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Our ref: SHEROYZ/FBU-BSTOCKHOLM

Your ref:

Date: 25 August 2023

Dear Sir/Madam

**LETTER IN ACCORDANCE WITH THE PRE-ACTION PROTOCOL FOR
JUDICIAL REVIEW**

**** RESPONSE REQUIRED BY 4 PM ON THURSDAY 31 AUGUST 2023 ****

Proposed Claimant

Fire Brigades Union ('FBU')

Proposed Defendant

Secretary of State for the Home Department ('SSHHD')

Proposed Interested Parties

- (1) Dorset and Wiltshire Fire and Rescue Service
- (2) Portland Harbour Authority
- (3) Dorset and Wiltshire Council
- (4) Health and Safety Executive
- (5) Corporate Travel Management (North)
- (6) Landry and Kling Global Ship Solutions
- (7) Bibby Marine Ltd

DETAILS OF THE MATTERS BEING CHALLENGED

- (1) The SSHD's decisions/action (of late July 2023 and continuing) to proceed with the use of the Bibby Stockholm barge (**'the Barge'**) as accommodation for asylum seekers under the Immigration and Asylum Act 1999 (**'the 1999 Act'**), despite representations and public concern regarding fire safety on the Barge.

URGENT ASSURANCE SOUGHT

1. **Given the circumstances set out below, we seek assurances by 4 pm on 31 August 2023 that the SSHD will not move asylum-seekers to the Barge under the 1999 Act until 7 days after she has provided a full response to this PAP Letter and given the information and disclosure sought herein.**
2. **We recognise that the proposed timetable is very abridged. We consider this justified since, first, the issues raised in this letter are substantially similar to those raised with you by our individual asylum seeker clients in our pre-action letter of 4 August 2023, such that it ought therefore to follow that your client is already in a position to respond urgently on the matters raised, and second, the Government has repeatedly expressed its commitment to resume relocating individuals to the Barge, notwithstanding the serious outstanding concerns set out below.**

THE CLAIMANT AND THE CIRCUMSTANCES GIVING RISE TO URGENCY

3. The FBU is the recognised trade union for the fire and rescue service throughout the UK. It has approximately 33,700 members and represents the vast majority of firefighters and emergency control staff, including fire safety inspectors. Its members are the professionals at all levels within the fire and rescue service and on all aspects of fire safety.
4. The issues set out below share common features with those raised in pre-action correspondence on behalf of the individual asylum seekers we represent who were given Notices of Transfer to the Barge and have authorised us to disclose their PAP Letters (please see our pre-action correspondence dated 4 – 16 August 2023).

5. The FBU has serious fire and operational safety concerns regarding the Barge. It is concerned for *all* persons who may in future be required to reside and/or work on the Barge, and for the safety of all firefighters who may be required to attend at the Barge in the event of a fire or other emergency.
6. Following newspaper reports in late July 2023 (see below), the FBU first raised its concerns with the SSHD on 2 August 2023. On this date, the FBU wrote to the Home Secretary ‘*to seek an urgent meeting [...] regarding fire safety matters at accommodation centres for asylum seekers and other migrants, including the [Barge]*’.¹ The FBU stated, *inter alia*:

‘Firefighting operations on vessels such as the Bibby Stockholm provide significant challenges and require specialist training and safe systems of work. The diminished safety provisions only exacerbate our operational concerns.

The FBU has expressed concerns about plans to exempt accommodation provided by the Home Office for asylum seekers from needing an HMO license. **We are concerned about the risks on a large floating structure used to accommodate asylum seekers in long-term housing and would expect the risk assessment to recommend substantial prevention and control measures to tackle overcrowding, access to fire exits and other safety matters on the vessel.**

7. On 7 August 2023, and notwithstanding outstanding safety concerns, the SSHD moved the first individuals to the Barge. On 11 August 2023, following the disembarkation of the Barge due to the detection of legionella bacteria on board,² Assistant General Secretary of the FBU, Ben Selby, reiterated that the FBU’s ‘*fire safety and operational safety concerns remain*’ and that ‘*[i]t remains our professional view that [the Barge is] a potential death trap and an accident waiting to happen.*’³
8. On 15 August 2023, the Prime Minister said that the Government was still ‘*committed*’ to using the Barge to accommodate asylum seekers,⁴ and the Health Minister stated that people could return to the barge within ‘*days*’.⁵
9. On 17 August 2023, the Minister for Immigration, Robert Jenrick, responded to the FBU’s letter dated 2 August 2023. The Minister stated:

¹ <https://www.fbu.org.uk/news/2023/08/02/firefighters-union-demands-meeting-braverman-over-bibby-stockholm-fire-safety>.

² <https://homeofficemedia.blog.gov.uk/2023/08/11/statement-on-the-bibby-stockholm-11-08-2023/>.

³ <https://www.fbu.org.uk/news/2023/08/11/fbu-reiterates-fire-safety-concerns-after-refugees-evacuated-bibby-stockholm>.

⁴ <https://www.bbc.co.uk/news/uk-politics-66511123>.

⁵ <https://www.theguardian.com/uk-news/2023/aug/15/sunak-committed-to-housing-asylum-seekers-on-bibby-stockholm>.

