’ will be accommodated there. Accordingly, it is concerning that this provision may later be invoked (without further consultation) and there is a risk that the Secretary of State would seek to accommodate families at Napier Barracks. There are no safeguards contained within the Order; an operational management plan need only be approved in writing by the Secretary of State without any process for

⁴⁵ House of Lords Secondary Legislation Scrutiny Committee 13th Report of Session 2021–22, HL Paper 70 [8]-[9].

⁴⁶ Home Office, *Allocation of accommodation policy* (v 6.0, published 27 May 2021) 16-17

<<https://www.gov.uk/government/publications/asylum-accommodation-requests-policy>> accessed 28 January 2022.

⁴⁷ HC Deb 21 October 2021, Vol 701, Col 286

<[https://hansard.parliament.uk/commons/2021-10-21/debates/5c304a06-6a39-4e07-b550-28abbfa6da2/NationalityAndBordersBill\(EighthSitting\)](https://hansard.parliament.uk/commons/2021-10-21/debates/5c304a06-6a39-4e07-b550-28abbfa6da2/NationalityAndBordersBill(EighthSitting))> accessed 28 January 2022.

⁴⁸ ibid

scrutiny.⁴⁹ The matters listed which the Operational Management Plan will cover (at 3.10 and Appendix 4 of the Planning Statement) do not include the expansion of other persons to reside in Napier Barracks.

In summary, ILPA is particularly concerned about the proposals to use Napier Barracks as a test site for several reasons:

1. These proposals are not contained within this consultation, and thus there can be no meaningful consultation in relation to these;
2. The proposal of ‘test and pilot’ at the expense of extremely vulnerable individuals, without there being proper mechanisms and processes in place to carry out risk assessments, would put these individuals at greater risk of harm; and
3. As the Home Office accepts it is not suitable for any person other than a single healthy adult male without further vulnerabilities, under the age of 65, it is an inappropriate testing ground for future accommodation centres.

Our concerns remain that the use of Napier Barracks as facilities to accommodate persons seeking asylum puts already vulnerable individuals at greater risk of harm.

Institutional Accommodation is not the Solution

Accordingly, it remains firmly the position of ILPA that the Home Office should house people seeking asylum in communities, not in institutional settings. The reason for this is that they are likely to be particularly vulnerable. As stated by Mr Justice Linden, ‘I did not understand it to be in dispute that, as a group, asylum seekers are likely to be more vulnerable as a result of their experiences and their situation, and to have more complex physical and mental health care needs’.⁵⁰ All barracks, including Napier, are an extreme form of institutional accommodation. As we detail above, they can have a grave and dehumanising impact, negatively affect the wellbeing of vulnerable persons seeking asylum, and damage community cohesion.

We maintain that the Home Office should continue to progress the backlog of asylum cases, thereby relieving the pressure on asylum accommodation, and permit people seeking asylum to work while their claims are being decided, reducing the need for asylum support to be provided by the Government. This would allow people seeking asylum to contribute through paying taxes and national insurance, instead of requiring support. It would support their integration and sense of dignity.

In its report in December 2021, the APPG on Immigration Detention stated that the government must ensure that ‘Napier Barracks is closed as asylum accommodation with immediate and permanent effect,

⁴⁹ Town and Country Planning (Napier Barracks) Special Development Order 2021, Article 5.

⁵⁰ *NB & Ors v Secretary of State for the Home Department* [2021] EWHC 1489 (Admin) [187].

and that people seeking asylum accommodated at Napier are moved directly to decent, safe housing in the community that allows them to live with dignity'.⁵¹

ILPA opposes the use of Napier Barracks for asylum accommodation and supports the APPG Inquiry Panel in calling for its immediate and permanent closure.

Background

The Immigration Law Practitioners' Association ('ILPA') is a professional association founded in 1984, the majority of whose members are barristers, solicitors and advocates practising in all aspects of immigration, asylum and nationality law. Academics, non-governmental organisations and individuals with a substantial interest in the law are also members. ILPA exists to promote and improve advice and representation in immigration, asylum and nationality law, to act as an information and knowledge resource for members of the immigration law profession and to help ensure a fair and human rights-based immigration and asylum system. ILPA is represented on numerous government, official and non-governmental advisory groups and regularly provides evidence to parliamentary and official enquiries.

