



Refugee
Week

Accommodating asylum seekers: Barracks, Barges & Hotels



5.30 pm - 7pm



Wednesday 21 June 2023





Lessons from the Barracks

Legal issues arising from the use of barracks as asylum accommodation

Greg Ó Ceallaigh, Garden Court Chambers

21 June 2023



Introduction

The aim of this training is:

- To examine the legal challenges brought against the accommodation of asylum seekers in Napier and Penally Barracks.
- To see what lessons can be learned for challenging the placement of asylum seekers in novel/contingency accommodation.



Opening the Barracks



Use of Military Barracks as asylum accommodation

- Following lockdown in March 2020 the Home Office stopped removing asylum support where claims failed – and so *“no service users were leaving accommodation”*
- In early September 2020 the SSHD started looking for extra *“HMO or hostel-style accommodation”* because the existing estate was *“at capacity”*
- On 12 and 13 September 2020 the SSHD took control of ex-military barracks in Napier Barracks (Folkestone) and Penally Training Camp (Wales) to use as accommodation under s95 of the Immigration and Asylum Act 1999
- The Barracks were to be run and operated by Clearsprings Ready Homes
- By 20 September 2020 the camps were operational



Identifying suitable candidates



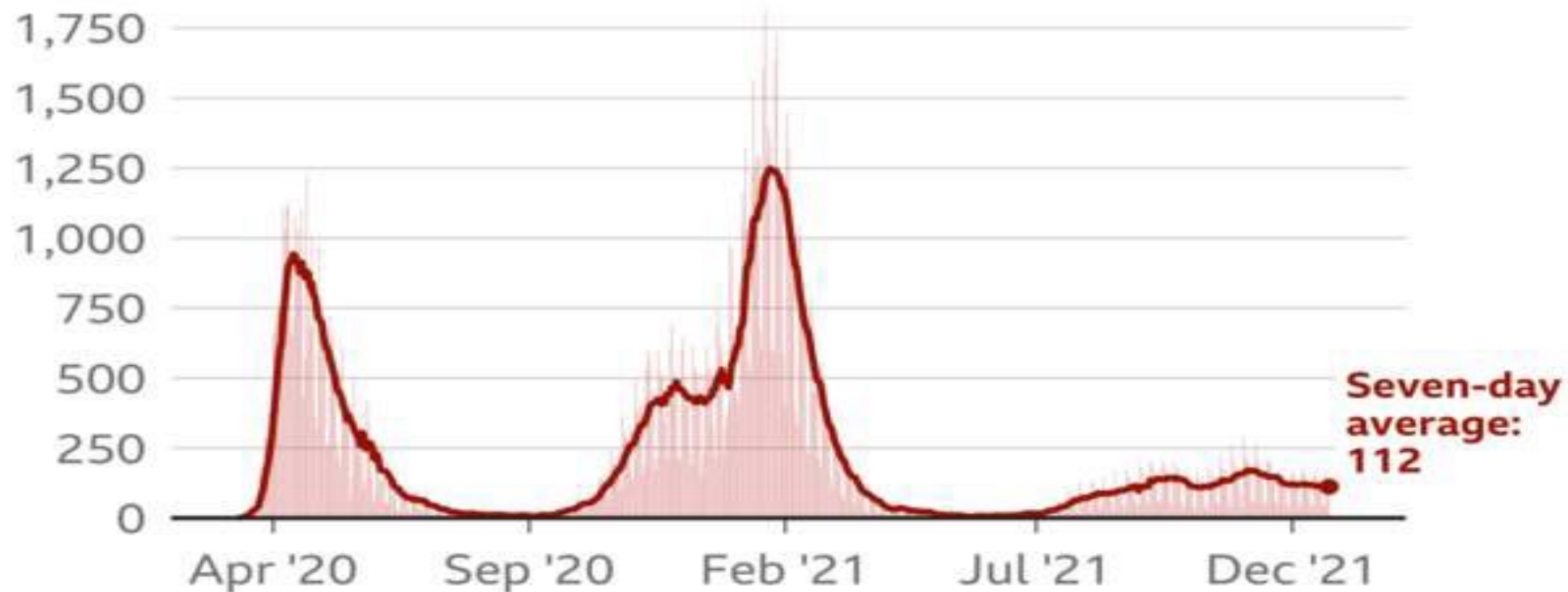
Equality Impact Assessment, September 2020

- *“As significant adjustments to the accommodation arrangements... is not considered practical any individuals who require adjustments will need to be accommodated elsewhere”.*
- Home Office decided not to use the hotel facilities then empty due to Covid because keeping asylum seekers in salubrious accommodation would *“undermine public confidence in the asylum system”*
- EIA repeatedly refers to the need for *“guidance on social distancing and self-isolation”* and *“appropriate adjustments to onsite facilities...”*
- ...despite the fact that *“the sleeping quarters available are large dormitories”* with *“communal rooms for dining and recreational activities”*
- Nowhere does the EIA take account of the fact that containing a large group of people in dormitory accommodation with communal bathrooms, recreational facilities and dining areas was inevitably going to lead to an enormous outbreak of Covid-19.



Daily deaths remain stable

UK daily reported deaths with coronavirus



Figures include only those who tested positive for coronavirus

Source: Gov.uk dashboard, updated 23 Dec



Selection criteria

- The Home Office acknowledged that this accommodation would be unsuitable for many people
- People were selected via the *Suitability Assessment for Contingency Accommodation* policy, which provided that:
 - Only single males were suitable
 - The following categories of people would be unsuitable:
 - “a person who has been subjected to torture, rape or other serious forms of psychological, physical or sexual violence”
 - People with “[s]erious mental health issues where there is a high risk of suicide, serious self-harm”
 - People with “...[a]ctive tuberculosis and [i]nfectious/active communicable diseases”



Penally barracks



Screening for suitability

- Suitability was determined by checking:
 - Screening Interviews
 - ASF1
 - CID/ATLAS information
 - “Supporting correspondence”



Issues with the Barracks



Problems with the Barracks

- Conditions in both sets of barracks were very poor
- The barracks were totally Covid-insecure
- Military-style accommodation
- The barracks were very isolated
- Racist protesters