‘The fire safety standards on the Bibby Stockholm are the same as any other berthed vessel, meeting the industry standard, and statutory inspections, including fire safety checks having been successfully completed. Tactical plans, including arrangements for evacuation of residents to assembly areas away from the quayside and outside the gated area, have been developed.’

10. The Minister did not provide any Fire Risk Assessment, Fire Safety Plan, or tactical plan. He declined the FBU’s request for a meeting on the basis that *‘the Home Office has already engaged with the appropriate bodies, Dorset and Wiltshire Fire Service in relation to fire safety on the Bibby Stockholm [...]’*.
11. The SSHD has not authorised us to provide to the FBU any information or documents she has provided to our individual asylum-seeker clients under the Pre-Action Protocol.

BACKGROUND

The announcement regarding the intended use of the Barge and other barges/vessels

12. On 5 April 2023, the SSHD announced that, for the *‘first time’* in the UK, it would use a berthed vessel – the Barge – to accommodate asylum seekers.³ The SSHD stated that asylum seekers were ‘due to be moved onto the [Barge] in the coming months’ and that it *‘will be operational for at least 18 months and stay berthed in the port during that time’*. It was said that use of the Barge will *‘reduce the reliance on expensive hotels and deliver a more orderly, cost effective and sustainable asylum accommodation system’* / *‘reduce the unsustainable pressure on the UK’s asylum system and cut the cost to the taxpayer caused by the significant increase in Channel crossings’*, and the Barge will *‘accommodate about 500 single adult males whilst their asylum claims are processed’*.
13. On 5 June 2023, the Prime Minister confirmed that the government had secured usage of two further barges, which will collectively provide another 1,000 bed spaces.⁴ Their proposed locations have not yet been confirmed.
14. On 7 July 2023, a House of Commons Library Research Briefing, *‘Asylum accommodation: hotels, vessels and large-scale sites’* (**‘Research Briefing’**),⁵ confirmed that the SSHD was *‘procuring accommodation barges, ferries or cruise ships and seeking agreements with UK port owners so they can be moored and used as asylum accommodation’* and that *‘[a]t the time of writing, the Home Office had confirmed that it had procured three vessels but only confirmed the mooring location for one of them’* (p23). Specifically in relation to the Barge, the Research Briefing confirmed that the Barge *‘has around 220 bedrooms and will accommodate around 500 single adult male asylum seekers’* (p23).
15. On 12 July 2023, the *‘Allocation of asylum accommodation policy’* (**‘the Policy’**)⁶ was updated to set out the suitability criteria for accommodating asylum seekers at *‘non-detained*

accommodation sites, which includes ‘vessels (including, but not limited to the Bibby Stockholm vessel at Portland Port)’ (p4).

16. On 18 July 2023, the SSHD published a Factsheet entitled ‘Asylum accommodation on a vessel in Portland Port’ (**‘the Factsheet’**).⁷ The Factsheet provides that *‘[t]he expectation is that individuals will stay on board between 3 and 6 months, although this could be up to 9 months. [...] The accommodation barge and berth have been contracted for 18 months.’*
17. The FBU understands that the Barge is owned by Bibby Marine Ltd (**‘Bibby Marine’**), and operated by Landry and Kling Global Ship Solutions (**‘Landry and Kling’**) and Corporate Travel Management (North) (**‘CTM’**),⁶ the former being sub-contracted by the latter.
18. Since 18 July 2023, the Barge has been moored at Portland Port, in Portland, Dorset, such that the relevant Statutory Harbour Authority is the Portland Harbour Authority and the relevant emergency fire and rescue service is the Dorset and Wiltshire Fire and Rescue Service (**‘DWFRS’**).

Fire safety concerns regarding the Barge

19. On 21 July 2023, following a guided tour to a select number of journalists, the Independent reported⁷ that the Barge *‘has 222 single bedrooms, but the Home Office has put between one and three bunk beds in each one to increase the capacity to 506 people’*. It has since been reported⁸ that *‘[o]fficials say the Bibby Stockholm has three fire exits, but when The Independent visited with other media on 21 July only two were in operation’* and that *‘[t]hey were both on the same side of the barge, and one was closed off for safety reasons because the gangway was deemed too steep for use’*.
20. On 31 July 2023, The Guardian⁹ reported that the SSHD had been *‘forced to delay moving people’* to the Barge in order *‘for officials to give a final survey’* and *‘to carry out last-minute fire safety checks amid concerns the vessel has not received approval from inspectors’*.
21. On the same date, The Times¹⁰ reported on *‘serious fire safety concerns’* regarding the Barge, which was *‘yet to receive approval from the local fire service’*. In particular:

⁶ <https://marineindustrynews.co.uk/australian-contract-uk-asylum-barges/>.

⁷ <https://www.independent.co.uk/news/uk/home-news/bibby-stockholm-berge-inside-portland-migrant-b2388754.html>.

⁸ <https://www.independent.co.uk/news/uk/home-news/migrant-berge-fire-safety-dorset-home-office-b2384916.html>.

⁹ <https://www.theguardian.com/uk-news/2023/jul/31/home-office-asylum-seekers-berge-bibby-stockholm-fire-safety-fears>.

¹⁰ <https://www.thetimes.co.uk/article/bibby-stockholm-could-become-floating-grenfell-pzqg2jtn>.