29 January 2022

⁵¹ APPG Report, Recommendation 1(a) page 10.

APPENDIX
**to ILPA's Response to the Home Office's Napier Barracks
planning application**



ILPA's response to the ICIBI's Call for Evidence: An inspection of the use of hotels and barracks as contingency asylum accommodation

Background

ILPA is a professional association founded in 1984, the majority of whose members are barristers, solicitors and advocates practising in all aspects of immigration, asylum and nationality law. Academics, non-governmental organisations and individuals with a substantial interest in the law are also members. ILPA exists to promote and improve advice and representation in immigration, asylum and nationality law, to act as an information and knowledge resource for members of the immigration law profession and to help ensure a fair and human rights-based immigration and asylum system. ILPA is represented on numerous government, official and non-governmental advisory groups and regularly provides evidence to parliamentary and official enquiries.

Introduction

ILPA recently submitted evidence to the Home Affairs Committee on the Home Office's response to Covid-19 which included a section on the use of institutional accommodation, specifically the barracks. We have expanded on and updated that evidence for this response. We are also providing to the ICIBI, but not publishing publicly with our response, several anonymised witness statements, which are summarised as case studies below.

The rationale behind the use of the barracks

It is well recognised that people seeking asylum should generally be housed in communities, not in institutional settings. This is because asylum seekers represent some of the most

vulnerable members of society.¹ The Grand Chamber of the European Court of Human Rights has specifically recognised that asylum-seekers are members of a particularly underprivileged population group and as such are in need of special protection.² The Home Office started using army barracks last year, purportedly as a response to Covid-19. Barracks represent perhaps the most extreme form of institutional accommodation.

We are concerned that the Home Office is relying on delays in decision making resulting from Covid-19 as a reason for why people are being housed in unsuitable accommodation. Many of these issues existed before the pandemic.

We believe that the Home Office could be doing more to progress the backlog of asylum cases and thereby relieving the pressure on asylum accommodation. As a related issue it should be noted there is ample evidence to show that long term stays in hotels is also completely inappropriate and harmful to people's health. ILPA Members report that cases where decisions could be made are not being progressed by the Home Office. This includes delays on decisions where the interview has taken place, delays on implementing appeal decisions, and deciding cases without an interview where possible (including but not limited to those nationalities that have extremely high grant rates, e.g. the estimated final grant rate in 2019 was 92% for Syria, 95% for Libya, 90% for Eritrea³). These are some of the humane and practical alternatives that are available to reduce the pressure on asylum accommodation. Instead, the government has sought to warehouse people in disused army barracks during a pandemic, causing untold harm and putting lives at risk, all unnecessary.

Further, if people seeking asylum were permitted to work while their claims were being decided then this would reduce the need for asylum support to be provided by the government. This is a simple step to take which would allow people to contribute by paying

¹ See Porter and Haslam (2005), *JAMA* Aug 3;294(5):602-12. '*Predisplacement and postdisplacement factors associated with mental health of refugees and internally displaced persons: a meta-analysis*'; as referred to in Written evidence submitted by Doctors of the World, the Helen Bamber Foundation, Forrest Medico-Legal Services and Freedom from Torture (COR0206).

² MSS v Belgium and Greece (Grand Chamber decision of European Court of Human Rights, (Application no. 30696/09), 21 January 2011, §251).

³ Outcome analysis of asylum applications <https://www.gov.uk/government/statistical-data-sets/asylum-and-resettlement-datasets>

tax and NI, instead of requiring support, and would also support integration and give people a sense of dignity.

We, and other charities, have been asking for a meeting with the Home Office to discuss options for progressing claims, but this has not taken place. It is extremely concerning to see that instead the Home Office is piloting the outsourcing of asylum interviews to private contractors. As outlined above, we believe that better options are available.

Case study 1

After fleeing my home country I was detained in Libya by traffickers for three months. I was forced to work for no payment and suffered beatings and torture for approximately three months. I eventually managed to escape and travel to London. Someone gave me money and took me on a bus to the Home Office but when I went there they said they were closed and couldn't help me, so I stayed outside the building overnight and claimed asylum the next day. I was initially put in a hotel and I was not allowed to go out and I was not given a Covid-19 test.