Conditions

- Napier:
 - Isolated – one mile walk to the nearest shop with no/poor street lighting
 - Dormitory accommodation, sharing bathrooms with 14 people
 - Decrepit buildings, with paint peeling off walls
 - Lack of privacy (achieved only by hanging sheets between beds)
 - Very limited healthcare available onsite
 - Several serious incidents of self-harm
 - Residents went on hunger strike in protest at the conditions
 - Serious fire on 29 January 2021



Conditions

- Penally:
 - Isolated – two and a half miles from the nearest town
 - Unsuitable dormitory style accommodation
 - Lack of basic necessities including soap, toilet paper, hand sanitizer, shampoo, internet, locks, drinking water
 - General lack of appropriate healthcare facilities
 - Residents had to queue outside for toilets in freezing rain
 - No mosque or provision for Friday prayers, lack of religious facilities
 - Curfew, enforced by threat of homelessness



Military style accommodation

- There was still an active military base a few miles away from Napier from which machine gun fire could be heard.
- Fenced off, partially guarded with barbed wire, uniformed guards.
- Singularly unsuitable for certain categories of asylum seekers.



Covid 19

- The barracks were adopted as accommodation at the very beginning of the Second Wave.
- Accommodation was dormitory style with little ventilation, communal bathrooms and eating facilities.
- Public Health England had specifically advised against using the barracks during the pandemic.
- On 15 January 2021, the residents of Napier barracks were told that because of Covid 19, they were not allowed to leave the Barracks “*under any circumstances*”. No formal decision to detain was made but the doors were locked and guarded.
- That order remained in place for weeks.



Racist protesters

- Napier:
 - Protesters outside, constant threats and abuse
 - Physical assaults
 - One attempt to drive over an asylum seeker resulting in injury
- Penally:
 - Protesters outside, filing residents, threatening and assaulting them
 - Police and Crime Commissioner said the camp was “...a focal point for far-right activity”.



ICIBI Reports

- A series of issues were identified by the Independent Chief Inspectors' reports on the Barracks:
 - Failure to consult local stakeholders on whose services and support the camps would be reliant (see also *R(Hough) v Secretary of State for the Home Department* [2022] EWHC 1635 (Admin) which found a breach of the PSED);
 - Inadequate assessments of the physical and mental health of those selected to be moved;
 - Poor communication with the camp residents;
 - Poor employment practices by the camp contactors;
 - Use of insecure means to share personal information;
 - Dangerous shortcomings in the nature of the accommodation and poor experiences for the residents.



Challenges



Judicial review claims

- Many individuals challenged the lawfulness of their transfer by way of judicial review.
- Typically, they were moved following PAP with medical evidence.
- Alternatively, were rapidly moved after proceedings were brought (with claims typically then transferring to the County Court/KBD).



R (NB & Ors) v SSHD [2021] EWHC 1489 (Admin)

- Using the Barracks was contrary to the advice of PHE and even the minimal risk mitigation measures the SSHD desired were not implemented – an outbreak was inevitable.
- Residents were exposed to an unacceptable fire risk.
- The claimants failed on the Reception Directive and legitimate expectation, but succeeded on a *Tameside* basis because of failures to identify vulnerable people:
“The system... fell below the fairly low standard required by the application of the Tameside principle... the particular context was one which the Defendant herself recognised that there was a relatively high risk of physical and mental vulnerability... and that the Barracks, therefore, were not suitable, even, for all adult male asylum seekers.”
- No breach of Articles 2, 3 or 8.
- The 15 January 2021 instruction led to a breach of Article 5 and false imprisonment.



Civil claims

- A large number of civil claims followed the use of Penally and Napier. These typically rely on:
 - Articles 3 and 8
 - False imprisonment/Article 5
 - Article 8 read with Article 14
 - Breach of the Equality Act 2010 (indirect discrimination)
 - Breach of EU law (depending on timing)
- In practice, these will settle where there is medical evidence that the person (i) was vulnerable and should have been identified as such and (ii) suffered as a result.



Lessons from the Barracks



What can we learn for future novel accommodation claims?

- Selection criteria:
 - This is essential – will they identify vulnerable people?
 - Also, what systems for identifying the vulnerable once allocated?
- Has the PSED been complied with?
 - What efforts have been made to check on community support/infrastructure? Have the views of relevant public bodies been considered? Are there sufficient community facilities available?
- Evidence:
 - Need evidence of vulnerability – medical evidence is key
 - Detailed reps will likely secure transfer and if not set a marker
 - Are there adequate medical facilities available/on-site?
- Venue:
 - These claims need to be brought in the Admin Court – but transfer to CC/KBD once moved
 - Some urgency may be justified – will depend on the facts



Thank you

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BARGES AS ASYLUM ACCOMMODATION

