

## **About BID**

BID exists to challenge immigration detention and ensure access to justice for detained people. With the assistance of barristers acting pro bono, BID prepares and presents bail applications in the Immigration and Asylum Chamber of the First-tier Tribunal. Our casework feeds into our policy and campaigning work providing a robust evidence base from which to challenge all forms of immigration detention. Our aim is to end immigration detention. In the past year, BID staff and volunteers provided 2,861 individuals with some form of assistance; legal managers and volunteers prepared a total of 442 bail applications, of which 339 were actually heard and 264 of which resulted in release on bail.

## **Our submission**

BID has not worked directly with people held in the military barracks and therefore our understanding of the conditions that people are being held in is based on external evidence. Our submission will highlight the difference between the safeguards and limits on the use of immigration detention and the lack of any such safeguards in relation to the practice of 'housing' asylum seekers in barracks. We will also address the use of Tinsley House IRC as asylum accommodation, and the use of GPS tagging as an additional form of quasi-detention.

## **Military barracks are not appropriate places of asylum accommodation**

We are strongly opposed to the use of military barracks to house asylum seekers. Asylum-seekers should be given the chance to live with dignity and to rebuild their lives in the UK and participate in society. This type of housing prevents asylum-seekers and survivors of torture and trauma from being able to rehabilitate and continue with their lives and leaves people stuck in a physical as well as a legal limbo.

We share the view expressed in the call for evidence by the Independent Chief Inspector of Borders and Immigration that the military barracks at Napier and Penally share many features in common with immigration detention. Evidence from Her Majesty's Inspector of Prisons and the Independent Chief Inspector of Borders and Immigration report described the site as impoverished, run-down and unsuitable for long-term accommodation<sup>1</sup>. Some areas were described as "filthy". They found "fundamental failures of leadership and planning by the Home Office." Conditions in the barracks appear to be woefully inadequate and not fit for human habitation, and particularly inappropriate for a vulnerable group such as asylum-seekers. A recent High Court case (*R (NB & Ors) v Secretary of State for the Home Department*) found that Napier Barracks provided inadequate accommodation

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<sup>1</sup> An inspection of the use of contingency asylum accommodation – key findings from site visits to Penally Camp and Napier Barracks <https://www.gov.uk/government/news/an-inspection-of-the-use-of-contingency-asylum-accommodation-key-findings-from-site-visits-to-penally-camp-and-napier-barracks>



for asylum seekers and that conditions were such that residents were *unlawfully detained* for a period.

A report by a union of Camp Residents of Penally<sup>2</sup> (CROP) described conditions that are “like a detention centre and are not safe or suitable places for people to live”. Their report detailed woefully inadequate medical care; the impossibility of social distancing; shower blocks that were often dirty and lacking privacy; overcrowded rooms; lack of storage; and residents feeling unsafe, not least because of ‘aggressive racist protests at the site’. In an interview CROP described the poor quality of food and lack of available drinking water, and heaters that were not working in the middle of winter<sup>3</sup>.

### **Lack of safeguards compared to Immigration Detention**

We are concerned that the use of military barracks to house people represents a form of detention without the safeguards designed to ensure that detention is kept under review and to prevent the wrongful detention of vulnerable people.

While the conditions in the barracks are akin to those of detention, also of real concern is how holding people in barracks seems to be redefining the Government’s concept of ‘liberty’. As Lord Lloyd-Jones said at para 29 in the (unanimously agreed) Supreme Court judgment of B<sup>4</sup> in relation to immigration bail:

“It was common ground before us that bail under the 1971 Act may be subject to conditions which constitute a deprivation of liberty within article 5(1)(f) ECHR. “

How much more so then for people held in barracks where control is exercised over a person’s movements in and out of the barracks, and conditions of compliance in terms of residence are applied (with we assume, the accompanying threat of detention in an IRC in case of any breach of conditions).

To be clear, BID has consistently argued and remains of the view that there are too few limits and safeguards governing the use of detention. Of particular concern is the lack of a time limit or judicial oversight of the decision to detain. In our experience those safeguards that do exist often do not work properly and Home Office decision-making is frequently poor<sup>5</sup>. However, no matter how meagre and insufficient the safeguards that exist in the context of immigration detention, there is no equivalent in the context of quasi-detention in military barracks. Indeed, BID argues that conditions of immigration bail should also be regularly reviewed to take into account the severity, longevity and

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<sup>2</sup> [http://appgdetention.org.uk/wp-content/uploads/2020/12/COVID-19\\_Penally-Camp-Residents-Report-final.pdf?x11024](http://appgdetention.org.uk/wp-content/uploads/2020/12/COVID-19_Penally-Camp-Residents-Report-final.pdf?x11024)

<sup>3</sup> <https://corporatetwatch.org/camp-residents-of-penally-an-interview-with-refugees-organising-inside-the-home-offices-military-camp/>

<sup>4</sup> [B v SSHD \[2018\] UKSC 5](#)

<sup>5</sup> See for example, *Risky Business: Immigration Detention decision-making during the COVID-19 pandemic*, (BID report published May 2020)



necessity of any conditions, balanced against individuals' circumstances and any vulnerabilities. There is therefore an even greater need to consider such factors in the context of a person's confinement at barracks or camps.