One day, around the end of November/beginning of December I was told that I would be moved and I was taken to Napier barracks. I was told that this would be temporary and I would be moved soon. I was given a room with two beds. Other parts of the camp were shared with hundreds of other people seeking asylum from countries like Sudan, Syria and Yemen.

I was afraid that I would get Covid-19 because of the conditions in the camp and I was one of the first people to get it. I had symptoms in the second week of January and asked for a test, I had to walk to a nearby hospital to have this done. The test was positive. Around a week later a security guard told me to go to the games room which is a big hall where residents would meet. They had moved the chairs and put around eight mattresses on the floor for me and other inmates who had the virus. They locked the doors. At first there was no access to a toilet, but they later brought one and the room never had a shower. There was no furniture except some cupboards and there was no television or radio. I was given Panadol but that was all. I had a headache and my body felt hot and very painful and weak. Another inmate came to my window and asked if I wanted to speak to

a lawyer, and I agreed they could write to the Home Office threatening legal action if I was not moved. I was worried about punishment for complaining, and I still am worried about this.

My mental health has got much worse since I came here and it reminds me of when I was tortured. I have seen bad things here, so many detainees have tried to commit suicide while I have been here, and I have seen the protests outside the camp against us. There is nothing to do here except think of the past. I have given up hope.

January 2021

Access to legal advice

The Home Office did not involve ILPA in any conversations before opening the barracks. As a result of this, the need to facilitate access to lawyers does not appear to have been given any consideration prior to the opening of Penally and Napier, with the result that many men were held there without access to legal advice for lengthy periods of time. Access remains difficult, for example the nearest law firm mentioned in the posters that are up at Penally is approximately one hour 15 minutes' drive away, each way, and the rest are two hours. We understand that the vast majority of people who have managed to be transferred out of Penally and Napier barracks are those who have been assisted by lawyers.

We note that there is provision in section 29(4) of the Nationality, Immigration and Asylum Act 2002 that: "*The Secretary of State shall take reasonable steps to ensure that a resident of an accommodation centre has an opportunity to obtain legal advice before any appointment made by an immigration officer or an official of the Secretary of State for the purpose of obtaining information from the resident to be used in determining his claim for asylum.*" This part of the Act is not in force, however it shows that Parliament has previously recognised the importance of access to legal advice at the earliest stages of a person's asylum claim. The new asylum rules relating to the potential of an asylum claim being deemed inadmissible and not considered substantively in the UK make access to legal advice at an early stage even more crucial.

Case study 2

I claimed asylum in Dover and had a short initial interview with the Home Office where they asked me some very brief questions about myself. After staying elsewhere for a month and a half, I arrived in Napier barracks in September 2020 and I was told by Migrant Help that I would be moved after six weeks. I have now been here for almost four months. I live in a room with 13 other men, with the beds separated by curtains. The room is very cold as there is no heating. Connected to our room is another room with 14 people so there are 28 people in total in our block.

We are not allowed to go outside the camp. There are security staff controlling the outside and the gates are always locked. Security previously allowed us to go outside the camp for two hours at a time. The environment is like a prison and the situation in the camp reminds me of the difficult experiences I have been through, so I stay in my room most of the time.

I have conducted research about Covid-19 as no one in the camp has given us any information about it. I have not seen any leaflets in my own language about it. Since arriving at the camp my mental health has deteriorated and I cannot sleep.

It is very difficult to get legal advice in the camp, there is no help from the Home Office or Migrant Help for people to get asylum solicitors. I have had no news about my asylum claim or when I will be moved from the camp.

January 2021

Inadequate screening processes

We are aware that there are issues with the initial assessment of whether or not a person can be accommodated in the barracks under the Home Office's own guidance, 'Suitability for contingency accommodation'. The Home Office checks, purportedly designed to "*help ensure that anyone with indicators of vulnerability, modern slavery or exploitation, or significant health issues are not transferred to the sites*", are deficient. For example, we know that people

who have been identified as potential victims of trafficking have been accommodated in the barracks.⁴

The asylum screening interview is currently being used to decide whether people should be accommodated in the barracks⁵, there are two problems with this. Firstly, the screening interview is designed to obtain preliminary information about a person's asylum claim, not about what form of accommodation may be appropriate for them. Secondly, we are aware that the Home Office was using a truncated screening process for months last year which omitted questions that would identify those who may have been trafficked, until the High Court made an Order that they must resume asking those questions.⁶

It is unclear what processes are in place to identify and relocate to safe accommodation, anyone who has been erroneously transferred to the barracks, for example those who were subjected to this truncated screening process, nor those who develop vulnerabilities due to the trauma of the barracks. The latter example is an important one, we are already aware of such cases existing, and this is why our position is that the barracks should be closed as they are unsuitable for any person, regardless of their current state of health.