- a. A whistle-blower in the local fire authority *'said fire safety checks last week led to serious safety concerns'*. They described the Barge as having the potential to become a *'floating Grenfell'* due to the lack of fire safety protocols.
- b. Another local source said DWFRS was *'very critical on a number of safety issues'* after inspections the week prior and *'expressed fears that the Home Office would "suppress" the safety concerns raised to progress its plans to move migrants on board'*.
- c. Landry and Kling, the management company, told The Times that it would not be carrying out fire drills because *'it did not want to upset migrants on board as they may have faced "traumatic situations" on their journey to Britain'*.
- d. The evacuation point for those on board was described as *'completely inadequate'* for 550 people by someone who has worked at the port. There were also warnings of a *'Hillsborough-type crush'* behind two sets of locked security gates.

22. On the same date, various media outlets reported¹¹ that the Fire Safety Manager of DWFRS, Mr Graham Kewley, had said:

'[DWFRS] continues to liaise with partner agencies, the Bibby Stockholm's operator and the Home Office through the multi-agency forum and relevant subgroups.

Responsibility for planning, implementing and managing the safety of barge residents rests with the responsible person, as defined in fire safety legislation, in conjunction with the Master of the vessel.

Where any aspect falls within the scope of the Regulatory Reform (Fire Safety) Order, we will be undertaking appropriate audits to confirm that adequate general fire precautions are in place.

We have provided advice and comment in relation to fire safety arrangements to both the Home Office and the vessels operators during our familiarisation and pre-occupation visits.

The fire risk assessment is the appropriate mechanism for determining the planning, organisation, management and control of fire safety measures, and responsibility rests with CTM (Corporate Travel Management) and Landry & Kling as the vessel operator – under their contract with the Home Office – to produce and keep this document under review.

¹¹ <https://www.independent.co.uk/news/uk/home-news/migrant-barge-fire-safety-dorset-home-office-b2384916.html>; <https://www.itv.com/news/westcountry/2023-07-31/bibby-stockholm-fire-safety-concerns-over-migrant-barge>.

We do not conduct fire risk assessments or provide an approval process prior to occupation of a premises but will exercise our enforcement powers (either formal or informal) to address any significant areas of non-compliance where necessary.

It would be inappropriate for DWFRS to provide further detail on the specific systems and emergency plans in place, as these could impact upon the safety of the vessel and/or its occupants. This aligns with our approach to any other commercial or residential premises.”

23. On 1 August 2023, and following the receipt of complaints from members about the safety of the Barge (including in relation to overcrowding and lack of sufficient access to fire exits), Assistant General Secretary of the FBU, Ben Selby, told the press that: ‘*[a]s the only professional voice, firefighters believe the Bibby Stockholm to be a potential deathtrap*’.¹²
24. On 2 August 2023, the FBU wrote to the SSHD ‘*to seek an urgent meeting [...] regarding fire safety matters at accommodation centres for asylum seekers and other migrants, including the [Barge]*’.¹³ The FBU stated, *inter alia*:

‘Firefighting operations on vessels such as the Bibby Stockholm provide significant challenges and require specialist training and safe systems of work. The diminished safety provisions only exacerbate our operational concerns.

The FBU has expressed concerns about plans to exempt accommodation provided by the Home Office for asylum seekers from needing an HMO license. **We are concerned about the risks on a large floating structure used to accommodate asylum seekers in long-term housing and would expect the risk assessment to recommend substantial prevention and control measures to tackle overcrowding, access to fire exits and other safety matters on the vessel.**’

25. In the press release¹⁴ accompanying the above letter, Mr Selby stated:

‘The Fire Brigades Union represents the overwhelming majority of firefighters and emergency control staff across the UK, [...] who will be forced to deal with the consequences of any fire on board the Bibby Stockholm.

As firefighters, we are driven by the need to prevent loss of life and protect public safety. Everyone has the right to live in safe and decent housing, no matter where they are from.

¹² <https://www.theguardian.com/uk-news/2023/aug/01/bibby-stockholm-asylum-barge-is-potential-deathtrap-say-firefighters#:~:text=But%20the%20FBU's%20assistant%20general,%2C%E2%80%9D%20he%20told%20the%20%20Guardian.>

¹³ <https://www.fbu.org.uk/news/2023/08/02/firefighters-union-demands-meeting-braverman-over-bibby-stockholm-fire-safety.>

¹⁴ <https://www.fbu.org.uk/news/2023/08/02/firefighters-union-demands-meeting-braverman-over-bibby-stockholm-fire-safety.>



Duncan Lewis Solicitors

The government has already scrapped vital fire safety measures for asylum seeker accommodation. Now, it wants to put more than 500 people onto an off-shore barge designed to hold around 200.

This is a cruel and reckless approach to the welfare of asylum seekers, and puts the safety of firefighters at risk.’

