



**Written evidence submitted by Matthew Gold and Co. Ltd. Solicitors**

1. Matthew Gold and Co. Ltd. Solicitors is a leading civil liberties firm specialising, in particular, in migrant rights cases. We have represented 34 men accommodated at Napier Barracks, including two of the Claimants in *R (NB & Ors) v Secretary of State for the Home Department* [2021] EWHC 1489 (Admin) ("NB & Ors"), in which it was held that accommodating asylum seekers at Napier was unlawful. We also represented two clients who were transferred from Napier to Tinsley House.

**Who has been accommodated at Napier Barracks and for how long?**

2. Asylum seeking men have been accommodated at Napier Barracks since around 22 September 2020, with all of this first group of residents transferred out by 5 April 2021. In November 2020, there were 414 residents, and the number of residents did not significantly reduce until after the Covid-19 outbreak and the commencement of judicial review litigation. Whilst these residents were told that their stay at Napier would be short, their stay continued to be extended, and the indefinite nature of the stay was a contributing factor to the deterioration of the mental health of residents. Most residents were at the barracks for at least 4 months.
3. The second group of residents were transferred in from 9 April 2021. These men were told that they would be there for 60 to 90 days.
4. The Home Office has said that no "vulnerable" men are to be accommodated at Napier. However, that has not been our experience. This is a point we address further below in relation to our concerns as to the Home Office's mechanism for allocating men to Napier.

**What are the key features of the site(s) that generate concern, and how do these features impact on residents?**

***Key features of the site***

5. The barracks look and feel to residents like a prison. They are surrounded by a large perimeter fence, which until earlier this month, was topped with barbed wire. Entry and exit from Napier Barracks was via a staffed gate, which until a few months ago was padlocked closed.
6. Within the barracks, living accommodation is arranged into blocks. Most blocks were divided into two 14 person dormitories (reduced to 12 person dormitories for the second group of Napier residents). There was at least one block with two person rooms (with no partitions between the beds in these rooms). The beds in the dormitories were separated by plywood

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partitions that did not reach the ceiling. These bed spaces opened on to the communal thoroughfare. Initially there was nothing at all to separate the bed spaces from the central walkway and the first residents to Napier hung bedsheets and blankets to create some semblance of privacy. These were replaced with curtains around November/December 2020. The dormitories were centrally lit which meant that the lights were on or off for the entire dormitory. Some of the bed spaces would have a window, but many did not.

7. Two dormitories would share a bathroom, which had urinals and two shower cubicles. The showers were open; in most blocks there were two semi-enclosed cubicles on either side of the wall. Inside each semi-enclosed cubicle, there would be two showerheads. Very belatedly after the *NB & Ors* litigation was already underway, shower curtains were hung in some blocks, enclosing the cubicles. However, this created a smaller enclosed space still with two showers in it, or if it was used as only one cubicle, then it halved the number of available showers. Outside, portacabins were erected with showers and toilets, with each portacabin being shared between 2 blocks (4 dormitories). It is unclear to us precisely when they were installed, but it was after the barracks were already in use, and most of our clients reported they were not really used, as they were often out of order or it was too cold to use the facilities during the winter period.
8. There is also a communal canteen, recreation room and prayer room. Until more recently, there were very few social distancing measures in place in these communal areas. There were no staggered meal times and all residents were able to use these spaces at the same time, increasing their risk of contracting Covid 19. For a significant period of time, these communal areas were closed.

### **Key concerns**

9. The key concerns expressed to us by clients and voluntary organisations were as follows:
10. Lack of privacy and personal space: The communal living arrangements caused the following problems:
  - a. Constant noise and interruption to sleep: a very common complaint concerned the constant noise in the dormitories, and in particular, how this impacted upon sleep. Many men described how they could not get to sleep at night, or would be constantly awoken due to the noise of other men moving around, talking, listening to music or experiencing night terrors. Many of our clients reported how this left them feeling sleep deprived.
  - b. Lack of privacy and control over personal space: there was simply no private space for our clients:
    - i. They could be viewed naked in the showers, which was especially distressing for those clients who had physical scarring from torture they had suffered or where it was offensive to their religious or cultural beliefs.
    - ii. Private conversations with loved ones, lawyers and medical professionals could be overheard by everyone.
    - iii. Anyone could, and did, enter their bed spaces by pulling back the curtain whenever they wanted without invitation or indeed warning. This made a number of our clients feel uncomfortable, especially at night or when they were changing.

- c. Lighting: there was no control over when the lights were on or off, or if a window was open or shut. That caused tension within the dormitories and was another cause of disturbed sleep.
- d. Cleanliness - the Home Office has said that it has now improved the cleaning regime, but when our clients resided there, a very common complaint concerned the unsanitary and dirty conditions, particularly in the bathrooms.