Case study 3

I arrived in Dover and applied for asylum. When I had my first interview I told the officials about my experience with torture. I did not have a lawyer at this time. I was originally placed in a single room in a hotel with a private toilet and shower, I felt safe from Covid-19 and my mental health felt good. One day in September 2020 there was a knock on my door and I was told that I was being transferred at 6.30pm that day. I felt scared as I thought my asylum was being refused and I was being deported. A car came and picked up I think five of us. We eventually pulled up at Napier barracks. A staff member took our temperature and asked me for my name and date of birth, nothing else. My room was small with two

⁴ In addition to the case studies, see here: <https://dpglaw.co.uk/asylum-seeker-at-napier-barracks-obtains-court-injunction-that-he-must-be-re-housed/>

⁵ UKVI guidance 'Suitability Assessment for Contingency Accommodation' version 6 December 2020, p2

⁶ *DA & Ors v The Secretary of State for the Home Department* [2020] EWHC 3080 (Admin) (13 November 2020) <https://www.bailii.org/ew/cases/EWHC/Admin/2020/3080.html>

beds, in a block that houses 28 people and has two toilets and one shower. There were six sinks and no soap. When I saw the barracks and the barbed wire around it, I felt very sad and low. I was told that I would be there for up to two months but now it is January and I am still there.

It is extremely cold in my room. The heater has not worked properly the whole time I have been here. The toilets have never had any soap and are used by at least 28 people. The hall where we line up for food often has a large number of people queueing and distancing is impossible. Detainees have lost hope, I have witnessed people trying to commit suicide. I know of four people in the camp who have tried to hang themselves. Someone in my block sliced his neck and wrists with a blade. The ambulance came and took him and he never came back. These are terrible things to witness and I have not been given any support.

I slept outside for six nights in January with around five other detainees, as we were so worried about contracting Covid-19, however I eventually did contract the virus.

January 2021

Equality Impact Assessment

The Equality Impact Assessment carried out in respect of the use of Ministry of Defence Sites to accommodate asylum seekers, dated September 2020, states that on page 11 that: "*There is some PHE evidence that has highlighted the potential increased prevalence of Covid-19 in black, Asian and minority ethnic (BAME) communities*".

The Public Health England (PHE) report 'Disparities in the risk and outcomes of COVID-19' dated August 2020 puts it rather more starkly, stating:

People from Black ethnic groups were most likely to be diagnosed. Death rates from COVID-19 were highest among people of Black and Asian ethnic groups. This is the opposite of what is seen in previous years, when the mortality rates were lower in Asian and Black ethnic groups than White ethnic groups. Therefore, the disparity in COVID-

19 mortality between ethnic groups is the opposite of that seen in previous years. An analysis of survival among confirmed COVID-19 cases and using more detailed ethnic groups, shows that after accounting for the effect of sex, age, deprivation and region, people of Bangladeshi ethnicity had around twice the risk of death than people of White British ethnicity. People of Chinese, Indian, Pakistani, Other Asian, Black Caribbean and Other Black ethnicity had between 10 and 50% higher risk of death when compared to White British.⁷

In addition to the findings by PHE, the Office for National Statistics has published statistics on Covid-19 related deaths by ethnic group. After adjusting for region, population density, socio-economic and household characteristics, the statistics show “*the raised risk of death involving COVID-19 for people of Black ethnic background of all ages together was 2.0 times greater for males ... compared with those of White ethnic background*” and ‘*Males of Bangladeshi, Pakistani and Indian ethnic background also had a significantly higher risk of death involving COVID-19 (1.5 and 1.6 times, respectively) than White males*’.⁸ This week, the government has recognised that ethnicity and deprivation are risk factors for severe Covid-19 and as a result are advising almost two million more people to shield.⁹ It is unclear what processes are in place to identify those in the barracks who should be shielding.