26. On 3 August 2023, the Deputy Prime Minister confirmed that *‘[w]e have to undertake a number of inspections and other measures to make sure that these vessels, and this vessel in particular, is suitable and ready’*, but emphasised that he is *‘absolutely certain we will be able to get people on this vessel in the coming weeks’*.¹⁵
27. On 4 August 2023, The Independent reported¹⁶ that there are only six fire engines stationed within 15 miles of the Barge, all but one of the fire engines is staffed by part-time crews, and the nearest fire station *‘has no full-time staff’*. In a report seen by The Independent, Andy Dark, former Assistant General Secretary of the FBU, called the Barge a *‘major life risk’*. He added: *‘[t]here’s a real concern with regards to the availability of crews’* and, noting that there would be *‘no second chances’* if a fire broke out, *‘urged the fire service to run real-life simulations to test its response’*. It was further reported that DWFRS *‘said it had “robust plans” in place for the Bibby Stockholm and could draw resources from numerous stations over a wide area’*.
28. On the same date, there were reports¹⁷ that Police were investigating threatening letters that had been sent to entities (including taxi firms, a security company, the Barge management firm, and Dorset Council) warning of *‘punishment’* for their work on and association with the Barge. The letters threatened that *‘collaborators’* will be followed home and warned recipients *‘[f]or the sake of your conscience, finances [...] families, pets, house and cars, do not in any way work on the barge or assist.’*
29. On 6 August 2023, The Guardian reported¹⁸ that *‘[s]ocial media posts show threats to try to sink the barge with asylum seekers on it and to blow it up’* and that *‘[m]any local residents told the Guardian they were scared for their names to be published for fear of far-right reprisals against them.’*

¹⁵ <https://www.dailymail.co.uk/news/article-12369189/Deputy-PM-Oliver-Dowden-commits-Bibby-Stockholmbarge-use-coming-weeks-hints-fresh-delay-asylum-vessel-attacks-Labour-linked-fire-union-criticising-cruel-recklessplan.html>.

¹⁶ <https://www.independent.co.uk/news/uk/home-news/migrant-berge-dorset-fire-safety-b2387239.html>.

¹⁷ See, for example, <https://www.bbc.co.uk/news/uk-england-dorset-66408122> and <https://www.bristolpost.co.uk/news/uk-world-news/far-right-thugs-threaten-target-8652957>.

¹⁸ <https://www.theguardian.com/uk-news/2023/aug/06/bibby-stockholm-move-ins-planned-for-monday-despite-outbreak-warnings>.



30. On 7 August 2023, and notwithstanding the safety concerns, the SSHD began to transfer individuals to the Barge.¹⁹

31. On 11 August 2023, the SSHD announced that *‘[e]nvironmental samples from the water system on the Bibby Stockholm have shown levels of legionella bacteria which require further investigation [...] As a precautionary measure, all 39 asylum seekers who arrived on the vessel this week are being disembarked while further assessments are undertaken’*.²⁰

32. Following the disembarkation of the Barge, Mr Selby issued a statement²¹ stating (emphasis added):

‘The [FBU] warned the Home Secretary that forcibly holding migrants on this barge was a huge health and safety risk.

We wrote to Suella Braverman more than a week ago to demand a meeting to discuss these issues. **We have had no response that letter, and our fire safety and operational safety concerns remain.**

It remains our professional view that it's a potential death trap and an accident waiting to happen.

However, Suella Braverman and her ministerial colleagues are hellbent on confining vulnerable people in jail like conditions on what is effectively a prison ship.

This outbreak of Legionella suggests that it's only a matter of time before either lives are lost or there is serious harm to a detainee.’

33. On 15 August 2023, the Prime Minister said that the Government was still *‘committed’* to using the Barge to accommodate asylum seekers,²² and the Health Minister stated that people could return to the barge within *‘days’*.²³

34. On 17 August 2023, the Minister for Immigration, Robert Jenrick, responded to the FBU’s letter dated 2 August 2023. The Minister stated:

‘The fire safety standards on the Bibby Stockholm are the same as any other berthed vessel, meeting the industry standard, and statutory inspections, including fire safety checks having been successfully completed. Tactical plans, including arrangements for evacuation

¹⁹ See, for example, <https://www.independent.co.uk/news/uk/home-news/bibby-stockholm-berge-first-asylum-seekers-portland-b2388822.html>.

²⁰ <https://homeofficemedia.blog.gov.uk/2023/08/11/statement-on-the-bibby-stockholm-11-08-2023/>.

²¹ <https://www.fbu.org.uk/news/2023/08/11/fbu-reiterates-fire-safety-concerns-after-refugees-evacuated-bibby-stockholm>.

²² <https://www.bbc.co.uk/news/uk-politics-66511123>.

²³ <https://www.theguardian.com/uk-news/2023/aug/15/sunak-committed-to-housing-asylum-seekers-on-bibby-stockholm>.

of residents to assembly areas away from the quayside and outside the gated area, have been developed.’

35. The Minister did not provide any Fire Risk Assessment, Fire Safety Plan, or tactical plan. The Minister declined the FBU’s request for a meeting on the basis that ‘*the Home Office has already engaged with the appropriate bodies, Dorset and Wiltshire Fire Service in relation to fire safety on the Bibby Stockholm [...]*’.

LEGAL FRAMEWORK

Asylum Accommodation

36. The SSHD is under a statutory duty to ensure that asylum support accommodation is adequate for asylum seekers to maintain an adequate standard of health and meet their subsistence needs (s. 95 of the 1999 Act; reg. 5 Asylum Seekers (Reception Conditions) Regulations 2005/7 (**‘2005 Regulations’**); *Refugee Action v SSHD* [2014] EWHC 1033 (Admin) (**‘Refugee Action’**) at §87; *NB v SSHD* [2021] EWHC 1489 (Admin) at §161 (**‘NB’**)).
37. The question of ‘*fire risk*’ in relation to asylum accommodation is of central relevance to the question of adequacy for the health of the residents at such accommodation: *NB* at §170. Issues of fire safety, even in isolation, may mean that accommodation does not ensure a standard of living adequate for health: *NB* at §171.