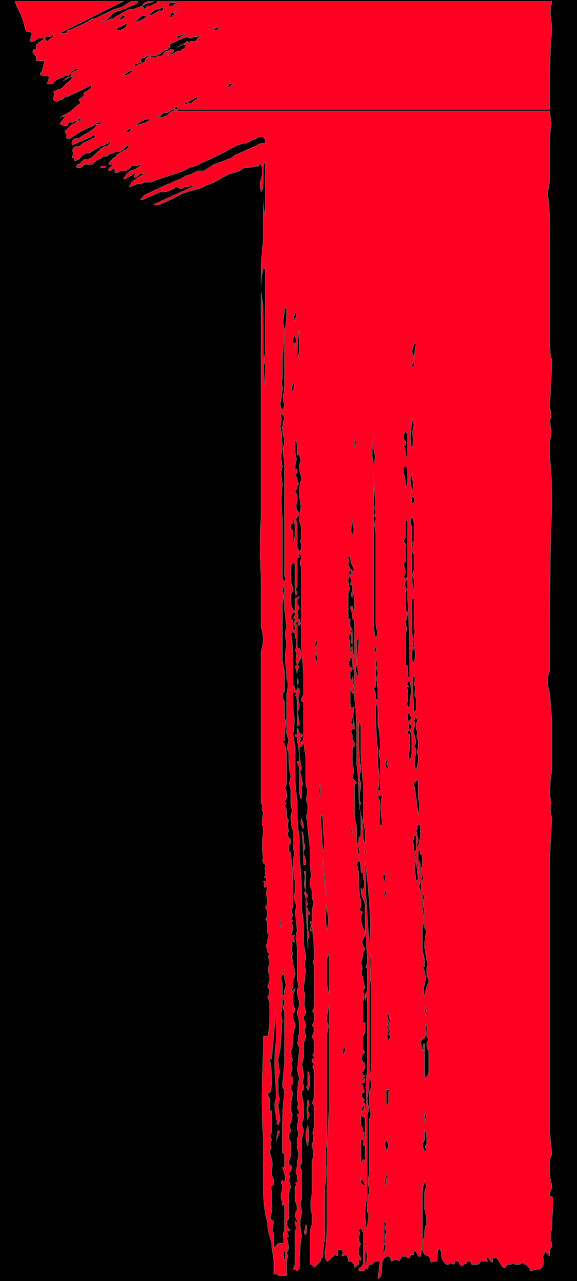
SHELTER

STANDARDS AND SAFETY:

- 1 FLAG & DOMESTIC
LEGISLATION**
- 2 REGULATORY LANDSCAPE**
- 3 PORTLAND PORT**
- 4 COMPARISON WITH CRUISE
SHIPS IN SCOTLAND**



FLAG AND DOMESTIC LEGISLATION



THE BIBBY STOCKHOLM FILES THE FLAG OF BARBADOS...

A vessel flying the flag of a specific country is bound to follow the laws of that country.

The Bibby Stockholm is flagged in Barbados, so it must follow the laws of Barbados.

A vessel's flag determines the laws, regulations and standards that the vessel must comply with.

... BUT IT WILL BE DOCKED IN ENGLISH WATERS

When a vessel is in the territorial waters of another country, that vessel must follow that domestic legislation as well as the flag state laws.

In general:

Flag state regs = framework for overall operation of the vessel, crew qualifications and safety

Domestic regs = specific requirements for the living conditions of those on board

REGULATORY LANDSCAPE



WHAT LEGISLATION?

In addition to the housing/asylum support/human rights framework, relevant legislation includes (but is not limited to....):

Merchant Shipping Act 1995 (gives effect to most international shipping conventions)

Portland Port General Byelaws 2018 (local ports are given powers to make laws applicable to their area, these organisations are Statutory Harbour Authorities)

Maritime Guidance Note 469(M) (identifies the domestic safety requirements applicable to the vessel e.g life saving appliances and firefighting equipment)

Offshore Installations and Wells (Design and Construction etc) Regulations 1996 (governs standards required for accommodation on offshore installations, e.g. overcrowding and adequate space to sleep and store clothes)

The Health and Safety (Enforcing Authority) Regulations 1998

(govern which organisation is responsible for enforcing the health and safety rules applicable to different entities). Portland Port is within Dorset County Council and it is likely that the vessel will fall within their responsibility for ensuring all health and safety regs are complied with.

International Ship and Port Facility Security Code (framework through which ships and port facilities should co-operate to detect and deter acts that may threaten maritime security)

WHO'S IN CHARGE?

Maritime and Coastguard Agency – an executive agency of the UK govt, within the **Dept for Transport**, responsible for producing legislation and guidance for ships. They also inspect vessels flagged to the UK and foreign vessels at UK ports.

Statutory Harbour Authority at Portland Port (the **Portland Harbour Authority Ltd**) – responsible for the management and running of the harbour, health, safety, environmental issues and emergencies. Responsible to the Dept for Transport.

Corporate Travel Management – the firm who managed the two Scottish vessels will also be managing the Bibby Stockholm.

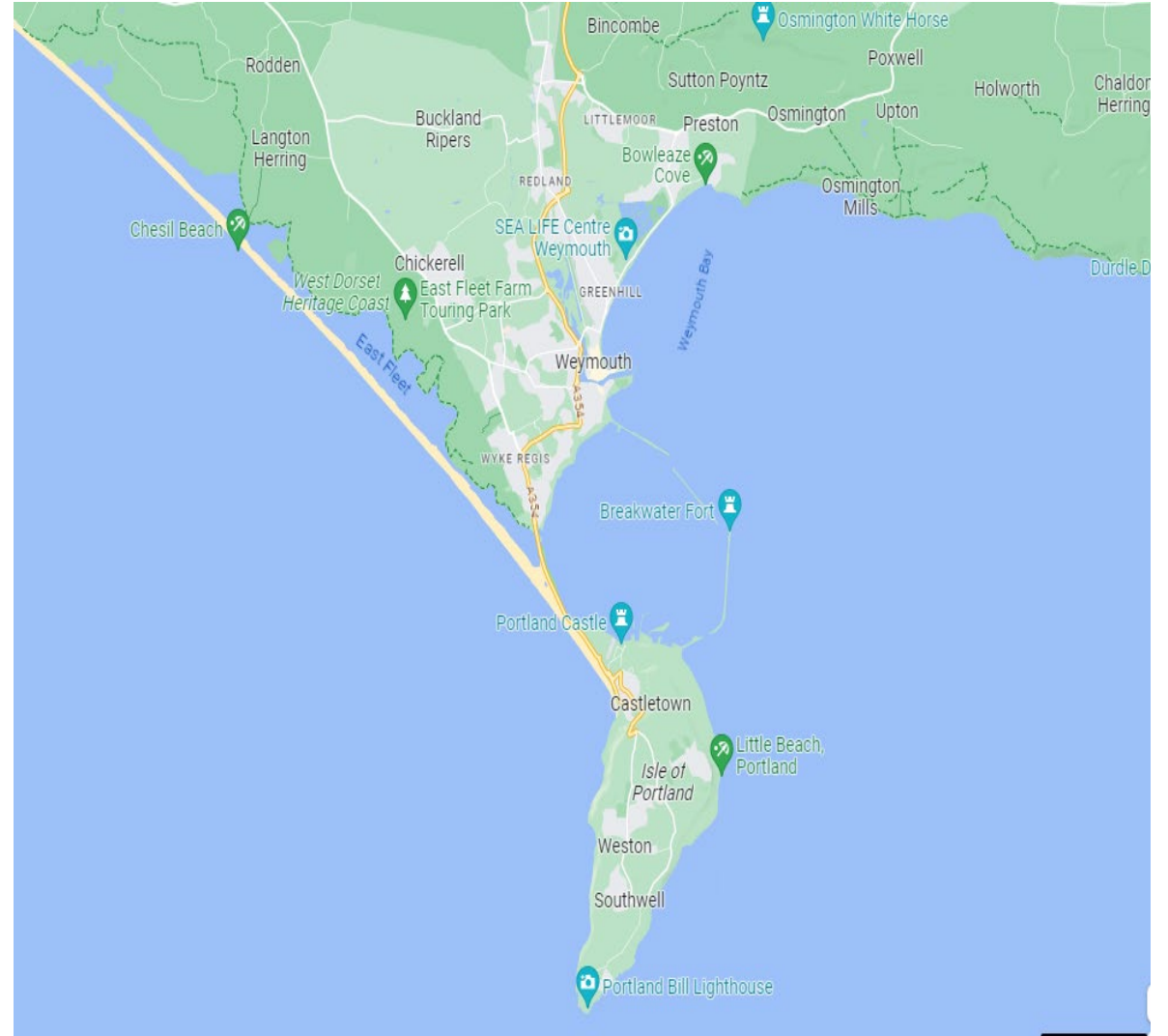
The Home Office?