The Equality Impact Assessment goes on to state that the PHE evidence: “*needs to be balanced against the evidence that infection rates for those receiving asylum support (predominantly members of the BAME community) appear to be low.*” It is unclear where the supporting evidence for this statement is, we do note however that PHE identifies deprivation as a relevant factor in higher mortality rates for Covid-19 in their report.¹⁰ We do not believe

⁷

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/908434/Disparities_in_the_risk_and_outcomes_of_COVID_August_2020_update.pdf

⁸

<https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/deaths/articles/coronaviruscovid19relateddeathsbyethnicgroupenglandandwales/2march2020to15may2020>

⁹ <https://amp.theguardian.com/world/2021/feb/16/covid-almost-2m-more-people-asked-shield-england>

¹⁰

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/908434/Disparities_in_the_risk_and_outcomes_of_COVID_August_2020_update.pdf

there is any evidence to suggest that the people accommodated in the barracks are any less deprived than those referred to in the PHE report.

At page 7 of the Equality Impact Assessment the Home Office appears to justify its failure to inform or consult the NGO sector about the barracks prior to their opening by claiming that it is analogous to normal initial accommodation: "*The Home Office has remained in discussion with NGOs through the NASF forums about the support arrangements for those in full-board initial accommodation - i.e. accommodation with very similar characteristics to the arrangements that are intended to be put in place in Folkestone and Tenby.*" This is not understood. Our understanding is that at no stage did the Home Office ever inform or consult with the NGO sector about the use of barracks in any NASF forum, before it implemented it. It appears that the Welsh Government was also uninformed at an early stage about the plans, to the extent that they sent an urgent letter to the Home Secretary on 18 September 2020 raising concerns about the suitability of the Penally barracks and asking her to postpone its use.¹¹ The lack of transparency from the Home Office around decisions that are being made on changes to the asylum system is a key and growing area of concern. It is difficult to see how this explanation for the failure to discuss the proposals at an earlier stage can be considered rational, as using remote army barracks is clearly very different to other full-board initial accommodation.

The Equality Impact Assessment also states the following on page 9:

Destitute asylum seekers with protected characteristics are not analogous to British Citizens and other permanent residents with similar characteristics who are in need of welfare assistance from public funds; so to the extent that asylum support is less generous, this is justified by the need to control immigration. Any provision of support over and beyond what is necessary to enable the individuals to meet their housing and subsistence needs could undermine public confidence in the asylum system and hamper wider efforts to tackle prejudice and promote understanding within the general community and amongst other migrant groups.

¹¹ <https://gov.wales/sites/default/files/publications/2020-11/atism14343doc1.pdf>

The proposal results in placing asylum seekers in areas of the country not previously used to house asylum seekers and there may be impacts on community relations that will need to be carefully managed in partnership with the police, local authorities and others. However, similar issues have arisen recently in respect to the use of hotels, which may well be perceived by the general public as a more generous accommodation option than former MoD barracks. The proposal is therefore consistent with the general objective of tackling prejudice and promoting understanding between people with different characteristics.

This is deeply concerning. It suggests that an underlying rationale for the placing of asylum seekers in barracks is not because of practical delays arising out of covid-19, but because of political reasons and a desire to appear tough on asylum seekers. The comments come under the heading ‘Foster good relations between people who share a protected characteristic’. It is unclear how providing substandard accommodation to vulnerable people assists in tackling prejudice. Instead it excludes and ‘others’ those seeking asylum, separating them from the community. This is the opposite of fostering good relations. This is the opposite of providing ‘special protection’ to a particularly vulnerable population group as required by the European Court of Human Rights.¹²

Napier Covid-19 outbreak

In relation to the large outbreak of Covid-19 cases at Napier barracks, while the Home Office initially moved people out,¹³ it appears that in the week before the fire they changed their approach such that no-one was to be transferred out, regardless of their circumstances (for example including those identified as potential victims of trafficking) until the end of the new period of enforced self-isolation. This is despite the fact that The Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) Regulations 2020 have explicit provision for movement during self-isolation to move to different accommodation provided under

¹² See footnote 2 above

¹³ <https://www.theguardian.com/world/2021/jan/26/asylum-seekers-sent-to-hotels-after-covid-outbreak-at-former-uk-army-barracks>

section 4, 95 or 98 of the Immigration and Asylum Act 1999 where it becomes impracticable to remain where they currently are, or to avoid a risk of harm.¹⁴