Fire Safety

Regulatory Reform (Fire Safety) Order 2005

38. The Regulatory Reform (Fire Safety) Order 2005 (**‘2005 Order’**) sets out general fire precautions and other fire safety duties needed to protect “relevant persons” (see below) in case of fire in and around most premises.
39. The 2005 Order applies to ‘*any place and, in particular [...] —(b) any [...] vessel [...]; (c) [...] any other installation (whether floating [...])*’, save as are excluded under Article 6 of the 2005 Order. The 2005 Order does not apply to ‘*domestic premises*²⁴ ‘*consisting of or comprised in a house which is occupied as a single private dwelling*’: Article 6(1)(a) and Article 31(10).
40. ‘*Relevant persons*’ means: (a) any person (including the “responsible person” (see below)) who is or may be lawfully on the premises; and (b) any person in the immediate vicinity of the premises who is at risk from a fire on the premises (but does not include a fire-fighter

²⁴ ‘*domestic premises*’ means ‘*premises occupied as a private dwelling (including any garden, yard, garage, outhouse, or other appurtenance of such premises which is not used in common by the occupants of more than one such dwelling)*’: Article 2 of the 2005 Order.

who is carrying out his duties in relation to a function of a fire and rescue authority under section 7, 8 or 9 of the Fire and Rescue Services Act 2004, other than in relation to a function under section 7(2)(d), 8(2)(d) or 9(3)(d) of that Act: Article 2 of the 2005 Order.

41. ‘*Responsible person*’ means:

- ‘(i) the person who has control of the premises (as occupier or otherwise) in connection with the carrying on by him of a trade, business or other undertaking (for profit or not); or
- (ii) the owner, where the person in control of the premises does not have control in connection with the carrying on by that person of a trade, business or other undertaking.’

42. In relation to the duties under the 2005 Order, Article 5 provides, in relevant part (emphasis added):

‘(2) Where the premises are not a workplace, the responsible person must ensure that any duty imposed by articles 8 to 22 or by regulations made under article 24 is complied with in respect of those premises, so far as the requirements relate to matters within his control.

(3) Any duty imposed by articles 8 to 22 or by regulations made under article 24 on the responsible person in respect of premises shall also be imposed on every person, other than the responsible person referred to in paragraphs (1) and (2), who has, to any extent, control of those premises so far as the requirements relate to matters within his control.

(4) Where a person has, by virtue of any contract or tenancy, an obligation of any extent in relation to—

- (a) the maintenance or repair of any premises, including anything in or on premises; or
- (b) the safety of any premises,

that person is to be treated, for the purposes of paragraph (3), as being a person who has control of the premises to the extent that his obligation so extends.

(5) Articles 8 to 22 and any regulations made under article 24 only require the taking or observance of general fire precautions in respect of relevant persons’

43. The relevant fire safety duties are set out under Part 2. They include duties in relation to, *inter alia*, general fire precautions (Article 8), risk assessment (Article 9), fire safety arrangements (Article 11), fire-fighting and fire detection (Article 13), emergency routes and exits (Article 14), procedures for serious and imminent danger and for danger areas (Article 15), and co-operation and co-ordination (which applies where two or more responsible persons share, or have duties in respect of, premises (Article 22).

44. The enforcement duties and powers are set out under Part 3. For present purposes, the ‘enforcing authority’ is *‘the fire and rescue authority for the area in which premises are [...] situated’*: Article 25 (a) of the 2005 Order.

Fire Safety England Regulations 2022

45. The Fire Safety England Regulations 2022 (**‘2022 Regulations’**) provides for additional duties on responsible persons, including in relation to: information to residents (regulation 9) and fire doors (regulation 10).

Housing Act 2004

46. Part 1 of the Housing Act 2004 (**‘2004 Act’**) imposes duties on the Council as regards HMOs, whether occupied or unoccupied (see ss.1(5) and 1(8)). Under s.3(1), the Council *‘must keep the housing conditions in its area under review with a view to identifying any action that may need to be taken by them under [Parts 1 and 2 of that Act]’*. Under ss.5(1) and 6(1), this duty of review includes the duty to assess whether category 1 or category 2 hazards exist within residential premises, and s.4(1) imposes a duty to inspect premises in order to determine whether such hazards exist.
47. *‘Hazard’* means any risk of harm to the health or safety of an actual or potential occupier of, *inter alia*, an HMO which arises from a deficiency in the HMO or in any building or land in the vicinity (whether the deficiency arises as a result of the construction of any building, an absence of maintenance or repair, or otherwise): section 2(1).

The Health and Safety at Work Act 1974

48. The Health and Safety at Work Act 1974 (**‘the 1974 Act’**) imposes duties on employees and other persons who have control of premises in respect of the health, safety, and welfare of persons at work, including the protecting of others against risks to health or safety in connection with the activities of persons at work.
49. Section 3 provides, in relevant part:

‘General duties of employers and self-employed to persons other than their employees.