PORTLAND PORT





“A thriving commercial port”



SOME ISSUES TO CONSIDER

ACCESS

Access to the harbour is restricted
Photo ID/pass for crew and visitors
Port gates are locked at night

DAILY OPERATIONS

Who will be on board and in charge of
the day to day operations of the
vessel?

PORT RULES

Rules governing activities within the
port

SECURITY

Who will be on board and in the port
to provide security?

SAFETY PLANS

The Port has a Marine Safety plan
The vessel should also have detailed
emergency procedures

TRANSPORTATION

Will transport be provided from the
vessel to the port gates and beyond to
local services?

COMPARISON WITH CRUISE SHIPS IN SCOTLAND





DIFFERENT REGULATIONS

A cruise ship is a 'passenger vessel' (the barge is not) and will be subject to different, more onerous regulations.

Cruise ships undergo both announced and unannounced safety inspections and are subject to stringent international conventions in addition to flag state and domestic regs.

RED CROSS REPORT

'Fearing, fleeing, facing the future' (Feb 2023)

- Cruise ships are not appropriate
- Ships are isolated and do not support integration
- No timescales for those on board
- No infrastructure to support after leaving

[HTTPS://UNHERD.COM/2023/04/ON-BOARD-A-MIGRANT-CRUISE-SHIP/](https://unherd.com/2023/04/on-board-a-migrant-cruise-ship/)

[HTTPS://WWW.HARWICHANDMANNINGTREESTANDARD.CO.UK/NEWS/18780363.COUNCILLOR-WARNS-GOVERNMENT-NOT-REPEAT-MISTAKE-HOUSING-REFUGEES-FERRIES/](https://www.harwichandmanningtreestandard.co.uk/news/18780363.councillor-warns-government-not-repeat-mistake-housing-refugees-ferries/)

[HTTPS://WEBARCHIVE.NATIONALARCHIVES.GOV.UK/UKGWA/20130128112038/HTTP://WWW.JUSTICE.GOV.UK/DOWNLOADS/PUBLICATIONS/INSPECTORATE-REPORTS/HMIPRIS/PRISON-AND-YOI-INSPECTIONS/WEARE/HMPWEARE042-RPS.PDF](https://webarchive.nationalarchives.gov.uk/ukgwa/20130128112038/http://www.justice.gov.uk/downloads/publications/inspectorate-reports/hmipris/prison-and-yoi-inspections/weare/hmpweare042-rps.pdf)

shelter.org.uk



Using the Equality Act 2010 in asylum support cases

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21 June 2023



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Why run Equality Act 2010 points in asylum support cases?

- Positive duties
- Inquiry duties supplement review/monitoring duties intrinsic in asylum support frameworks
- Damages
- Reputational harm to Home Office(!?) (Or inconvenience?)



Service Provider/Jurisdiction

- Section 29 (1) or(6) EA 2010

- Jurisdiction to run EA 2010 points in JRs specifically preserved by section 113(3)(a) EA 2010