Our understanding of the origins of the fire at Napier on 29 January 2021 is that this was the escalation of a protest that started when people were told that they would not be transferred away from the site. People are understandably scared given the vast numbers of Covid-19 infections on site. We have heard of people sleeping outside as they are too fearful of sharing rooms with several others, who it is quite likely may have Covid-19. It is troubling to hear reports of police in anti-riot gear preventing people from leaving Napier during the fire, although staff were permitted to leave. The Home Office has been explicit that the army barracks are not detention,¹⁵ yet not permitting people to leave the site when it was on fire indicates otherwise. People were forced to remain on site despite the ongoing Covid-19 outbreak, the fire, and the resulting lack of electricity, heating and water. We understand that around a dozen men were moved to Tinsley House following the fire, due to their alleged involvement in the protests, so it clearly is possible to move people. All people currently housed in the barracks should be moved to safe and appropriate accommodation as a matter of urgency.

We have seen the statement made by the Home Secretary¹⁶ stating that it was “an insult” to say that the barracks were unsuitable and for people to complain about conditions which were deemed appropriate for army personnel. This is a line that the government continues to take.¹⁷

We refer to comments made by Johnny Mercer MP in 2019 in relation to the state of army barracks (not Napier) *“Animals would not be housed in such dangerous conditions. It is disgraceful how ministers talk up our armed forces at every opportunity, and yet, away from the spotlight, ask our most loyal public servants to endure totally unacceptable and lethal*

¹⁴ Regulation 2(3)(b)(iv) and (viii) <https://www.legislation.gov.uk/uksi/2020/1045/made>

¹⁵ <https://questions-statements.parliament.uk/written-questions/detail/2021-01-25/142956>

¹⁶ <https://twitter.com/pritipatel/status/1355207920091344897>

¹⁷ <https://hansard.parliament.uk/lords/2021-02-11/debates/37B2C3E3-9F96-4B50-AA3C-73D0A3CABF51/RefugeesNapierBarracks>

*living environments.*¹⁸ The National Audit Office published a report on 3 February 2021 that raises concerns about the conditions of accommodation provided by the Ministry of Defence to service personnel.¹⁹ A report in November 2014 stated “*these buildings were never intended for long-term use*”.²⁰ We note that Napier was scheduled for demolition prior to being repurposed.²¹

Further, those being accommodated in the army barracks at present are not fit and healthy army personnel who are staying there for a short and defined period of time, they are traumatised individuals who have fled their home in order to seek safety in the United Kingdom. The situations are simply not comparable.

ILPA’s Legal Director attended the hearing on 16 February 2021 at which permission was granted for judicial review to proceed in respect of five people who have been accommodated at Napier. It was notable that the SSHD conceded the matter of permission on all but one of the grounds immediately prior to the hearing.²² At that hearing, we were told that a senior Home Office official is intending to visit Napier on Friday with a view to investigating the issues raised, and that these visits will take place on a weekly basis going forward. This should have been happening a lot sooner and questions should be raised as to why this was not being done and what level of oversight the Home Office is exercising over these sites, particularly given the high level of concern expressed by numerous organisations and that detailed in the media.

We were also told at the hearing by counsel for the SSHD that 63 people remain at Napier. There are many questions outstanding in relation to this outbreak, but it would be useful to know what assessments were made about what the government considers to be a ‘safe’ number of people to be in Napier during the outbreak, and how and when this advice

¹⁸ <https://www.theguardian.com/uk-news/2019/jan/01/army-barracks-not-fit-for-animals-says-tory-mp-after-leaked-fire-safety-report>

¹⁹ <https://www.nao.org.uk/press-release/improving-single-living-accommodation/>

²⁰ <https://folkestonehythdc.force.com/prs/planning-application/a1n2o000002yxz9AAA/y140300sh?tabset-185b1=2> ES Appendix 8.2 – Built Heritage Statement, p 19

²¹ <https://www.kentononline.co.uk/folkestone/news/more-homes-planned-for-mod-land-205150/> and <https://www.kentlive.news/news/kent-news/far-right-mob-make-odd-4533197>

²² <https://dpglaw.co.uk/home-secretary-concedes-that-it-is-arguable-that-napier-barracks-are-inadequate-and-in-breach-of-human-rights-high-court-grants-permission-to-proceed/>

changed. At the end of this submission we have listed documents relevant to the outbreak at Napier, which we are aware of and are seeking disclosure of via various means, but that the ICIBI should certainly request to see if it has not yet done so.

