



## **All-Party Parliamentary Group on Immigration Detention**

### **Inquiry into quasi-detention**

#### **Oral evidence session – Legal and health issues**

Thursday 1 July 2021, 10.00 - 12.00 (online via Zoom)

#### **Part One – Legal issues**

##### **Attendees**

##### **Witnesses:**

Clare Jennings – Director and Head of Public Law and Community Care, Mathew Gold & Co. Solicitors  
Sonia Lenegan – Legal Director, Immigration Law Practitioners' Association  
Shu Shin Luh – Barrister, Doughty Street Chambers  
Sue Willman – Solicitor / Consultant, Deighton Pierce Glynn Law

##### **Parliamentarians:**

Alison Thewliss MP (SNP) – Chair  
Wendy Chamberlain MP (Liberal Democrat)  
Mary Kelly Foy MP (Labour)  
Richard Fuller MP (Conservative)  
Helen Hayes MP (Labour)  
Baroness Lister of Burtersett (Labour)  
Bell Ribeiro-Addy MP (Labour)  
Lord Roberts of Llandudno (Liberal Democrat)

##### **Other attendees:**

Over 45 additional guests, including experts by experience, parliamentary staff, and representatives from external organisations.

## **Transcript**

Alison Thewliss MP Thank you, everybody, and welcome again to all the participants who have joined. I think we're up to 58 participants, which is fantastic.

So this is the first oral evidence session of our current inquiry, which is looking at the government's use of large scale institutional sites, like Napier Barracks in Kent, to house asylum seekers in the UK. We're concerned as an APPG that these sites replicate many of the features found in immigration detention centres. So we feel it's particularly important to look in more detail at their suitability for asylum accommodation, particularly given the UK government's current proposals to set up new asylum reception centres in the UK and potentially also off-shoring the asylum processing centres. Sites like Napier likely give a good indication to us of what to expect from these future centres, so we want to do some additional scrutiny of how they are working.

On this occasion the format of the session will be a Q&A between the parliamentarians and the speakers who are giving evidence. So it won't be possible to take questions from the floor, as we usually do. But we hope everybody finds it an informative session nonetheless. So I'd like to move to our first session, which is on residents' access to justice and to ask each of the people giving evidence to give a brief introduction to themselves. So first of all, if I could take Sonia Lenegan, Legal Director of the Immigration Law Practitioners' Association (ILPA). Sonia.

Sonia Lenegan Thanks Alison. My name is Sonia Lenegan, I'm the Legal Director of ILPA. I'm also a practicing solicitor and have been for over a decade. The vast majority of my experience has been in legal aid, judicial review, as well as asylum and immigration work. ILPA is a membership organisation. The majority of our members are barristers, solicitors and advocates practicing in all aspects of immigration, asylum and nationality law.

Alison Thewliss MP Thank you very much, Sonia. Clare Jennings, Director and Head of Public Law and Community Care at Matthew Gold & Co. Solicitors.

Clare Jennings Hi, I'm Clare Jennings. I'm Director at Matthew Gold & Co. and Head of our Public Law team. We focus primarily on migrant rights cases. We have in the last six months represented at least 30 or more men accommodated at Napier Barracks, including two of the claimants in the lead case. We continue to represent men who are at Napier Barracks and also some who were transferred to Tinsley House from Napier Barracks.

Alison Thewliss MP Thank you very much, Clare. Shu Shin Luh, Doughty Street Chambers.

Shu Shin Luh Thank you, Alison. I'm Shu Shin Luh, I'm a barrister practicing at Doughty Street Chambers. I acted for two of the claimants who brought the challenge

in *NB & Others* to the use of the barracks as accommodation for destitute asylum seekers. Thank you for having me.

Alison Thewliss MP Thank you very much. Sue Willman, Solicitor / Consultant from Deighton Pierce Glynn Law. Have we got Sue on the call? Sue I can see that you're on here but I think you are muted.

Sue Willman So sorry.

Alison Thewliss MP That's OK - there's always somebody on the call, so don't worry about it. Somebody has to be first.

Sue Willman Maybe the reason I'm muted is that I'm so ancient that I've been representing destitute asylum seekers on these issues since the late 90s - first at a law centre, and now at Deighton Pierce Glynn. I'm also Chair of the Law Society's Human Rights Committee.

But I think the reason I've been asked today is that with Clare at Matthew Gold, I've been representing the asylum seekers in the lead case in relation to the unsuitable accommodation at the barracks. My firm is also involved in a previous case in relation to Penally in Wales and, like Clare, we represented several asylum seekers who were transferred to Tinsley Immigration Removal Centre after the fire at Napier. I look forward to discussing these issues with you today.