Indirect Discrimination

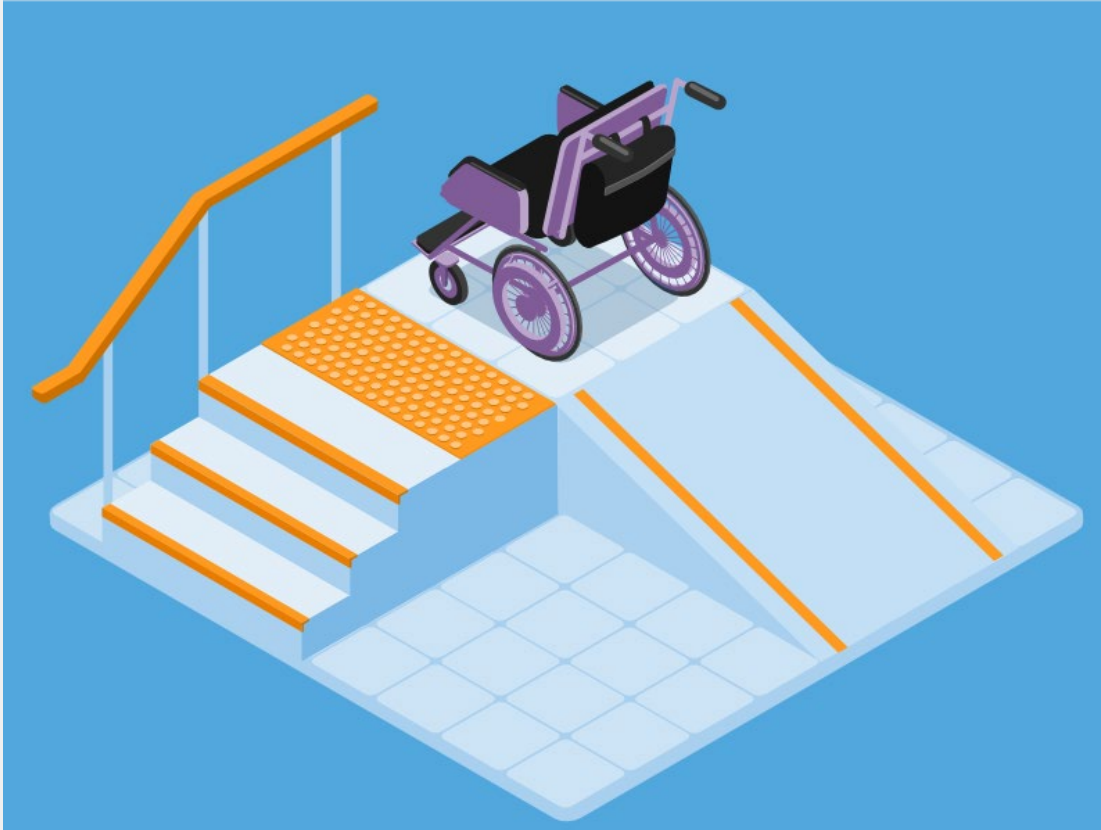
Indirect discrimination occurs where there is, on the face of it, a neutral provision, criterion or practice ('PCP') that places an individual at a particular disadvantage and the PCP cannot be justified. The key elements of an indirect discrimination claim are:

- a. **PCP:** Para 5.6 of the EHRC Code of Practice provides that a PCP “...*should be construed widely so as to include, for example, any formal or informal policies, rules practices, arrangements, criteria, conditions, prerequisites, qualifications or provisions. A provision, criterion or practice may also include decisions to do something in the future such as a policy or criterion that has not yet been applied, as well as a ‘one-off’ or discretionary decision.*” See also *Ishola v Transport for London* [2020] EWCA Civ 112; [2020] ICR 1204, paras. 28, 31, 35-38.
- b. **“Particular disadvantage”:** The PCP must be the “but for” cause of the disadvantage to the individual. The PCP does not have to disadvantage all members of a particular group that shares a protected characteristic (e.g. disability). However, the Claimant must establish that the group is disproportionately disadvantaged: see *Essop v Home Office* [2017] 1 WLR 1343, para 27. The disadvantage suffered by the Claimant must also be the same type of disadvantage as suffered by the group.
- c. **“Would put”:** The inclusion of “would put” allows challenges to PCPs that have not yet been applied but which would have a discriminatory effect if they were applied: EHRC Code of Practice para. 5.8.
- d. **Comparator:** section 23 EA 2010 requires a “like for like” comparator: “*there must be no material difference between the circumstances relating to each case*”.
- e. **Proportionate means of achieving a legitimate aim:** once *prima facie* discrimination is established, the burden to justify that discrimination shifts to the Defendant.

NB: Remember parallel duties under Article 14 ECHR.



The Reasonable Adjustments Duty



The key elements of the reasonable adjustments duty:

- a. **Disability:** the individual must come within the section 6 definition of disability
- b. **PCP:** the individual must be able to identify a relevant PCP(s)
- c. **Substantial disadvantage:** this means more than ‘minor or trivial’: see section 212(1) EA 2010. It can refer to the procedure or the outcome of procedure.
- d. **Comparator:** Section 23 does not apply so there *can* be material differences in circumstances between people with disabilities and people without disabilities. “*Persons who are not disabled*” has been read down to mean the type of disability in question: see *Paulley v FirstGroup plc* [2017] UKSC 4; [2017] 1 WLR 423, para. 33 where a bus operator’s policy of “first come first served” for the space designated for wheelchair users put “disabled wheelchair users” at a substantial disadvantage.
- e. **Reasonable steps:** What is reasonable depends on the circumstances of the case: see *R (Rowley) v Minister for the Cabinet Office* [2021] EWHC 2108 (Admin), para 29. Paras. 7.29-7.30 Code of Practice explains that relevant factors include practicability, cost, disruption and the Defendant’s resources. The nature and extent of the disadvantage is also relevant: see *R (Imam) v Croydon LBC (No 2)* [2021] EWHC 739 (Admin), paras. 87,89.



What is the PSED? The General Duty

- Applies to public authorities and those exercising public functions
- A ‘procedural duty’
- Integral to establishing whether *prima facie* indirect discrimination can be justified, or reasonable steps have been taken.
- Policy decisions AND individual decisions



What is the PSED?

A public authority must, in the exercise of its functions, have due regard to the need to—

- (a) **eliminate discrimination**, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- (b) **advance equality of opportunity** between persons who share a relevant protected characteristic and persons who do not share it;
- (c) **foster good relations** between persons who share a relevant protected characteristic and persons who do not share it.



What is “Due Regard”?

- Consideration of equalities implications of decision-making
- Context sensitive how much consideration is required
- Should put a decision-maker in an evidence-based position to address disadvantage faced by particular groups
- Due regard is “*about informed decision-making, not about carrying out particular processes or producing particular documents.*”



Eliminate Discrimination

Limb 1: (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;



Advance Equality of Opportunity

Limb 2: advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;

“Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—

(a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;

(b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;

(c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.”



Foster Good Relations

Limb 3: (5) Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to—

- (a) tackle prejudice, and
- (b) promote understanding.