(1) It shall be the duty of every employer to conduct his undertaking in such a way as to ensure, so far as is reasonably practicable, that persons not in his employment who may be affected thereby are not thereby exposed to risks to their health or safety.’

50. Section 4 provides, in relevant part:

‘General duties of persons concerned with premises to persons other than their employees.

(1) This section has effect for imposing on persons duties in relation to those who

(a) are not their employees; but

(b) use non-domestic premises made available to them as a place of work or as a place where they may use plant or substances provided for their use there,

and applies to premises so made available and other non-domestic premises used in connection with them.

(2) It shall be the duty of each person who has, to any extent, control of premises to which this section applies or of the means of access thereto or egress therefrom [...] to take such measures as it is reasonable for a person in his position to take to ensure, so far as is reasonably practicable, that the premises, all means of access thereto or egress therefrom available for use by persons using the premises [...] are safe and without risks to health.

[...]

(4) Any reference in this section to a person having control of any premises or matter is a reference to a person having control of the premises or matter in connection with the carrying on by him of a trade, business or other undertaking (whether for profit or not).’

51. We consider that the above provisions are relevant to fire and hazardous materials safety. Please confirm that the SSHD agrees, or if she disagrees, please state the reasons why.

Management of Health and Safety at Work Regulations 1999

52. The Management of Health and Safety at Work Regulations 1999 (**‘1999 Regulations’**) reinforce the 1974 Act.

53. Regulation 3 provides, in relevant part:

‘Risk assessment

3.—(1) Every employer shall make a suitable and sufficient assessment of—

(a) the risks to the health and safety of his employees to which they are exposed whilst they are at work; and

(b) the risks to the health and safety of persons not in his employment arising out of or in connection with the conduct by him of his undertaking,

for the purpose of identifying the measures he needs to take to comply with the requirements and prohibitions imposed upon him by or under the relevant statutory provisions [...].’

54. Regulation 5 provides, in relevant part:

‘Health and safety arrangements

5.—(1) Every employer shall make and give effect to such arrangements as are appropriate, having regard to the nature of his activities and the size of his undertaking, for the effective planning, organisation, control, monitoring and review of the preventive and protective measures.’

55. The 1999 Regulations also address, *inter alia*: health and safety assistance (regulation 7), procedures for serious and imminent danger and for danger areas (regulation 8), information for employees (regulation 10), and co-operation and co-ordination (regulation 11).

56. We consider that the above provisions are relevant to fire and hazardous materials safety. Please confirm that the SSHD agrees, or if she disagrees, please state the reasons why.

Control of Substances Hazardous to Health Regulations 2002

57. The Control of Substances Hazardous to Health Regulations 2002 (**‘2002 Regulations’**) provide a framework to help protect people in the workplace against health risks from hazardous substances.

58. Regulation 3 provides, in relevant part:

‘Duties under these Regulations

3.—(1) Where a duty is placed by these Regulations on an employer in respect of his employees, he shall, so far as is reasonably practicable, be under a like duty in respect of any other person, whether at work or not, who may be affected by the work carried out by the employer [...]

59. The 2002 Regulations address, *inter alia*: assessment of the risk to health created by work involving substances hazardous to health (regulation 6), prevention or control of exposure to substances hazardous to health, use of control measures (regulation 8), and arrangements to deal with accidents, incidents, and emergencies (regulation 13).

60. We consider that the above provisions are relevant to fire and hazardous materials safety. Please confirm that the SSHD agrees, or if she disagrees, please state the reasons why.

Merchant Shipping (Fire Protection) Regulations 2023

61. We consider that the Merchant Shipping (Fire Protection) Regulations 2023 (**‘2023 Regulations’**) (which revoked and replaced the Merchant Shipping (Fire Protection: Large Ships) Regulations 1998) do not apply to the Barge.

62. The 2023 Regulations apply to ‘United Kingdom ships, wherever they may be’ and ‘non-United Kingdom ships while they are within United Kingdom waters’ (reg. 5(1)). ‘Ship’ is defined in the Merchant Shipping Act 1995 as ‘every description of vessel used in navigation’, ‘unless the context otherwise requires’ (s.313(1)).

63. We consider that the Barge is not a vessel ‘used in navigation’:

- a. The term ‘navigation’ refers to ‘the nautical art or science of conducting a ship from one place to another. The navigator must be able (1) to determine the ship’s position and (2) to determine the future course or courses to be steered to reach the intended destination. The word ‘navigation’ is also used to describe the action of navigating or ordered movement of ships on water [...] the phrase ‘used in navigation’ conveys the concept of transporting persons or property by water to an intended destination [...] ‘Navigation’ is not synonymous with movement on water. Navigation is planned or ordered movement from one place to another’: *Steedman v Scofield and Anor* [1992] 2 Lloyd’s Rep 163.
- b. The phrase ‘vessel used in navigation’ is confined to ‘vessels which are used to make ordered progression over the water from one place to another’: *R v Goodwin (Mark)* [2006] 1 WLR 546 at §33 (in which the Court of Appeal conducted a review of the relevant authorities) citing *Steedman*.