Alison Thewliss MP Thank you very much. So we move on now to questions which I'm happy to open with around the issue of residents' access to justice.

So firstly, I'd like to ask Sonia Lenegan - we understand that everyone accommodated at the sites of relevance to our inquiry are people seeking asylum, and obviously access to legal advice and representation is really important for such a group. Can you talk us through how this works at the barracks and any concerns that you might have on this?

Sonia Lenegan How it works at Napier is that there is Migrant Help on site who are contracted by the Home Office to provide support to people there. When people arrive at Napier, they have an induction with Migrant Help and they are signposted at that point to legal reps. And there are also posters put around the barracks that have a list of legal firms on there. There are 11 law firms on the list, and I understand that five of those are currently not accepting referrals.

Fortunately, there are organisations who have gone in and are working with the men at Napier - and that's specifically Human for Rights Network, the Jesuit Refugee Service and Care4Calais. And they have been working directly with the men in Napier to ensure that they are actually taken on by a

lawyer. They've told me that they've found asylum lawyers for over a hundred people in recent months.

Initially with the barracks, the priority was getting people out of them - and so the lawyers that were needed for those type of cases, public law lawyers who are experienced in judicial review. It's generally a bit easier to find lawyers for those type of cases because they are paid considerably better than asylum work. But it was a real scramble at the beginning, when the barracks suddenly opened without any forewarning.

With legal aid asylum lawyers, it's a very different picture. It is well known that there are massive issues with capacity. Giving someone a list of lawyers is really of no help at all. Migrant Help does seem to be aware that many of the firms on the list do not have the capacity to assist, as I'm aware that they have recently approached the Legal Aid Agency (LAA) for assistance in finding providers who are able to help. And the LAA to their credit has done a huge amount of work to try to resolve the capacity issues. But this is likely to only be a temporary fix before providers are overwhelmed again, if and when the Home Office resumes transfers into Napier.

The fact that we have very little idea of what the Home Office is planning for Napier doesn't help. I'm going to talk more about the recent changes later - but expecting an overstretched sector operating completely in the dark to be able to react quickly is obviously unreasonable. And it's been very clear from the outset of the use of the barracks that little, if any, thought has been given to the importance and inclusion of legal representatives. And that's a real problem.

Alison Thewliss MP    OK, thank you very much.

If I could bring in Clare Jennings. We know that you and other colleagues have represented many clients of the barracks. What are the practical realities of working with clients in these settings

Clare Jennings    Well, there are quite a few difficulties with working with clients in these settings. One is that for a long time, face to face meetings wouldn't have been possible. That's because no one was being allowed into the barracks and people weren't allowed to leave the barracks. Even if they had been allowed to leave, until November they were not getting any money, so they couldn't have afforded the travel fare. And even now they're only getting £8 a week, so they still couldn't afford the travel fare.

One of the other issues is that there's no real private space to have these conversations with your clients in the barracks. Many of the conversations

that we've had with our clients, they've been in their dormitories. And we're taking instructions and discussing confidential and sensitive things: their past experiences of torture or slavery, and how that has impacted on them; discussing their mental and physical health and well-being, and how they've suffered. And to have to have those discussions overheard by a dozen or more than a dozen other men is difficult. You would never normally have that kind of client meeting within earshot of others. It's not so easy at our end either, because it's loud. You can hear all the noise in the dorm, even if they go out. And often it's via interpreters.

It's also quite difficult because often it's kind of almost a point of crisis when you're instructed. These men are suffering from being in Napier and then you're asking them to go through "how is it making you feel?" and drag up painful and difficult experiences.

And then I would also say that it has appeared to me that the Home Office has been using the judicial review pre-action protocol and lawyers as almost a way of identifying who shouldn't be in the barracks. And it's really not a desirable or sustainable way of doing it. It's very resource intensive for lawyers. We've worked all day and night to take on as many clients to help, particularly during the outbreak. But you can't take on hundreds of men at one time, all in an urgent case. So, that's one of the other obstacles.

So the way it's set up and the way you have to do it is not really that conducive to access to justice. It's doable. But it's through hard work and dedication and clients, I suppose, suffering slightly in the process.

Alison Thewliss MP And have there been issues getting access to the interpreters as well?

Clare Jennings So that can be difficult as well - because with legal aid you're limited to how much you can pay for an interpreter. So yes, there can be issues there. And like in everything in life - there are good and bad interpreters. If you're using an instant access interpreting service, you might find an interpreter who's not very good. If your client's got one of the less common languages, you might hold for quite a long time or just not be able to get an interpreter when you need them. So yes - that is also an issue, and has been.