#### 'Prison-like' setting

11. As described above, the appearance of Napier Barracks meant that many men felt as if they were living in a "prison", and for some of our clients, this triggered painful reminders of their experiences being detained or imprisoned.
12. To leave the barracks, the men had to sign in and out, and the gate had to be unlocked by barracks security. The padlock was only removed after the permission hearing in February 2021.
13. The general prison-like feel of the place was compounded by actual restrictions on movement.
  - e. All residents were prevented from leaving Napier Barracks from 15 January 2021 following the Covid-19 outbreak. Initially they were confined to the barracks, and from 4 February, they were prevented from leaving their dormitories. The High Court has since held that this amounted to a breach of Article 5 and to false imprisonment.
  - f. All residents were expected to remain on-site between 10pm and 6am each day. In *NB & Ors* case, the Home Office argued that there was not, in practice, any sanction against men who did not comply. Whilst the Court accepted the Defendant's account and found this did not amount to false imprisonment/Article 5 breach, our clients believed that they could not be outside the barracks after 10pm and had never tested this for fear of consequences.
  - g. Our clients also told us about occasions in October, November and December 2020 when the gates were locked during normal opening hours to prevent them from speaking to charity workers and journalists.
  - h. A number of our clients told us that in or around November 2020, appearing to coincide with the second national lockdown, they were not allowed to leave the site for more than 2 hours at a time.

#### Covid-19

14. Evidence disclosed to us in the course of the *NB & Ors* litigation and under the Freedom of Information Act reveal that the Home Office has been repeatedly advised by public health officials against using large communal living facilities during the pandemic and that an outbreak was inevitable. On 4 March 2021, the Joint Biosecurity Centre Regional Support Unit sent an email in which they described repopulating the barracks as a "*non-sensical approach*" and how the site risked "*becoming an area of 'reoccurring or enduring transmission'*".

15. The inevitable outbreak of Covid-19 happened in mid-January 2021, with 21 of our clients eventually contracting Covid-19. From 15 January, all residents were told that they could not leave the barracks, and from 5 February, they were confined to their rooms. However, it appeared to us that no meaningful attempt was made to protect residents from contracting Covid-19. One client reported to us that he had tested negative, but was still sharing a dormitory with 13 men who had tested positive for Covid-19. He subsequently contracted Covid-19. Numerous other clients told us that barracks staff had refused to move men who had tested positive with Covid-19 into other dormitories, or vice versa. The prevailing attitude appeared to be that it was inevitable that all residents would contract Covid-19.
16. Our clients during this time were extremely frightened and distressed, due to the very high probability that they would contract Covid-19. A number also felt very unwell, although fortunately did not require hospital treatment.

#### Inadequate healthcare provisions

17. We are concerned that there is inadequate healthcare provision for Napier residents.
18. There is only one nurse on-site at Napier Barracks, Monday to Friday between normal working hours. We have been told that the nurse himself reported that he was struggling to deal with the mental health issues of the residents at Napier Barracks.
19. Residents have been registered with a local GP surgery, although this appears to have been a couple of months after Napier first opened. Our clients were unaware that they had been registered with the GP surgery.
20. However, Napier residents did not have direct access to their GP. They had to contact the on-site nurse, who acts as a triage service deciding whether or not a person should be able to consult with a GP.
21. More generally there do not appear to have been effective processes for onward referral to specialist mental health services.

#### Substantive Asylum Interviews and immigration advice

22. Since April 2021, substantive asylum interviews have been taking place on-site. Although progressing a person's asylum claim is generally welcomed, we have serious concerns about the conduct of such interviews at Napier Barracks.
23. First, we are aware of occasions when insufficient notice of the interview has been given to residents, with one client being woken up and told his interview was in 15 minutes. Consequently men were unable to prepare properly for interview, nor obtain immigration advice in advance.
24. Second, and more generally, there have not been processes in place at Napier Barracks to assist men in obtaining immigration advice, which is concerning if interviews are to be conducted at the barracks. As new arrivals to the UK, many of the men may not have anyone advising them at the time of transfer to Napier and assistance to access such advice was not provided by the Home Office. The lack of subsistence until November (and even now it is only £8.00 per week) meant that residents could not afford the

phone credit or travel costs to obtain advice themselves. Restrictions on NGOs and legal representatives entering the barracks at various times further impacted upon the ability to obtain legal advice.

25. Third, we heard of one report where a person had to move rooms 6 times during the interview.
26. Fourth, the conditions in Napier Barracks have been shown to have a detrimental impact on the mental health of residents. There is no active process to identify men who are unsuitable for Napier Barracks post-transfer, and there is similarly no proactive process for identifying whether there are men for whom in-barracks interviews would not be appropriate.