64. Please confirm if you disagree with the above and provide your reasons for the same.

PROPOSED GROUNDS

Ground 1: Failure to comply and/or to take reasonable steps to ensure compliance with duties under the 2005 Order and/or the 2022 Regulations

65. The SSHD and/or her agents (a) have not undertaken risk assessments of the quality required by the 2005 Order and/or the 2022 Regulations (having regard also to the provisions under the 1974 Act, 1999 Regulations, and 2002 Regulations set out above), (b) have not implemented the fire safety measures required by the same and by any risk assessment, and (c) have in any event, continued with the decision to accommodate up to 506 vulnerable people on the Barge notwithstanding (a) and (b).

66. The SSHD is a responsible person under Article 5(3) of the 2005 Order and is therefore subject to the duties imposed by the 2005 Order and the 2022 Regulations on responsible persons.

67. Further/alternatively, and to the extent that the SSHD does not have control over certain aspects of the Barge or its operations, the SSHD’s agents have such control. The SSHD has a public law duty to instruct her agents (in so far as they are also ‘responsible persons’

within the meaning of the 2005 Order and 2022 Regulations) to comply with their duties under the 2005 Order and the 2022 Regulations, and (in so far as they are ‘employers’ for the purposes of the 1974 Act, 1999 Regulations, and 2002 Regulations) to comply with their duties under those instruments (including in relation to ‘persons not in his employment’).

68. On the basis of the information available to the FBU (set out above), and subject to disclosure, the FBU has serious concerns that the SSHD, her staff and/or her agents, have failed to comply with their duties as responsible persons under the 2005 Order and/or the 2022 Regulations, and/or as employers under the 1974 Act, 1999 Regulations, and/or 2002 Regulations, including, in particular, in relation to the duties set out at paragraphs 38 – 59 above for the following reasons, in particular.
69. The Barge is intended to be used for long-term occupancy by asylum-seekers who, the FBU understands, have arrived in the UK recently. They are accordingly unlikely to speak English, nor to share a common language, nor to have experience of safety requirements and drills. They are in a very different situation from a crew, who are employees and work together. Moreover, as the SSHD’s agents’ Landry and Kling recognises, the asylum-seekers to be accommodated on the Barge may have faced ‘traumatic situations’ on their journey to Britain which – in the assessment of SSHD’s agents – makes them too traumatised to be expected to undergo fire drills.
70. SSHD has decided to accommodate 506 people in the Barge. While the Barge would previously normally have accommodated only 222 persons, in single rooms, the SSHD has decided to crowd in an additional 284 people, by using single rooms for double occupancy, and creating rooms for 4 or 6 persons to sleep in (presumably by converting other spaces). The FBU is unaware that the Barge has ever been previously used for such high occupancy.
71. In the view of the FBU, far-right opposition to asylum-seekers, reported in the news, gives rise to a real risk of arson attacks or use of hazardous materials against the Barge.
72. The decision of the SSHD therefore creates an apparently entirely new, and highly dangerous accommodation arrangement, in which 506 traumatised asylum-seekers may face a fire or hazardous materials emergency and need to evacuate the Barge as an emergency, while being entirely untrained in fire safety, without even having undertaken fire drills.
73. This situation is inherently unsafe.
74. Moreover, the FBU is concerned that adequate provision has not been made for fire evacuation points to allow the asylum-seekers to leave the Barge safely, and with sufficient

speed. The failure of the SSHD to disclose any information to the FBU has only strengthened these concerns.

75. We consider that the above failures are contrary to, *inter alia*, Articles 8, 9, 11, 14 and 15 of the 2005 Order, regulation 10 of the 2022 Regulations, sections 3 and 4 of the 1974 Act, regulations 3 and 5 of the 1999 Regulations, and regulations 6, 8 and 13 of the 2002 Regulations.

Ground 2: Failure to ensure adequate accommodation and/or irrationality in determining that the Barge is adequate accommodation

76. The Barge is not adequate within the meaning of s. 96(1) of the 1999 Act and the 2005 Regulations — that is, to maintain an adequate standard of health for asylum seekers — for the reasons set out at Ground 1.
77. Any purported cost saving is an irrelevant consideration for the purposes of compliance with 1999 Act and is not a ground for failing to comply with the statutory duty to provide adequate accommodation. To the extent that the SSHD relied on this factor in deeming the accommodation on the Barge adequate, she acted in breach of her statutory duty under the 1999 Act.

Ground 3: *Tameside* / *Refugee Action* unlawfulness

78. In considering whether accommodation is adequate to meet asylum seekers' needs, the SSHD is required '*to carry out an inquiry which was sufficient to enable her to make an informed and rational judgment*' as to those needs (*Refugee Action* at §120 citing *Secretary of State for Education and Science v Tameside Metropolitan Borough Council* [1977] AC 1014 ('***Tameside***') at 1065B). This includes, as a minimum, taking '*reasonable steps to gather sufficient information to enable her to make a rational judgment*' (*Refugee Action* at §158(4)).
79. In light of the potential impact on the living conditions of the asylum seekers which would be accommodated on the Barge, '*a significant proportion of whom are vulnerable and have suffered traumatic experiences*', the circumstances mandate '*a careful inquiry*' (*Refugee Action* at §121).
80. The SSHD has failed to carry out a careful inquiry and/or to take reasonable steps to gather sufficient information to enable her to satisfy herself as to the matters set out at Ground 1, before deciding to transfer individuals to the Barge.
81. In the alternative, the SSHD has breached her elementary public law duty to '*ask [herself] the right question and take reasonable steps to acquaint [herself] with the relevant information to enable him to answer it correctly*': *Tameside* at 1065B (the *Tameside* duty).