Alison Thewliss MP OK, thank you very much. I think we move to Wendy Chamberlain for some questions now.

Wendy Chamberlain MP Thanks very much, Alison. And thanks to all the witnesses for being here today.

I'm going to move on to issues of lawfulness. And my first question is to Sue Willman - in fact both of my questions are. Now, the government has stated that it has a process for assessing the suitability of people to be housed at

the barracks. Can you explain that assessment process, what it involves and how effective it is, particularly in light of Clare's comments there

Sue Willman

Thank you. So I'd like you to put yourself in the shoes of an asylum seeker who has come from, say, Sudan. They've been held by traffickers in Libya, and then eventually they've come over the Channel and come to the UK. They've been in the UK for a few weeks, they don't speak much English and they're in a hotel. They probably haven't seen a doctor.

The process is that they'll get a call from Migrant Help, who go through a form called an ASF1 Form and ask them a series of questions. It will ask them, have they been trafficked to the UK? But they may not tie that up with what happened in Libya, where they were forced to work and beaten and held in a basement room.

And that's the basis, together with the original screening form, which the Home Office do when someone claims asylum and they fingerprint them, which is a brief form, of the Home Office's decision about whether or not to send them to the barracks. They have an allocation policy which has a page and a half about what kind of people will be sent there - which is basically single men who aren't vulnerable in certain ways. So people who are torture survivors or victims of trafficking or have disabilities should not be sent there. But for trafficking survivors, they now need to have actually been referred to the trafficking process - which many of them will not have been, because they haven't been picked up by that stage. And also, as Clare touched on, people may be afraid of authorities and may not be able to disclose things to someone they just met for the first time over the phone.

So that process is used by a Home Office caseworker to decide who to send. And then a bus picks them up and takes them to Napier. And so, with one of my clients in the *NB* case called OMA, he had actually been recorded by the Home Office as having experienced torture in Sudan, and he had torture scars. But by mistake he was still sent to Napier.

So the second point that I want to stress is that it's not just the initial process. It's also the fact that we understand mistakes may be made - but once vulnerable people arrive at the camp or if they become more vulnerable while they're there, there isn't a process really for picking people up there.

You know, they're mostly low paid agency staff who are working with people. They might have had a half-day training about safeguarding, but in this kind of crowded environment, there's not necessarily a venue for them to realise that certain people are vulnerable and should now be moved out.

And at the height of the bad situation in Napier, people were attempting suicide through cutting themselves and trying to hang themselves. So they went to hospital. But even some of them were then sent back to the camp and not moved out.

Wendy  
Chamberlain MP

Thank you very much. So a process that has lots of opportunities for error in it, but not a way to correct it either.

Can I ask a second question of you Sue? We understand that a considerable number of people at the sites have been, and continue to be, moved out as a result of legal challenges or the threat of such challenges. Can you talk us through the basis of those? Thank you.

Sue Willman

Thank you. So I suppose the most important basis of the legal challenge was that a barracks wasn't adequate and isn't adequate to house asylum seekers who recently arrived, who are mostly vulnerable because they've mostly had bad experiences. And the threshold for housing asylum seekers is very low – it's not as high as, say, in homelessness cases where people are rehoused. So it's just adequate. And also there are contractual provisions about what contractors have to provide in terms of accommodation.

So we said that, especially during the Covid pandemic, housing people in a dormitory situation of 14 people per dormitory with 28 people sharing bathrooms, because of the risk of infection without a partition between each bedroom, and then with large shared canteen facilities, was not adequate. And we also argued that there wasn't a proper assessment procedure for people going there and arriving there. And those points were all agreed on.

Obviously, there are several reasons why the barracks aren't suitable - the right wing protests outside, the military-like environments, generally they are a bit dilapidated. People here are familiar with the basic arguments. They're in the middle of nowhere - and obviously there's a concern that the government is intending to continue the use of military barracks, or accommodation centres at least, in remote parts of the country, which for various reasons may not be adequate.

We also argued that it could be a breach of Article 8 of the Human Rights Convention because of the lack of privacy. For a long time, visitors weren't allowed - at the beginning, not even NGOs. And it wasn't possible for people to come and go. People can now come and go more freely, but obviously they are kind of in the middle of nowhere, away from a place where they could worship or a community center or that kind of thing.

So the judge found that – and Shu Shin might want to add to this when she speaks - the accommodation at the time was not adequate and that the procedures for assessing who was sent there were not adequate, and also that the decision to lock everyone down during a large Covid outbreak was actually unlawful detention.