Home Office policy states "detention must be used sparingly, and for the shortest period necessary<sup>6</sup>. Successive legislation in the UK has developed a specific but wide-ranging set of purposes for which immigration detention can be used by the Home Secretary<sup>7</sup>.

In addition to statutory powers to detain and policy guidance on the use of detention there are common law limitations on the power to detain. The authoritative statement of the implied limitations of the power to detain conferred by the Immigration Act 1971 is contained in what are widely known as the 'Hardial Singh principles'.<sup>8</sup>

*"Although the power which is given to the Secretary of State in para 2 to detain individuals is not subject to any express limitation of time, I am quite satisfied that **it is subject to limitations**. First of all, it can only authorise detention if the individual is being detained in one case pending the making of a deportation order and, in the other case, pending his removal. It cannot be used for any other purpose. Second, as the power is given in order to enable the machinery of deportation to be carried out, I regard the power of detention as being **impliedly limited to a period which is reasonably necessary for that purpose**. The period which is reasonable will depend on the circumstances of the particular case. What is more, **if there is a situation where it is apparent to the Secretary of State that he is not going to be able to operate the machinery provided in the Act for removing persons who are intended to be deported within a reasonable period, it seems to me that it would be wrong for the Secretary of State to seek to exercise his power of detention**. In addition, I would regard it as implicit that the **Secretary of State should exercise all reasonable expedition** to ensure that the steps are taken which will be necessary to ensure the removal of the individual within a reasonable time."<sup>9</sup>*

<sup>6</sup> Home Office, 'Enforcement Instructions & Guidance, Chapter 55 Detention and Temporary Release, section 55.1.3. Use of detention'. Available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/400022/Chapter55\\_external\\_v19.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/400022/Chapter55_external_v19.pdf)

<sup>7</sup> Including Immigration Act 1971 Schedules 2 and 3 (amended and supplemented by subsequent legislation); UK Borders Act 2007.

<sup>8</sup> See *R v. Governor of Durham Prison, Ex parte Singh*, [1984] 1 All ER 983, [1984] 1 WLR 704, [1983] Imm AR 198, United Kingdom: High Court (England and Wales), 13 December 1983. Available at <http://www.bailii.org/ew/cases/EWHC/QB/1983/1.html>

<sup>9</sup> *R v Governor of Durham Prison, ex parte Hardial Singh* [1984] 1 WLR 704, restated by the Court of Appeal in two important cases: *R (I) v SSHD* [2003] INLR 196 and adopted by the Supreme Court in *Lumba v SSHD* [2011] UKSC 12. In *I Dyson LJ* stated that there were four such principles:

- (i) The Secretary of State must intend to deport the person and can only use the power to detain for that purpose;
- (ii) The deportee may only be detained for a period that is reasonable in all the circumstances;
- (iii) If, before the expiry of the reasonable period, it becomes apparent that the Secretary of State will not be able to effect deportation within that reasonable period, he should not seek to exercise the power of detention;



Each individual's detention must be subject at least to a monthly internal review by the Home Office, and ongoing detention is subject to escalating levels of authorisation within the Home Office<sup>10</sup>. Detainees are not provided with the findings of these Home Office internal reviews, but are instead given a 'monthly progress report' which is meant to provide a condensed review of their continued detention. The Home Office has introduced automatic bail hearings every four months (although foreign national ex-offenders are excluded), and case progression panels which review detention every 3 months.

In addition there are legal advice surgeries in detention, even though the quality of that advice is variable and in many cases inadequate (and non-existent for immigration detainees held in prisons).

Although these safeguards exist people are routinely detained with scant justification and when detention is unnecessary or removal is not imminent<sup>11</sup>. However, there are no such equivalent safeguards in relation to people being held in military barracks. People are held there for an indefinite amount of time and do not know where or when they will be transferred to a different location. They are held there simply for the purpose of accommodation and the Home Office is not required to demonstrate that the military barracks are being used sparingly, or for the shortest period necessary, or when alternatives have been exhausted.

The barracks are very remote, and there is very little access to legal advice or practical or emotional support. We are aware that after a recent legal decision the Home Office is now urgently trying to provide immigration providers who are able to assist asylum seekers held at Napier barracks. However at the time that the Home Office opened up Napier and Penally barracks we are not aware of any efforts made to ensure provision of legal advice at either centre.

We are not aware of any policies or processes in place to systematically review whether housing in barracks remains appropriate in individual cases.

Overall, although the safeguards and limits on immigration detention are woefully inadequate, the practice of housing asylum seekers in military barracks is even less regulated despite sharing many features in common with immigration detention.

## **Tinsley House:**

After a disturbance on 29 January at Napier barracks in Kent, the Home Office moved 13 people to Tinsley House IRC despite not being detained under immigration powers. After receiving a referral

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(iv) The Secretary of State should act with the reasonable diligence and expedition to effect removal.