Ground 4: *Munjaz* unlawfulness

82. The SSHD is under a general common law duty not to induce breaches of the law by her agents.
83. The SSHD must not to adopt a policy or practice which ‘*exposes [those subject to the policy or practice] to a significant risk of treatment prohibited by Article 3*’ (R (*Munjaz*) v Mersey Care Trust [2006] 2 AC 148 (*‘Munjaz’*) at §29). A breach of this obligation renders the policy or practice itself (and the decisions taken pursuant to it) unlawful.
84. The policy and/or practice of accommodating asylum seekers on barges/vessels in the absence of adequate measures to investigate and rectify the serious fire safety risks to those on the Barge (as set out at §§65 – 75 above) is unlawful in the *Munjaz* sense because it will inevitably expose individuals to real risks of breaches of Articles 2 and/or 3 ECHR.

STANDING

85. The FBU has standing for the following reasons:
 - a. This challenge to the SSHD’s decision to use the Barge as accommodation for asylum seekers despite ongoing fire safety concerns directly affects the individuals who are FBU members and whom the FBU represents, that is, firefighters and emergency control staff. FBU members would be expected to intervene in the event of fire or other incident concerning the Barge. FBU members doing so may become at risk of harm, and the deployment of staff to such an emergency may affect FBU members required elsewhere. Concerns regarding the adequacy (or otherwise) of fire safety on the Barge are therefore of vital importance to the interests of the FBU and its members.
 - b. In addition, the FBU’s members are professionals on all aspects of fire safety.
 - c. The FBU proposes to bring proceedings on behalf of its members. This is a quintessential case of ‘*associational standing*’: R (*Runnymede Trust*) v Prime Minister [2022] EWHC 298 (Admin) at §20.
 - d. There is no better placed challenger on the question of fire safety.

ACTIONS THE DEFENDANT IS EXPECTED TO TAKE

86. On 7 August 2023 and 24 August 2023, we requested (on behalf of individual clients in relation to whom the SSHD proposes to move to the Barge) that Professor José Torero

Cullen²⁵ be permitted to visit the Barge for the purposes of preparing an expert report in relation to fire safety. We reiterate that request on behalf of the FBU: the FBU intends to jointly instruct Prof Torero with our individual clients.

87. Please provide a response within the timeframe confirming that the SSHD will permit and facilitate a visit by Professor Torero.

Information and documents sought

88. Please provide the following documents by return, and no later than 31 August 2023 (references to fire safety include references to hazardous materials safety):

(1) Copies of all fire risk assessments that have been conducted in relation to the Barge.

89. Please provide the following information and documents no later than 4 September 2023:

- (2) Please identify all fire safety statutes, orders, regulations, and/or other instruments that the SSHD considers apply to the Barge.
- (3) What inspections and/or reports have been carried out relating to fire safety on the Barge? Please provide copies of any and all relevant inspections and/or reports relating to fire safety, escape routes, maximum occupancy, and sufficiency of space on the Barge.
- (4) Copies of all fire protocols prepared in relation to the Barge.
- (5) Copies of all fire safety strategies in relation to the Barge, including, but not limited to, the strategy in relation to egress, detection, alarm, and sprinkler systems.
- (6) Copies of all statutory inspections that have been carried out in relation to the Barge.
- (7) All correspondence with the SSHD's agents, HSE, DWFR, local councils, and other bodies regarding the fire safety of the Barge.
- (8) All correspondence from/to the DWFRS regarding the Barge, including all '*advice and comment*' provided by the DWFRS to the SSHD, and all documentation regarding '*familiarisation and pre-occupation visits*' conducted by the DWFRS.²⁶

²⁵ Professor of Civil Engineering and Head of the Department of Civil, Environmental and Geomatic Engineering at University College London.

²⁶ Such disclosure is sought on the basis of reports that the DWFRS, *inter alia*, had '*provided advice and comment in relation to fire safety arrangements to both the Home Office and the vessels operators during [its] familiarisation and pre-occupation visits*': see, e.g. <https://www.fia.uk.com/news/fire-safety-worries-regarding-the-migrant-barge.html>.

(9) Records from all Multi-Agency Forum and relevant subgroup meetings between DWFRS, 'partner agencies', the Barge's operator, and the SSHD regarding the Barge.²⁷

90. **Once again, the purpose of this letter is to avoid litigation by giving the Secretary of State the opportunity to remedy the issues raised by our client. Should the Secretary of State resist providing a satisfactory response to the matters set out above, our clients may commence action for Judicial Review without further notice.**

Should you wish to discuss this further please contact Sheroy Zaq on SheroyZ@Duncanlewis.com, or 020 3114 1166.

Yours faithfully

Duncan Lewis

Duncan Lewis

²⁷ Such disclosure is sought on the basis of reports that the DWFRS 'continues to liaise with partner agencies, the [Barge's] operator and the Home Office through the multi-agency forum and relevant subgroups' regarding safety on the Barge: see, e.g. <https://www.fia.uk.com/news/fire-safety-worries-regarding-the-migrant-barge.html>.