And I'm sorry to have to tell you that it looks like there's now a second Covid outbreak which is affecting two of the dormitories at the site. And we also have concerns about other types of infections.

So, generally, the legal challenge is the lack of adequacy of this kind of large scale accommodation for asylum seekers.

Wendy  
Chamberlain MP

Thank you.

Alison Thewliss MP

OK thank you very much. I'd like to bring in Helen Hayes MP.

Helen Hayes MP

Thank you very much, Alison. Both of my questions are for Shu Shin Luh. We're aware of the recent High Court ruling on Napier Barracks, and we know that you and other colleagues here today represented the claimants. Could you explain the ruling in a little more detail, and what its implications are?

Shu Shin Luh

Yes, of course. I hope the panel has seen the background and summary of the judge's findings that I had prepared in advance of today's session, which I understand will be on the APPG website in due course. It's a lengthy judgment, so I hope that provides a fuller summary than what I can say today in oral evidence.

There were two overarching findings from the judge. The first is that the way the barracks were arranged and the conditions in which the residents were held were unlawful and didn't comply with the actual duty that the Home Secretary owes, which Sue has already alluded to, to arrange adequate accommodation for destitute asylum seekers. And there are a combination of factors that led to this finding.

Firstly, the communal living areas of the dormitory - with 14 men to dorm, 28 to block; but not just that, that it was contrary to the advice of Public Health England (PHE) and was Covid insecure. And the Home Secretary and her officials knew this ahead of time, but went ahead anyway, crowding asylum seekers into communal dormitories which meant, according to PHE, that a Covid outbreak was virtually inevitable and unavoidable. The Home Secretary had identified a few measures that they thought that they could put in place, but they didn't even implement those measures to mitigate the risks.



Secondly, the second factor is that the beds in the dorms were divided by very thin, highly combustible plywood. And this was really said to be an attempt for social distancing. But what it did was ironically created a serious fire risk that was never addressed and still isn't addressed.

There was overcrowding in the communal setting. Clare has already set the scene for the lack of privacy. But you've got to understand that there's noise at all hours of the night. The dorms have a centrally controlled strip lighting, which means that one person might want the lights on, the other person might want the lights off. And you just have this on-off-on-off thing. People might be speaking or playing music or having calls with their family members abroad, during the middle of the night. There was poor ventilation. And all of that wasn't just the conditions, but the impact of that on the mental health of the residents and many of them already having past trauma histories.

There was also a lack of privacy in where they lived, where they showered, where they ate. And there was really nowhere that in the barracks where they could have a moment of quiet to themselves.

The second key issue is, as already alluded by Sue, that although the Home Secretary accepted that there were categories of asylum seekers who were unsuitable to be allocated at the barracks, there was no system in place that was capable of identifying who these were and preventing their allocation or removing them.

And one thing that hasn't been mentioned is there is only one nurse in the barracks - for 400 people at the height of the pandemic. So put simply, the use of the barracks in these circumstances was unlawful. And what I would just add is this shouldn't be surprising to the Home Secretary, considering the Chief Inspector and Inspector of Prisons produced a draft report to the Home Secretary on the 21 March, which identified the same serious concerns before the judgement was handed down in June.

And one of the important things to put in context for the judge's findings is that although the claimants who brought the case were all moved out in early February because of legal action, it would be really wrong to treat the judge's findings as somehow temporally limited to the period that they were in there. The declarations were made by the judge about these claimants, but the findings were further reaching than that. And I would just draw you to paragraph 239 of the judgment where the judge says if the barracks are to continue to be used, there clearly needed to be substantial improvements in the conditions there, and lower numbers of asylum seekers living there for

significantly shorter periods of time, with measures to reduce risk of Covid infection which are consistent with PHE advice. And there needed to be a better system for identifying the vulnerable.

One would expect this finding would mean that the barracks could and should cease to be used with immediate effect until and unless the Home Secretary can satisfy herself that the barracks are actually operated in a lawful manner. So it is quite extraordinary that there are still, as of mid-June, 200 plus new residents in the barracks and obviously even more extraordinary to see history repeating itself with a Covid outbreak.

Helen Hayes MP

Thank you very much. I know lots of those details are familiar, but it's nevertheless very distressing to hear about them in your description.

Following the ruling, the government has stated that significant improvements have been made at the barracks. It sounds from what you've said already that those improvements are nowhere near sufficient. But I wondered if you could comment specifically on what the changes have been and what the deficiencies are still that remain to be addressed?