Case study 4

I was told in September 2020 that I would be leaving my accommodation in ten minutes and that I would be going somewhere where my asylum claim would be processed quickly. I have been in Napier for almost four months now, although the staff told me that I would only be there for around two months. I was not asked about my health or background when I arrived. I sleep in a room with 13 other men. Each bed is separated by pieces of wood and a curtain. It is always very cold. I share one shower and two toilets with 28 people. I have not been interviewed by the Home Office or had an update on my asylum claim. The other people in the camp are in the same situation and everyone is upset and frustrated.

Social distancing is impossible here, and there is no procedure for isolating those who test positive for Covid-19 from the rest of us. All the people are still sharing the toilets and showers.

The gates to the camp are kept locked. Before, we could ask security to open the gates and we were allowed outside until 10pm. Now we are not allowed to go outside at all. There are security guards on both sides of the gate and the police are outside. It feels like a detention centre or prison camp.

When you are surrounded by such an environment it makes you feel down all the time. I want to live a normal life somewhere where I can move around freely without guards controlling me. I want to choose how to spend my days, where to go and what to eat. I hope I can be moved out of the camp to stable accommodation and that I never have to come back to this place again.

When I was moved to the camp, a woman helped me find a solicitor for my asylum case. There is no help or information inside the camp, and so without her help I would not have known how to find a solicitor.

January 2021

Clearsprings

We have very serious concerns about the way that Clearsprings has been communicating with people who are accommodated at Napier and Penally.

1. Confusion re: detention

It is unclear how it is being effectively communicated to people that they are not being detained in these barracks. This is a group of often traumatised people who do not have English as a first language, if at all. There are security guards on site and it is surrounded by a large fence, and people were given a curfew. An incident was filmed where police officers forcibly returned someone to the barracks, it does not report who called them.²³

On 16 January 2021, people at Napier were given a letter from Clearsprings headed “COVID-19 ISOLATION”. The letter stated:

*There are now restrictions in place at the site. You are **not** to leave the site under any circumstance. The Police are aware of the situation and if you have been found to disregard this advice, the Police may issue you with a **Fixed Penalty Notice** or you may be arrested.*

It appears from this letter that people were effectively subject to detention in Napier without there being any lawful basis on which to do this. There is nothing in the Covid laws to support such a position, as exceptions are carved out for a variety of reasons which could apply to those in Napier.

²³ <https://www.theguardian.com/uk-news/2021/feb/03/police-filmed-carrying-asylum-seeker-into-kent-barracks-against-his-will>

The SSHD's position is that people are not detained, but it is unclear what action has been taken to ensure that people are not misinformed in such a serious manner. We recommend that the ICIBI should investigate the circumstances around the production of this letter and what action was taken by the Home Office once they became aware of it.

2. Threats to report people to the Home Office

We have had sight of a letter headed "VERBAL WARNING – AGGRESSIVE BEHAVIOUR" issued at Penally by Clearsprings. No details are given of the alleged behaviour, but examples given in the letter of the type of behaviour that Clearsprings considers harassment are:

- violence or threat of violence towards any person
- abuse or insulting words or behaviour
- damage or threats of damage to property belonging to another party
- writing threatening, abusive or insulting graffiti
- any act or omission calculated to interfere with the peace or comfort of any other person or to inconvenience such person

The letter concludes "*Should you commit further breaches of any term of your Occupancy Agreement or covid restrictions per government guidelines, I will report each and any breaches to the Home Office.*"

No explanation is given in the letter as to what the Home Office would do with such information, and this is in our view an empty threat, as breaching the Occupancy Agreement or the Covid-19 laws are highly unlikely to have any effect on a person's asylum claim. It is inappropriate to make such threats to people who are not in a position to fully understand their situation or rights. Clearsprings and the Home Office should explain what action will be taken in circumstances where a report such as that referred to in the written verbal warning is made, so that people are able to understand the consequences, if any. It is also unclear as to what extent people have the contents of the Occupancy Agreement or the Covid-19 laws

and guidance (including as and when these are updated) explained to them, and made available in their own language.