The *Bracking* criteria

- Record keeping
- Anticipatory duty
- Continuing duty
- Not a box-ticking exercise
- Specific rather than general regard



Continuing Duty

Court of Appeal in *UNISON v Lord Chancellor* [2015] EWCA Civ 935 at §121:

*‘Fifthly, it is said that “no evidence was gathered as to the likely deterrent effect of the introduction of fees ... on different protected groups”. It is not clear to me, and Ms Monaghan did not explain in her submissions, what kind of evidence could or should reasonably have been sought. It is a matter of common sense that the introduction of a fee for a service which has previously been available for free is likely to produce some reduction in take-up, even from those who can realistically afford to pay; but the extent of that reduction must be very difficult to predict, and asking people in advance on a hypothetical basis would seem unlikely to produce reliable data. I can see nothing wrong in making a reasonable judgement and then monitoring the outcome with a view to making any adjustments that may seem necessary: the section 149 duty is ongoing. Elias LJ made a similar point, albeit that the context was different (he was not of course concerned with the section 149 claim – see para. 29 (4) above), in the course of his discussion of justification in his judgment in *Unison 2*. In relation to the Lord Chancellor’s aim that the introduction of fees should encourage early settlement of claims, he said, at para. 86: “The Commission advanced ... [an] argument to the effect that there is no hard evidence to support the Lord Chancellor’s assessment but as the EAT pointed out in *Constable of West Yorkshire Police and another v Homer* [2009] ICR 223 para. 48, concrete evidence is not always required. A reasonable and rational view about what effects a particular policy is likely to have will in principle suffice to justify its adoption, although the impact of the policy will have to be kept under consideration to ensure that the ends justify the means. Were it otherwise, government would be stifled in its ability to introduce new and untried measures because of the uncertainty of their impact”.’*



Continuing Duty

R(on the application of DMA) v SSHD [2020] EWHC 3416 (Admin); [2021] 1 W.L.R. 2374

"... [T]here is a fundamental obstacle preventing [the Secretary of State] being able to have "due regard" to the need to eliminate discrimination, advance equality of opportunity and foster good relations in respect of disabled people within the s.4 scheme as required by s.149(1)(a), (b) and/or (c) and s. 149(4). That follows from the simple failure to undertake any form of monitoring of disabled [individuals] accessing the system."



PSED and Justification of Discrimination

In *G v St Gregory's Catholic Science College Governors* [2011] EWHC 1452 (Admin); [2011] 6 WLUK 376, the High Court held at §42 (emphasis added):

*“Having found that there is indirect discrimination, I must now consider justification. **Performance of the equality duty is of relevance in establishing justification.** The purpose of the duty is to require public bodies to whom it applies to give advance consideration to issues of race discrimination before making any policy decision that may be affected by them: see per Arden LJ in *R (Elias) v Secretary of State for Defence* [2006] 1 WLR 3213, §274. She observed:*

“This is a salutary requirement and this provision must be seen as an integral and important part of the mechanisms for ensuring the fulfilment of the aims of anti-discrimination legislation”



PSED and Justification of Discrimination

The High Court in *Hussein v Secretary of State for the Home Department* [2018] 2 WLUK held:

“It is instructive to note the relief actually granted by the Supreme Court in paragraph 45 of Coll. The Court made a declaration that there was:

‘...direct discrimination against women ... which is unlawful unless justified ... No such justification has yet been shown by the Secretary of State’. I emphasise the word ‘yet’ in that quotation”.

“ [...]Paragraph 42 of Coll is not laying down (nor am I being invited by Ms Harrison to apply) a rule of law. It merely indicates an approach which may, on the facts and in the circumstances of a given case, be adopted. I cannot see that the approach is confined to cases of direct discrimination, nor why it may not be equally in point in cases of indirect discrimination.

*Either way, the point is the same. **The minister has failed to address his mind to the problem and how it may be mitigated or avoided. Whilst the question of justification may not "logically depend on whether the [minister] thought about this at the time", a minister who did not think about it is likely to be disadvantaged or disabled in demonstrating justification unless and until he has properly thought about it.**”*



PSED and Justification of Discrimination

The EHRC Services Code provides, at [5.36]:

“A significant factor in determining whether a public authority is able to justify what may be indirect discrimination is the extent to which the authority has complied with their public sector equality duty”.



Application in asylum support cases



- Racist attacks on asylum accommodation? Skin colour not exempted.
- Supplement existing duties? E.g. risk and needs based assessments, section
- Impact on eligibility for accommodation if damages awarded?



Thank you

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Accommodating asylum seekers: Barracks, Barges & Hotels: *En Suite Education*

Georgie Rea, Garden Court Chambers

21 June 2023



GARDEN COURT CHAMBERS



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The Issue

- The Home Office’s systemic failure in processing asylum claims has resulted in a growing number of asylum seekers in ‘temporary’ asylum accommodation.
- The Home Office estimates that “*about 51,000 destitute migrants are currently being accommodated in hotels*” and it is looking to reduce its estimated £6 million per day expenditure by using army camps and barges (24 May 2023).
- Refugee Council Report in 2021 (summary) Conditions in Hotels:
 - No capacity to cook familiar food or for children to engage in play.
 - Parents poor mental health has a greater impact on children in the close quarters of hotel living arrangements.
 - Children living in hotels experience high levels of social isolation and school placements can help them to establish lasting friendships.
 - Severe overcrowding with nowhere for children to complete their homework.
 - Link to delayed cognitive development and communication skills.



R (HZ & Ors) v Secretary of State for the Home Department [2023] EWHC 660 (Admin)

The Claimants:

- Afghan nationals relocated to the UK, granted ILR and various forms of support following the fall of Afghanistan to the Taliban in the summer of 2021
- Provided with temporary or "bridging" accommodation until they could find or were offered settled accommodation.

The Facts:

- The Claimants were accommodated in “the Southwark Hotel”
- In summer 2022, that hotel terminated their contract with the Defendant.
- The Defendant offered them new bridging accommodation in two hotels in Manchester.
- Among the families were teenage girls who were preparing to take GCSE exams, who would have their education severely disrupted by the move and faced long delays in obtaining school places.
- Some students were offered places up to two hours journey away from the families’ accommodation.



R (HZ & Ors) v Secretary of State for the Home Department [2023]

The Challenge:

- The Claimants challenged the Defendant's decision to offer the new bridging accommodation in Manchester
- Sought orders requiring her to provide them and their families with bridging accommodation in, or within a reasonable travelling distance of, the London Borough of Southwark.