Shu Shin Luh

Well, I've seen the government statements that they've made some significant improvements, but those statements don't really explain what it is that they have actually done. So, in a way, we're all somehow in the dark. But perhaps it's very telling that neither the Home Secretary or the officials have been in a position to say they can now confidently assure the public and Parliament that the use of the barracks is now lawful and that all the concerns identified in the 300 paragraphs of the judgment have been identified and have been addressed, including the recommendations of the inspectors.

Sue has already alluded to the fact that there are current claims before the court relating to claimants that were moved into the barracks in April or May after this case was heard and before judgment was handed down. Certainly there is nothing in those claims and the evidence disclosed to suggest that key matters that the judge identified as needing substantial improvements have been addressed.

So you may be aware from a Guardian article on the 22 June that public health officials continue to be of the view that the site is Covid insecure. And now we know that it's Covid insecure. But what's important also is that the Guardian article cited internal documents from the Bio-Security Centre that says "clearly repopulating it to its full capacity is a nonsensical approach" and raises concerns about the site becoming a site of "reoccurring and enduring" transmission.

And that's really hardly surprising because the things that haven't changed are communal living: there's still at least 12 men to a dorm, 24 to a block, with shared bathrooms. And there's no suggestion that the plywood dividers in the dorms that divide the beds have been removed. So there is still a serious risk of fire.

On overcrowding - yes, the Home Secretary might say that there are only 200 plus people in there now. But that's not because of a deliberate decision to reduce the numbers, but because the Home Secretary felt she had to suspend transfer of more men into the barracks in light of the judgment. That doesn't mean that there's no future intention to repopulate to the same levels up to 400. And certainly the public health officials quoted in the Guardian article suggest that that is actually the intention.

In terms of ventilation, levels of noise, total lack of privacy - one of the current claimants couldn't actually continue with his psychological treatment once transferred to the barracks because there was nowhere safe and private to speak to his therapists. So that speaks for a very clear lack of change that is actually substantive.

And when you add that to the layer that I know Sonia is going to deal with later - the decision to process asylum claims in the barracks with no safeguards to ensure proper access to legal advice - then you're layering on top of already unlawful, inadequate arrangements, a further risk of further inadequacy. And so the only inference you could really draw from the state of play at the moment is that the Home Secretary simply doesn't know whether or not the use of the barracks is lawful and can be used lawfully.

Helen Hayes MP

Thank you very much. That's really disturbing. Sue, are you wanting to come in?

Sue Willman

Yes, could I just add very briefly that my firm has a scheme of pre-action protocol letters, which is letters threatening court action, with a city firm. And they have sent 55 letters since April, threatening legal action if people weren't moved. And the majority of those people have been moved. The only people who haven't been moved I think are one or two who were afraid to be moved, that it might have repercussions for their case.

And secondly, we've heard that the government plans to extend the use of the barracks beyond September, which is something that we're very concerned about - that they're continuing to use it for another couple of years and move Portakabins from Yarl's Wood or something along those lines.

So we would be keen if any MPs could seek clarification about the future plans for the barracks. Thank you.

Helen Hayes MP Thank you very much. Back to you, Alison, thank you.

Alison Thewliss MP Thank you very much. We move now to Baroness of Lister of Burtersett.

Baroness Lister of Burtersett Thank you, Alison. And my first question is to Clare. Thank you very much Clare for the very full evidence you've sent us on Napier. But the question, in fact, relates to Tinsley House, which we gather was "de-designated" as IRC for a period of time earlier this year and used instead to accommodate people seeking asylum. And we understand that you represented two or possibly more of the men who were moved there. Could you tell us more about what happened and any concerns that arose from the work you did with those men?

Clare Jennings Sure. So, as you'll know, at the end of January there was a fire at Napier and I believe around 14 or 15 men were arrested. They were then bailed, not back to Napier but to Tinsley House, which is an immigration detention centre. I was told by one of the criminal solicitors representing one of my clients that the police had told her that the decision to bail them to Tinsley House was a Home Office and not a police decision. They then were taken to Tinsley House. I spoke to someone, a staff member at Tinsley House, who seemed somewhat perplexed about why there were people from Napier Barracks being sent to Tinsley House who weren't detained but were nevertheless in a detention centre.

They were then told they had to self-isolate for 10 days. There are serious question marks about the lawfulness of that. Those who were in Napier who were made to stay within the barracks - that has been found to be unlawful in the *NB & Others* judgment. And I would say it almost certainly applies equally to Tinsley House.

But in fact the whole Tinsley House environment was problematic because at the end of the day, it's a detention centre. It's set up for that. It's not set up to be accommodation that is provided to people because they're destitute. So that means it has all the features that you would expect in essentially prison. It's the furniture bolted to the floor. There's kind of opaque windows. There's no lock on the door. There's CCTV that monitors people's movement. There are staff monitoring their movement. It's surrounded, it's enclosed by a barbed wire fence. I believe there were six or seven gates that you have to pass through, each manned, to be able to get out. So it was a prison.