### ***Impact on mental health***

27. The issues raised above have had a detrimental impact on the mental and physical health of our clients.
28. Physical: many of our clients were physically unwell with Covid-19. Many of our clients reported that they had lost weight, frequently suffered episodes of vomiting and stomach cramps, continuous fatigue and weakness.
29. Mental health: All of our clients reported to us a deterioration in their mental health due to the conditions in the barracks. Some clients highlighted how the military/prison-like aesthetic of Napier Barracks triggered flashbacks to previous experiences of detention and torture. 4 of our clients told us that they had experienced suicidal ideation, with 1 client sending us text messages expressing suicidal thoughts. We are aware from the HMIP and NGO reports that there were a number of suicide and self-harm incidents. Many of our clients reported symptoms that were consistent with PTSD and severe depression, and 6 of our clients received diagnoses for their mental health problems or sought treatment for this. The Claimants, XD and YZM, in the case of NB & Ors, were diagnosed with Post Traumatic Stress Disorder and severe depression. The psychiatrist who diagnosed them commented that Napier Barracks had triggered feelings of hopelessness, powerlessness, degradation, and vulnerability, and had therefore exacerbated their symptoms. As noted above, one of our concerns is a lack of proper healthcare provision on-site.

### **What mechanisms, if any, exist at the site to identify and safeguard vulnerable people, and are these mechanisms adequate?**

#### ***The mechanisms***

30. The Home Office has said publicly that vulnerable men are not being accommodated at Napier Barracks. The Home Office has produced a suitability criteria for allocations to Napier. Until 27 May 2021, it was not publicly available.
31. Among others, potential victims of trafficking, those who could be defined as vulnerable under the Asylum Seekers (Reception Conditions) Regulations 2005 (such as those who had been subjected to torture, rape or other serious forms of psychological, physical or sexual violence); minors; and people with severe or complex health needs and serious mental health issues should be assessed as unsuitable for transfer to Napier. The criteria

does not include any specific reference to underlying health conditions that make a person more vulnerable to Covid-19.

32. The Home Office's policy has been to assess suitability based on the evidence available to the caseworker, which included the screening interview, ASF1s, CID/ATLAS information and supporting correspondence or other relevant material. If one of the items of evidence was unavailable, then the caseworker was meant to proceed on the basis of the evidence they had in possession. There was no requirement for caseworkers to gather additional information or to conduct any kind of health screening exercise.
33. There was no formal process to assess or continue to monitor the suitability of residents post-transfer to Napier.

#### Was it adequate?

34. We do not consider that the allocation process was effective, and it was held in *NB & Ors* to be unlawful. All of our 34 clients who were accommodated at Napier Barracks between September 2020 and May 2021 had various vulnerabilities. 18 of our clients had experienced arbitrary detention in their country of origin or during their journey to the UK. 22 had experienced torture. 3 of our clients experienced other forms of serious physical violence. 12 of our clients reported being potential victims of trafficking or modern slavery. One of our clients was a minor. The fact that so many of our clients, and we are aware of dozens more men represented by other firms who should have been assessed as unsuitable, were transferred to Napier, evidences the fact that the suitability process was not adequate.

#### Why was it not adequate?

35. There are a number of reasons why we consider the allocation process for transfer to Napier was inadequate:
36. First, caseworkers based their decisions on information that was not gathered for the purpose of identifying who may or may not be suitable for transfer to Napier Barracks. This includes ASF1 forms and screening interviews. This information was often not a good way of identifying who was unsuitable. There is no process for gathering information for the specific purpose of assessing whether a person is suitable for transfer to Napier.
37. Second, the process did not require a caseworker to ensure that they had gathered all relevant information before taking a decision.
38. Third, the screening interview appears to have been a key document considered by caseworkers to assess suitability. However, for some time during the pandemic, a truncated screening interview was being conducted where not all questions were asked. This further undermines the usefulness of this document as a means to identify who was unsuitable.
39. Fourth, we have seen a number of examples where the Home Office (or its contractor, Migrant Help) did have information, which would indicate a person was unsuitable for Napier, but they were still transferred to Napier.