The Hearing

- On 17 January 2023, the High Court in London heard how the unexpected move would affect school places



Section 55 The Borders, Citizenship and Immigration Act 2009

Section 55 -Duty regarding the welfare of children

- (1) The Secretary of State must make arrangements for ensuring that—
 - (a) the functions mentioned in subsection (2) are discharged having regard to the need to safeguard and promote the welfare of children who are in the United Kingdom, and
 - (b) any services provided by another person pursuant to arrangements which are made by the Secretary of State and relate to the discharge of a function mentioned in subsection (2) are provided having regard to that need.

- (2) The functions referred to in subsection (1) are—
 - (a) any function of the Secretary of State in relation to immigration, asylum or nationality;
 - (b) any function conferred by or by virtue of the Immigration Acts on an immigration officer;
 - (c) any general customs function of the Secretary of State;
 - (d) any customs function conferred on a designated customs official.



Section 55 - Application (HZ at [91])

The Section 55 duty, where it applies:

- i) requires consideration of a child's specific circumstances, not merely consideration of "children" generally: **Zoumbas v Secretary of State for the Home Department [2013] UKSC 74; [2013] 1 WLR 3690** at [10]; the decision-maker should identify the principal needs of the children (broadly construed), both individually and collectively: **Nzolameso v Westminster CC [2015] UKSC 22** at [23] and [27];
- ii) relates not merely to safeguarding the affected children but also to actively promoting their welfare: **Nzolameso v Westminster** at [27]; **YR v Lambeth London Borough Council [2022] EWHC 2381** at [46] and [82]; and
- iii) imposes an enhanced duty to be properly informed and carefully to consider all relevant information. What precisely is required in each case is fact-sensitive and a matter of substance rather than form. In **JO v Secretary of State for the Home Department [2014] UKUT 00517 (IAC)** at [10] and [11].



Section 55 – Exercising an “immigration function” - HZ conclusions

- The High Court ruled that the Home Secretary did not owe a duty to ‘safeguard and promote’ the best interests of the children affected by the moves, as she was not exercising an ‘immigration function’.
- The Claimants submitted that section 55(2)(a) does not limit the duty to the Secretary of State's immigration functions but refers, more widely, to "any function... in relation to" immigration, asylum or nationality
- However, the High Court held at [93] “The ordinary meaning of a "function in relation to immigration" is one which concerns entry to, abode in and removal from the United Kingdom”
- This might not apply to section 95 accommodation, which is arguably an immigration function provided by the SSHD.



- Section 55 – HZ conclusions – Low Bar for Discharge of Duty

- The High Court further ruled that even if she had owed such a duty, it was sufficient that she had given the Local Authority an opportunity to raise concerns about the number of school aged children.
- The Claimants had argued that the Home Secretary was required to make more substantive enquiries to ensure against further disruption in the lives and education of the children before taking the decision to take them out of their schools and relocate them hundreds of miles away, without any measures in place to ensure continuity.



Reasonableness– HZ conclusions

- [116]** Summary of enquiries which the Defendant made about educational provision in Manchester.
- i) The Defendant took into account the availability of health and education services (at [44]).
 - ii) Health and education teams were involved in discussions about the Manchester Hotels from the outset. Education was a topic of discussion, even though Covid and TB screening were the highest priority at that point (at [45]).
 - iii) The Defendant took the Department for Education's overview or estimate of available school places in the local authority into account in rating hotels during the review process initiated in October 2021. Their estimate was the same for Southwark and for Manchester- both “amber rating” (at [47]-[48]).
 - iv) The Defendant’s Engagement Team spoke to MCC staff on 10 August 2022 about the educational provision available for children of school age. MCC confirmed they would accept the proposed hotel residents in principle despite the numbers of school aged children on the booking, subject to prior sharing of any safeguarding issues (at [70])

[117] The general public law question (i.e. before considering section 55) is whether “*no reasonable authority could have been satisfied, on the basis of those enquiries, that it possessed the information necessary for its decision about where to offer the Claimants substitute bridging accommodation.*”



Section 55 – HZ conclusions

[102] *“As the Claimant’s point out, a broad range of public bodies are required to make arrangements for ensuring that their functions are discharged having regard to the need to safeguard and promote the welfare of children, under section 11 of the Children Act 2004. Those bodies include local authorities discharging housing and other functions in relation to children who are living in the UK by reason of the Afghan resettlement schemes. Section 11 applies to the Secretary of State, however, only in relation to certain non-relevant functions (relating to offender management).”*



Section 19

Following HZ, and how migrant education duties fit in with s55 duty, is there potential for use of section 19 to secure school place?

➤ *Even if we can't fix hotel accommodation*

19. Exceptional provision of education in pupil referral units or elsewhere: England

(1) Each local authority in England **shall make** arrangements for the provision of suitable education at school or otherwise than at school for those children of compulsory school age who, by reason of illness, exclusion from school or **otherwise**, may not for any period receive suitable education unless such arrangements are made for them.



Statutory Guidance – Not on a School Roll

Ensuring a good education for children who cannot attend school because of health needs

Statutory guidance for local authorities - January 2013

This is statutory guidance from the Department for Education. Local authorities (LAs) must have regard to it when carrying out their duty to arrange suitable full-time education (or part-time when appropriate for the child's needs) for children who are unable to attend a mainstream or special school because of their health. This duty applies to **all children** and young people who would normally attend mainstream schools, including Academies, Free Schools, independent schools and special schools, or **where a child is not on the roll of a school**. It applies equally whether a child cannot attend school at all or can only attend intermittently (*page 3*).



Report on the use of hotels for housing UASCs

Independent chief inspector of Borders and Immigration - October 2022

- The use of hotels did not constitute a permanent local authority placement but were provided on a ‘short-term interim basis’, and it fell to local authorities to provide services under Part III of the Children Act 1989.
- No agency or government department has statutory responsibility for these children. The Home Office has not assumed this statutory responsibility and is not operating as the ‘corporate parent’.
- The local authorities of the areas where these hotels are located do not have statutory responsibility for these young people as they are not considered to be ‘Looked After’.
- The young people are not provided with any kind of formal or informal education while living in the hotels. Social workers had identified a need for more educational input, such as English as a Second Language. Home Office staff acknowledged the importance of education but commented: “there’s no way our provision can cater for that gap.”