So, even if not actually detained, they felt like they were in prison because that's exactly where they were. If a person who approaches the local

authority is homeless and is owed a homelessness duty, you wouldn't put them in a prison because it happened to have some spare beds. So why do this to these people?

So, with my clients, they were only moved from Tinsley House following judicial review pre-action protocol letters being sent. I believe Sue and her firm also represented a number of Tinsley House clients and had the same experience - that they had to send letters to get them moved.

The legal issues that arise are, well, what powers were they using? Immigration detention centres are meant to be used solely for those people who are detained. So on what basis are they putting destitute asylum seekers in there? There was a similar argument to that run in Napier about the fact that it's simply not adequate as asylum support accommodation to use a detention centre. And it was having a real impact on my client and I expect the other men's mental health - so that raised human rights issues. I recall one of one of my clients - he was texting us late at night expressing suicidal thoughts: if we didn't get him out of there, he couldn't go on. So it was having a really quite profound impact on unwell men. So, yes - those were essentially the concerns that arose.

Baroness Lister of  
Burtersett

Thank you. Very concerning - I can't imagine what it must've felt like for those men.

We turn now to Sonia. You mentioned earlier that the Home Office has recently introduced changes in the way that the asylum cases of people that are accommodated in Napier are being processed. Could you explain a bit more what those changes are, and the impacts they may be having? And could you also tell us what you think the implications may be for the wider reforms to the asylum system that we're expecting to be announced next week actually, and the legislation?

Sonia Lenegan

Yes, thanks. So after the case of *NB* had been heard, it was towards the end of April that I started hearing about men having their substantive asylum interview, which is their main interview, the really important one - that they were having that at Napier.

Clare has described in detail the noise and privacy issues. And I have heard of men actually having to move during their asylum interview to try to find somewhere better where they can hear. That comes at a cost of privacy in many cases. And without privacy, it will essentially be impossible to disclose some of the more traumatic experiences that they've had. And that's in addition to the disruption of having such an important interview interrupted in that way. So that is a concern.

So I don't attend these meetings, but I understand that the South East Strategic Migration Partnership were given an update from the Home Office at a meeting on 4 May, and they were told there formally that the men would be having their interviews on site. Access to justice and access to lawyers was raised at that meeting. And the Home Office said that if a person had not had legal advice and did not want to continue, then they just needed to say this and the Home Office would look to rearrange.

Now, this is something I have heard several times from the Home Office. And every time I make the same response, which is that you are pushing the burden onto a person who is in a very stressful situation and there is a huge power imbalance. And you were expecting them to be able to advocate for themselves in that situation, in the knowledge, particularly with Napier, that any request for the interview to be rearranged so that they could find a lawyer will then result in a longer stay at Napier. So it's just not realistic to expect that people will raise concerns about the fact that they don't have a lawyer at the beginning of their asylum interview.

In relation to the New Plan for Immigration, the policy statement says that the government will bring forward plans to expand the asylum estate. These plans will include proposals for reception centres to provide basic accommodation while processing the claims of asylum seekers. What is happening in Napier at the moment fits that description exactly.

The New Plan talks about having safeguards in place to ensure procedural fairness. And the importance of such safeguards, which includes access to lawyers, has been recognised in the past - where we've had processes like the Detained Fast Track, Detained Asylum Casework and also the proposals for accommodation centres that were contained in the Nationality, Immigration and Asylum Act 2002.

But what we seem to have in Napier is a reception centre without any procedural safeguards. A key one would be to ensure that people have access to a lawyer at a sufficiently early stage, and that is in advance of their first substantive interview. As far as the impact of all of this is concerned, 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. For example, indicators that a person is a victim of trafficking. If the person is lucky this sort of thing that's been missed at an earlier stage will be picked up when they see a lawyer at the detention center, when they are facing removal. And that is when those claims will then be brought properly.

So basically, the situation as it currently exists is a very good way of generating the type of claims that the Home Secretary professes to want to get rid of - which is those claims that are raised when a person is facing removal.

Baroness Lister of  
Burtersett

Thank you. It's worrying I think for what's being proposed in terms of a single interview right at the beginning. And all your points about legal access and so forth are very relevant to that.

Just another question for Sonia. You've raised a number of concerns around access to justice in Napier. And I just wondered what you've been able to do in terms of raising these issues with the Home Office or with contractors; how easy you've found it; any barriers or difficulties you faced in trying to bring these to the attention of people who could change things; and to what extent you were successful?