40. Fifth, the fact that the suitability criteria was not published until very recently meant that those who were being transferred or their advisors did not know who should have been assessed as unsuitable for Napier. This impeded a person's ability to make it known to the Home Office that they were a person who should not be there.
41. Nor were the inadequacies in the mechanism, which resulted in men being transferred to Napier when they should have been assessed as unsuitable, remedied post-transfer. There was no health screening or other such assessment upon arrival. Nor was there any process to ensure the active review of residents' welfare, with the purpose of identifying who should not remain at Napier (including those who may have been 'suitable' when transferred, but who had subsequently become unsuitable, for example because their mental health had deteriorated). Even where mental health or other concerns were brought to the attention of the on-site nurse or barracks staff, there was no effective process for transferring men from Napier. Indeed, the suitable criteria was only actually shared with barracks staff and the on-site nurse in late February 2021, after permission had been granted in the *NB & Ors* judicial review. Therefore, it would have been impossible for on-site staff to identify who should not be there. As Mr Justice Linden in *NB & Ors* observed: *"Throughout the time that the Claimants were living at the Barracks there appears to have been barely anyone on site, not even the nurse, who was aware of the suitability assessment criteria and the possibility of referrals to the Home Office Safeguarding Team, let alone trained in the application of the criteria or to identify cases where the person was not suitable."*<sup>1</sup> Even after staff were made aware of the suitability criteria, it appeared that there was still not an effective mechanism for transferring people out of Napier. The main mechanism for transfer continues to be a referral to public law solicitors who could write a judicial pre-action protocol letter. Whilst the Home Office agreed during the course of the *NB & Ors* litigation to deal with such correspondence within 2 working days, this is not an effective or desirable mechanism.
42. The lawfulness of the suitability criteria process was considered in *NB & Ors* and it was held that the Secretary of State for the Home Department had failed to enact a lawful and reasonable process.

### **What questions arise with regard to the lawfulness of the site?**

43. On 3 June 2021 the High Court held in *NB & Ors* that the Home Secretary's decision to accommodate destitute asylum seeking men in Napier Barracks was unlawful and irrational. Mr Justice Linden made the following findings:
- a. That the accommodation at Napier barracks was not adequate to ensure a standard of living which was adequate for the health of residents. That finding was based on the inevitable Covid-19 risk, the fire risk, the overcrowded and noisy dormitories lacking privacy, and the detention-like setting.
  - b. Insofar as the Home Secretary considered that the accommodation at Napier was adequate, that view was irrational.
  - c. That the system which operated to identify those who were vulnerable and therefore not suitable for Napier was flawed and unlawful, both in relation to the

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<sup>1</sup> *R (NB & Ors) v Secretary of State for the Home Department* [2021] EWHC 1489 (Admin) at para 237.

initial decision to transfer asylum seekers to the barracks, and the monitoring or reviewing of suitability post-transfer.

- d. That the Claimants had been falsely imprisoned and deprived of their liberty in breach of Article 5 of the European Convention on Human Rights, when residents of Napier Barracks were prevented from leaving for a period of weeks following the outbreak of Covid-19 in January 2021.

44. It was held that if the barracks were to continue to be used, there had to be substantial improvements in the conditions, lower numbers living there for significantly shorter periods, and measures to reduce the risk of an outbreak of Covid-19. There also needed to be a better system for identifying those for whom accommodation was not suitable and for detecting cases where a person ceased to be suitable during their stay.

45. In the days before the *NB & Ors* hearing, the Home Office began to move more men into Napier Barracks. That led to further claims for judicial review being issued in relation to the repopulation of the barracks. As of mid-June 2021, there were 236 men still residing in Napier Barracks, who had been transferred to Napier pursuant to the same allocation process held to be unlawful in *NB & Ors*, and living in conditions that are materially the same even if some small improvements have been made. The Home Office has said in the new Napier litigation that it has suspended the transfer of men to Napier in light of the judgment in *NB & Ors*, although it has not indicated that it will move out those men already there more quickly. Unless and until the Home Office makes substantial improvements to address the concerns identified in *NB & Ors*, it is difficult to see how the continued use of Napier can be lawful.

46. Furthermore, there is an issue about the creation of accommodation centres without any effective or proper safeguards or parliamentary oversight. In Part II of the Nationality Immigration and Asylum Act 2002, Parliament legislated for the provision of accommodation centres for destitute asylum seekers and set out detailed provisions and safeguards for doing so. However, instead of bringing into force Part II, and introducing accommodation centres via this carefully articulated scheme, the Home Secretary repurposed Napier Barracks, relying upon her asylum support powers. Whilst we were refused permission to advance an argument that the failure and/or refusal to consider bringing into force Part II was unlawful, that permission decision was taken before the Home Office started conducting substantive asylum interviews at the centre. We remain concerned that the Home Office is seeking to introduce accommodation centres, without any proper parliamentary scrutiny and without proper safeguards and processes in place.

#### **What recommendation do you have for the government regarding Napier barracks?**

47. It is our view that Napier Barracks should not be used as asylum support accommodation. It is fundamentally unsuitable for housing vulnerable asylum seekers, and being accommodated there is highly likely to have a detrimental impact on the mental health of residents.

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