<sup>10</sup> Chapter 55, Enforcement, Instructions and Guidance, pg 32  
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<sup>11</sup> See for instance BID's report Risky Business: Immigration Detention decision-making during the COVID-19 pandemic, Published May 2020 [https://hubble-live-assets.s3.amazonaws.com/biduk/redactor2\\_assets/files/1203/BID\\_COVID-19\\_Detention\\_research\\_report.pdf](https://hubble-live-assets.s3.amazonaws.com/biduk/redactor2_assets/files/1203/BID_COVID-19_Detention_research_report.pdf)



from an NGO, we attempted to contact the individuals to send them our documents to help them apply for bail. We were told by a member of IRC staff that “*these residents have already been given Bail and do not require these applications*”. We were later told by the Home Office that Tinsley House was ‘de-designated as an Immigration Removal Centre so that it could be used on a temporary basis for asylum accommodation’. We were informed that asylum seekers were free to come and go and there was no curfew, and that the Home Office did not make any physical changes to the site in the transition from IRC to initial accommodation. Indeed, we have also learnt that the freedom to come and go involved being escorted by staff (no doubt subject to their availability) through several locked doors. We were informed that as of 01/03/21 there were no longer any asylum seekers being housed in Tinsley House.

Tinsley House is a prison-like environment close to Gatwick airport. Like all Immigration Removal Centres it was built specifically to incarcerate people and deprive them of their liberty and should never have been used as initial asylum accommodation, particularly where no physical changes have been made to the centre. Although Tinsley House is no longer being used as asylum accommodation we are concerned this has set a dangerous precedent that IRCs can be acceptable sites of asylum accommodation. This also sets further precedent for the blurring of the lines between the concepts of liberty and of detention.

### **Reception centres:**

We are concerned about the government’s plans to use ‘reception centres’. It is concerning that the Home Office felt the need to stipulate that accommodation will be ‘basic’ as existing asylum accommodation is already basic<sup>12</sup>. This indicates that reception centres will be modelled on the use of Napier and Penally barracks.

### **GPS tagging:**

BID considers that Home Office’s recent transition to GPS tagging of people on immigration bail is another form of quasi-detention<sup>13</sup>. Whereas the previous system of radio frequency monitoring can verify whether a person is where they should be at a given time, GPS monitoring provides 24/7 real time location monitoring, tracking an individual’s every move. Those who are being monitored in this way do not know when the ordeal will end because there is no time limit for how long people will be tracked, and as we have noted above there are no regular reviews, nor applicable principles governing the imposition of conditions of bail.

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<sup>12</sup> British Red Cross, *Far From A Home* Published April 2021

<sup>13</sup> The Home Office’s most recent bail policy (V.7 January 2021) states that they “historically used an electronic monitoring device known as a ‘radio frequency tag’ (RFT is an EM device which uses radio frequency technology) but is transitioning to the use of a Global Positioning System (GPS) device (an EM device which uses GPS technology).”



Electronic monitoring of any kind amounts to a significant interference with individual liberty and privacy. The psychological harm caused by electronic monitoring is well-documented – tag-wearers report that tags have an impact on almost every area of life including the ability to participate in society; relationships; financial and emotional stress; sleep; feelings of dehumanisation and stigma<sup>14</sup>. The Supreme Court has accepted that curfews (which are part and parcel of electronic monitoring immigration bail conditions) amount to a form of detention<sup>15</sup>.

GPS monitoring is far more intrusive, and closer to imprisonment, than curfews. People involved in a Ministry of Justice GPS Electronic Monitoring Pilot<sup>16</sup> described a feeling of being ‘constantly watched’ by the authorities’. It effectively amounts to an extension of immigration detention outside the physical walls of immigration removal centres or prisons.

The Home Office has quietly given itself almost unlimited discretion to retrospectively access 24/7 geolocation data, by stating that the data may be accessed “where it may be relevant to a claim by the individual under Article 8 ECHR<sup>17</sup>”.

At the same time the government plans to vastly increase the number of people monitored. According to FOI data obtained by Leigh Day solicitors, there are currently 269 people have been fitted with a GPS tag<sup>18</sup>. The government is currently preparing a Statutory Instrument to make electronic monitoring compulsory for all those facing deportation except where one of two exceptions apply, meaning thousands of additional people will likely be subject to this far more invasive form of monitoring<sup>19</sup>.

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<sup>14</sup> See Bhatia, Monish “Racial surveillance and the mental health impacts of electronic monitoring on migrants”

<sup>15</sup> The Queen (on the application of Jalloh) v Secretary of State for Home Department [2020] UKSC 4, 12 February 2020, where the Supreme Court found that unlawful curfews of this nature amounted to false imprisonment.

<sup>16</sup> Process evaluation of the Global Positioning System (GPS) Electronic Monitoring Pilot Qualitative findings, Ministry of Justice Analytical Series 2019

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<sup>17</sup> Page 23, Home Office bail policy

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<sup>18</sup> Data is correct up to 10th May 2021, FOI response provided on 17th May 2021

<sup>19</sup> Disclosed to BID via FOI response provided on 8th February 2021