Sonia Lenegan

Well, it has been extraordinarily frustrating. As I mentioned, I first became aware of the incidents taking place on site around the end of April, and then I was sent an update after the Strategic Migration Partnership meeting on the 4 May. So that was basically the first time I had second hand confirmation from the Home Office that this was actually taking place. But I had nothing from the Home Office directly.

So I emailed them on 12 May explaining the access to justice concerns, both those that had been raised with me and also those that I'm just aware of - because it is a fact in the sector that there is no resource for this sort of thing.

So, yeah, it is just common sense that this would be a problem. The asylum legal aid sector is not just sitting around with nothing to do. They are extremely under-resourced and overstretched. It's obvious that to insert hundreds of new cases that needed a lot of urgent work to be done in a very short period of time would create a problem.

In addition to this, the organisations who were in Napier were flagging up issues with me - you know, there were people without lawyers, who were being invited to asylum interviews.

So in my email of 12 May I asked for a meeting to take place with the Law Society, the Legal Aid Agency, and then the Home Office and Migrant Help to discuss what was going on and what was needed to ensure that the men did have lawyers in a timely manner before the substantive interview. I've sent several emails since then reiterating my request for a meeting. I've had responses from the Home Office and from Migrant Help saying that there is not an issue with access to lawyers. They have refused to accept

what the organisations working in Napier - so that's Human for Rights Network, Care4Calais, and the Jesuit Refugee Service - were saying to me about the issues, which I pointed out to them are supported by the fact that we know that there is no spare resource in the sector. The response from the Home Office and Migrant Help was to insist that the names of the individuals who were unable to obtain lawyers were provided.

First of all, the organisations I mentioned have done a simply astounding amount of work to ensure that most of the men did have lawyers. I can't emphasise enough how difficult a task it is to find asylum lawyers with capacity, but the point is that they shouldn't have to. The government should be ensuring that people have lawyers and that they have them in a timely manner.

The second point is that - I'm sure the Home Office are aware of this because it's just not possible that they're not - but people in the asylum system, as I've mentioned, are extremely unlikely to want to raise any complaint, as they believe that it will impact their asylum claim. So if you are ignoring NGO evidence and insisting that individuals must come forward and complain in order for you to accept that there is an issue, then you are just guaranteeing that you will not hear about any problems.

Both Humans for Rights Network and Care4Calais have told me that they've had Migrant Help sending men to them so that they can find lawyers. I'm aware that Maddie from Human for Rights Network is giving evidence in a couple of weeks, so she can talk a lot more about the upheaval that this situation caused for them and how difficult it was and all the work that they had to do to facilitate these referrals.

Since that initial interview pilot - it was an interview pilot at Napier - since then, it appears that some learning has been done from the Napier pilot and the Home Office and Migrant Help have now accepted that it will take a lot longer for someone to find a lawyer.

But the issue is that there was just never any need to put people through the pilot in order to learn that lesson. Because, you know, if they'd spoken to me at the outset, I could have said, well, this is what the issues are going to be - we need to talk to the Legal Aid Agency. And as I said earlier, they have done a huge amount of work to try and find some capacity.

So I just feel like a lot of what these men have been through could have been avoided if the Home Office had engaged at the earliest stage, let alone at any point since 12 May. So I'm still waiting for my meeting on Napier. And it seems there might have been a bit of movement in the last



week - so I'm a little bit optimistic, but it should not have come to this. This is July, and I've been emailing since the 12 May asking for a meeting.

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Burtersett

I can absolutely appreciate how frustrated you feel, and it's disappointing given that the Home Office is supposedly supposed to be working better with stakeholders and so forth now than in the past. Anyway, thank you very much indeed for the very helpful evidence. And back to Alison.

Alison Thewliss MP

Thank you very much. We have a Richard Fuller here, MP for Northeast Bedfordshire. I think you've got some questions you'd like to come in with as well.

Richard Fuller MP

Thank you. It was really prompted, I think, by some comments by Ms Jennings. But any of the other witnesses may want to come in. And it's about this issue of access to legal services and forgive my ignorance, but is there an established code of practice for asylum seekers to be able to access legal services stating how quickly they can obtain it? What's the format for it? What issues can be resolved? What facilities have to be provided that the Home Office can be held to account for? What are the pluses and minuses of having such a code of practice? There may be some downsides. If there isn't one, it makes sense to have one. What would be the particular points of substance? I'm thinking of this both in the context of what we've seen in the barracks but also, as a number have been talking about, about what we may see in the future.

So I'll put that if I may to Ms Jennings. But then if anyone else wants to come in, do feel free.