“The Experiences of People Seeking Asylum Living in Hotel Accommodation”

Refugee Council Report April 2021

- Families with school-age children living in hotels have often not been supported or encouraged to enrol their children in school, leaving many children unable to access formal education.
- When schooling was only happening remotely, those families who had secured school places struggled to support their children’s learning because the whole of the family’s life was confined to one room and the internet connection from hotel Wi-Fi was often too weak for remote learning.
- This situation was made worse in families with more than one child. Now schools have re-opened, these problems persist when children are trying to do their homework. As people have been staying in hotels for many months, children’s education has been severely disrupted.



Strategy

1. Write to LA requesting education under section 19
2. Remind them that the child does not need to be on a school roll for the duty to arise
3. Point them to the evidence that education in a hotel room cannot be “*suitable education*”
4. Work with the LA to secure a place in a school
5. If they cannot provide a school place, PAP on the basis of section 19 breach
6. (Hopefully) secure a school place!

Long Game:

- More suitable education for Children in Hotel accommodation
- LA’s will put pressure on Home Office to consider education provision more carefully, when suggesting moves/hotel placements



Thank you

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GARDEN COURT CHAMBERS





Government spending £6.8m a day housing asylum seekers in hotels

Serco, which was awarded a **£1.9 billion** contract by the Home Office for 10 years in 2019, is currently housing at least 30,000 asylum seekers in 6,000 homes. 27 Oct 2022

The Serco logo consists of the word "serco" in a dark blue, lowercase, sans-serif font. A red oval is positioned below the letter "o".

Suella Braverman brands Channel crossings 'an invasion' of England in 'disgusting' comments

Suella Braverman says it is her 'dream' and 'obsession' to see a flight take asylum seekers to Rwanda



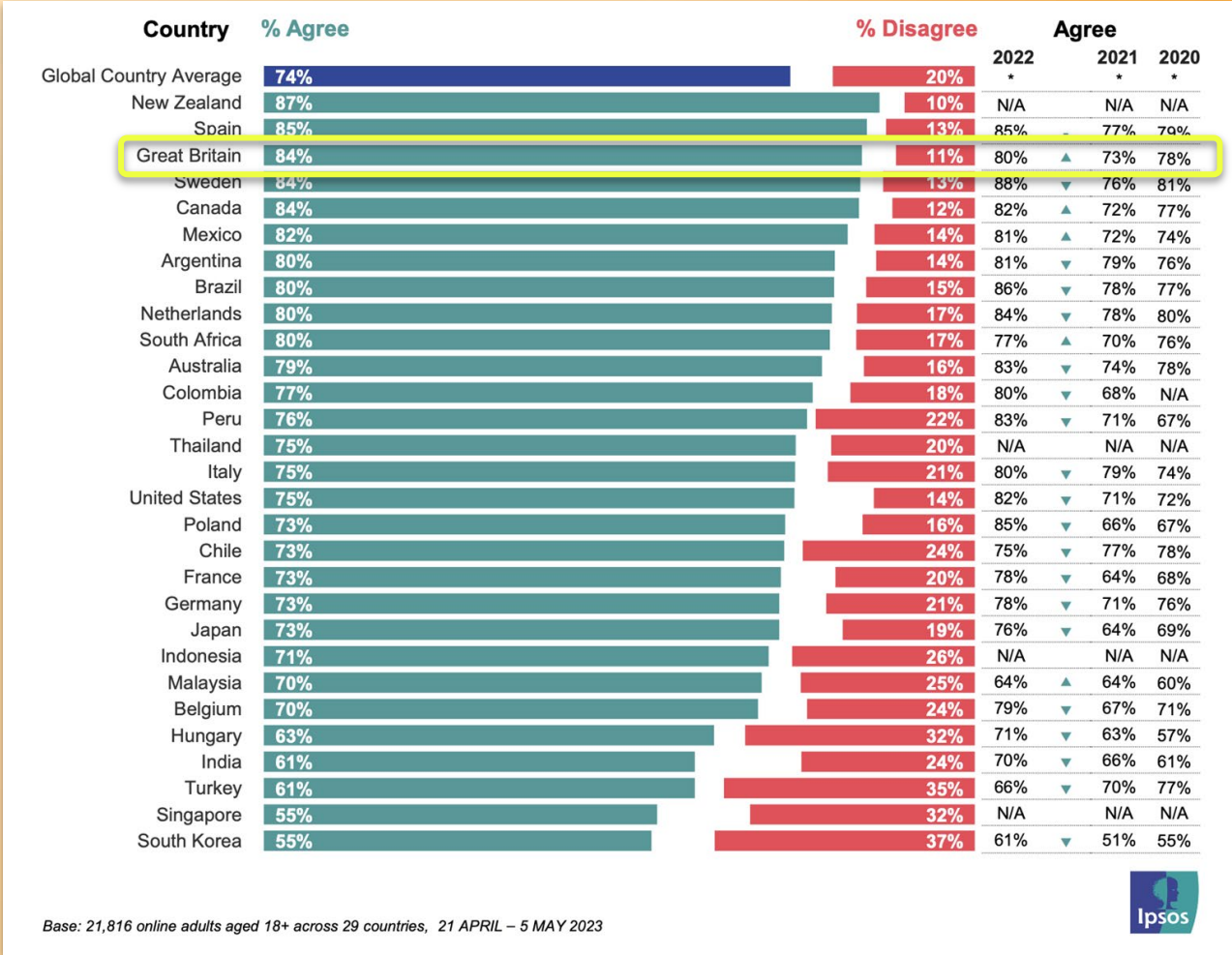
Rishi Sunak ✓

@RishiSunak

We're stopping the boats



UK is among countries with the most positive attitude towards refugees, poll finds



Government to remove licensing requirements for asylum seeker accommodation sparking safety fears

Government to remove housing safety regulations for asylum seekers

Asylum seekers in England and Wales to lose basic protections in move to cut hotel use