3. Use of the Official Secrets Act on staff and visitors

Clearsprings staff have been asking people who visit those being kept in the barracks at both Penally and Napier, including at least one of our Members, to sign non-disclosure agreements which contain references to the Official Secrets Act.²⁴ We have been informed that this was done in error and such requests are no longer being made, but it is unclear how this was ever considered appropriate. It is also unclear what, if any, steps have been taken to inform those who were told they could not see their clients unless they signed the document that they were asked to do so in error and that the agreements will have no legal effect.

The error appears to be that a staff agreement was being used for site visitors. We would therefore query why Clearsprings staff are being asked to sign documents that contain any reference to the Official Secrets Act, and whether this is necessary and proportionate.

Future strategy

On 9 February 2021 we were advised that the Initial Accommodation that was due to open at Yarl's Wood would not be proceeding. We understand that the plans were advanced and had been informed that the site was to open imminently. The intended opening of the site was made public on 16 December 2020, and the initial plan had been to move people in on 24 December.²⁵ The reason given was that they "*do not need to use the additional capacity at this location at this time*". The following day it was reported that the use of Penally is to be extended for a further six months.²⁶ It is therefore difficult to discern a strategy in relation to the use of these type of sites at present, however we have seen various reports of further proposed sites, and we echo the concerns of Lord Dubs that "*Similar detention centres are*

²⁴ In addition to evidence we received directly from a lawyer, this was covered here:
<https://www.theguardian.com/uk-news/2020/nov/23/home-office-accused-of-cover-up-at-camp-for-asylum-seekers>

²⁵ <https://www.theguardian.com/uk-news/2020/dec/16/home-office-criticised-over-plan-to-house-asylum-seekers-at-yarls-wood>

²⁶ <https://www.walesonline.co.uk/news/wales-news/penally-asylum-seekers-camp-run-19813672>

springing up elsewhere, suggesting a new Home Office policy which has neither been fully debated nor subject to adequate parliamentary scrutiny.”²⁷

Summary of areas where further data could usefully be obtained

The following are documents that we are aware of and that in our view should be made public, but at a minimum the ICIBI should see them:

- Notes of the Strategic Migration Partnership meetings for both Kent and Wales. We have made FOI requests for this information but have not yet had even an acknowledgement.
- Kent Clinical Commissioning Group Infection Prevention and Control Assessment for Napier
- The Public Health England advice referred to by Chris Philp MP in response to written parliamentary question 146935 from Holly Lynch MP.²⁸ We believe this is the advice dated 7 September 2020 which apparently states that it is not appropriate to use dormitories during the pandemic.²⁹
- We are aware that the government has carried out a ‘rapid review’ of initial asylum accommodation with a company called Human Applications.³⁰ The full review should be made public as soon as possible.

Summary of recommendations

- Our primary position has been and remains that the barracks are entirely unsuitable to house anyone and they should be closed, and people rehoused in safe accommodation. Any plans to extend the use of this type of accommodation, including the temporary structures that were planned for use at the Yarl’s Wood site should be abandoned.

²⁷ <https://www.politicshome.com/thehouse/article/shocking-conditions-in-military-barracks-housing-asylum-seekers-are-unacceptable-and-must-be-urgently-closed>

²⁸ <https://questions-statements.parliament.uk/written-questions/detail/2021-02-01/146935>

²⁹ <https://www.theguardian.com/politics/2021/feb/16/home-office-were-advised-not-to-house-asylum-seekers-in-napier-barracks>

³⁰ <https://questions-statements.parliament.uk/written-questions/detail/2021-01-12/136619>

- The Home Office should explain the extent to which the evidence referred to above regarding ethnicity and deprivation has been taken into account in their decision making, including what steps have been taken to identify such people in the barracks, and what policy changes have been made as a result of the publication of this new evidence.
- An audit should be carried out to find out how many people in the barracks do not have asylum lawyers, and assistance provided to help anyone who wants a lawyer to find one. The Home Office should discuss this with the Legal Aid Agency, and ILPA would be happy to assist where needed.
- The Home Office should urgently investigate the manner in which Clearsprings is communicating with people residing in and visiting the barracks. In particular the circumstances around the production of the letter dated 16 January 2021 informing people that they were not permitted to leave the site under any circumstances. The Home Office should make public what action they took once they became aware of this serious breach. They should also review all form letters used by Clearsprings to ensure that no further inappropriate communications are issued.

19 February 2021