And did we just lose Ms Jennings?

Clare Jennings

I'm sorry I dropped out at the critical moment and I didn't quite catch the last part.

Richard Fuller MP

So is there a code of practice that access legal services that the Home Office can be held to account for? What are the pluses and minuses of that? And if there isn't one, what should be the particular aspects that should be involved in that - thinking both with regard to what we've been seeing in the barracks, but also what might come forward in future legislation?

Clare Jennings

I'm a public law solicitor, so I don't actually do asylum claims or immigration cases. So for public law lawyers, there is no code of practice in terms of the Home Office having to provide access to a public law solicitor.

I believe there may be rules around having to provide - I don't know if it's a code of practice, but perhaps about providing advice to those who are

detained. But someone else will be better able to answer to that, because I'm not sure - it's not what I practice.

I'm not really sure - in terms of the issues we've seen in Napier, my involvement has been very much to do with challenging the suitability of the accommodation at Napier. So I can't really see the Home Office would necessarily have an obligation to ensure that you have legal advice for the purposes of challenging where they put you in that sense.

But certainly it's a problem in terms of access to justice. The conditions within Napier made it hard for people to get access to justice. But I think if they're going to be running accommodation centers where they are doing substantive asylum interviews - and that gives it a very different feel - the need for immigration advice, I think, is much, much greater. But I expect someone else could probably say a little bit more about what the situation is, perhaps drawing parallels with those who are detained.

Sonia Lenegan

I keep getting people messaging me, asking me to answer. So basically, there is no one set code of practice for the Home Office to facilitate lawyers. But for different processes, there are. So that's when I was talking about safeguards earlier, that was what I meant - processes that are in place to ensure that legal advice is available.

So when Detained Fast Track was still in place, that had firms who were contracted with the Legal Aid Agency to provide legal advice and representation. And it was built into the process that those people would access a lawyer. It is the same with the Detained Asylum Casework, which is currently in place. And again, you can draw analogies between the Detained Asylum Casework process and what is happening in Napier. But again, Detained Asylum Casework has a rota of legal aid lawyers who are specifically contracted to provide assistance to people in that process. Then also, if you are in an Immigration Removal Centre facing removal, then again, there is a formal process that is in place that is called the Detained Duty Advice Scheme, and that is where lawyers - well before the pandemic, they'd go into the removal centres and they would advise people in there on a rota and they would take cases on.

So it depends on what the different process is. But there are safeguards built in. That does not exist at Napier, and that is a huge problem.

Richard Fuller MP

Thanks for that clarification. So just as a follow up, the rules - from what you said - sounded a bit like they meant the rule is that you have to have access to legal advice, and here's a list of lawyers. Not that it went into further detail - there might be advice to the claimant, even if it was available at Napier,

where it would say “And these are the issues that would routinely be ones that your lawyer should address.”

I'm just wondering whether there's a value to more detailed advice that could be provided to people in similar situations to those in Napier?

Sonia Lenegan Do you mean that people in Napier need to be told about the importance of having a lawyer for their asylum claim?

Richard Fuller MP Well, one - they should be available; two - people should be told that it's important to have a lawyer; three - there should be some descriptive standards of issues that might be addressed, rather than leaving it to an expectation of a lawyer from a list that's been approved by the Home Office to decide those are the issues they wish to wish to cover; and that both the legal firm and the Home Office should be held to account for the availability of legal advice and the thoroughness of the advice that's been given. That's really my question - how far down that track have we gone with Napier and how far do we need to go in the future?

Sonia Lenegan Well, we haven't really gone anywhere with Napier. As far as providing a list of issues that the lawyer would need to address - it's just not possible to be that prescriptive, because some of these cases can be really complex. Some of them can be very straightforward. But I just think it would be difficult to do that in a way that was all encompassing. Otherwise that would be a risk if things were left off.

Richard Fuller MP Thank you. Thank you, Alison.

Alison Thewliss MP Thank you very much for those questions, Richard, that was very helpful. And so that brings us to the close of this part of the session just now. I'm going to allow a short comfort break until 11 o'clock, so people can go and recharge their tea cups or other things in between times.

I want to thank the witnesses from the session just now. Your evidence was incredibly important and very helpful in helping us put together some evidence on this as an APPG. And if there's anything further you feel that wasn't covered within this section that you think that we should have within our report, within the evidence we receive, please feel free to drop us a line and pass that on to us, so that we can include that within the report.

So, thank you very much for that. We will take a brief comfort break just now, as I say, till 11 o'clock. And then we'll come back to the session which follows, on health issues. Thank you very much, everybody. I'll be back with you in just a second.

