

NOTICE OF DETERMINATION
CORE PARTICIPANT APPLICATION – HMIP

1. The Brook House Inquiry was announced by the Secretary of State for the Home Department on 5 November 2019. In my opening statement on 21 April 2020, I formally invited those who wished to be considered for Core Participant status to submit a written application. A deadline was set for 19 May 2020.
2. I received a written application from HM Chief Inspector of Prisons ('HMIP') for Core Participant status dated 19 May 2020. I have given careful consideration to the application and I have decided to grant the application, for the reasons set out in detail below.

Application

3. The designation of individuals or organisations as Core Participants ('CPs') in an Inquiries Act inquiry is governed by Rule 5 of the Inquiry Rules 2006. The relevant paragraphs provide:

"Core participants

5.—(1) The chairman may designate a person as a core participant at any time during the course of the inquiry, provided that person consents to being so designated.

(2) In deciding whether to designate a person as a core participant, the chairman must in particular consider whether—

(a) the person played, or may have played, a direct and significant role in relation to the matters to which the inquiry relates;

(b) the person has a significant interest in an important aspect of the matters to which the inquiry relates; or

(c) the person may be subject to explicit or significant criticism during the inquiry proceedings or in the report, or in any interim report.”

4. In the application submitted on behalf HM Chief Inspector of Prisons (HMIP) describes its functions in relation to Brook House as follows:

“HMIP is the independent inspectorate which reports on conditions for and treatment of those in immigration detention facilities. HMIP undertook an unannounced inspection of Brook House between 31st October 2016 – 11th November 2016, before the footage aired in the Panorama documentary was filmed”.

5. I have noted that the application is submitted by HM Chief Inspector of Prisons “on behalf of HMIP”.
6. The application seeks the granting of core participant status and indicates that Rule 5(2)(a), (b) and (c) of the Inquiry Rules 2006 may apply.

Decision

7. I have considered the application in line with my approach as set out below. I have concluded that HMIP meets the requirements of Rule 5 for the following reasons:

The test under Rule 5(2)(a): a direct and significant role

8. In considering this element of the application, I have had regard to HMIP's remit and how it may specifically relate to the events at Brook House in the relevant period. While not specially referenced in the application, HMIP's website provides a detailed explanation of its function and powers:

"HM Chief Inspector of Prisons' responsibilities are set out in section 5A of the Prison Act 1952 as amended by section 57 of the Criminal Justice Act 1982. Her Majesty's Inspectorate of Prisons for England and Wales (HM Inspectorate of Prisons) is an independent inspectorate which reports on conditions for and treatment of those in prison, young offender institutions, secure training centres, immigration detention facilities, police and court custody suites, customs custody facilities and military detention.

The role of HM Inspectorate of Prisons is to provide independent scrutiny of conditions for and treatment of prisoners and other detainees, promoting the concept of 'healthy establishments' in which staff work effectively to support prisoners and other detainees to reduce reoffending and achieve positive outcomes for those detained and for the public...."

9. One of HMIP's central functions within Immigration Removal Centres (IRCs) relates closely to the Inquiry's terms of reference: HMIP's inspections focus on the treatment of [prisoners and other] detainees. In its application, HMIP states that it carried out an unannounced inspection of Brook House which took place from 31 October to 11 November 2016, approximately five months before Panorama's undercover recording commenced. The report of that inspection was published on 10 March 2017. While HMIP's physical presence in Brook House occurred before the five-month period which is the focus of this Inquiry

(the 'relevant period'), I take the view that the inspection took place within sufficient proximity for it to be relevant to the Inquiry's terms of reference.

The test under Rule 5(2)(b): a significant interest in an important aspect

10. As acknowledged in the application submitted on behalf of the HMIP, point (6) of the Inquiry's terms of reference specifically refers to the organisation's role as one of the external oversight bodies:

"The adequacy of the complaints and monitoring mechanisms provided by Home Office Immigration Enforcement and external bodies (including, but not limited to, the centre's independent monitoring board and statutory role of Her Majesty's Inspectorate of Prisons) in respect of any identified mistreatment."

11. I consider that HMIP's significant interest in the matters to which the Inquiry relates is clear. Following an assessment of the extent and nature of any mistreatment of detainees at Brook House, the Inquiry will turn to the question of the degree to which policies, practices and systems caused or contributed to it. It is then my intention to focus on the question of the adequacy of the safeguards designed to detect mistreatment. Those safeguards include the existence of HMIP.

The test under Rule 5(2)(c): The potential for explicit or significant criticism

12. I turn now to the possibility that HMIP may face explicit or significant criticism during the Inquiry's proceedings or in its reports. As referenced in the application submitted by HMIP, the specific role of HMIP in relation to its ability (or lack thereof) to detect mistreatment was discussed within the Panorama documentary. It is accordingly possible that there may be explicit or significant criticism of HMIP throughout the Inquiry's proceedings.

Conclusion

13. I have considered the statutory tests and determined that HMIP's application provides sufficient evidence of its direct and significant role and significant interest in the specific events at Brook House in the relevant period. I also consider that there are reasonable grounds to believe that the organisation and / or its members may be subject to criticism during the course of the Inquiry. I therefore grant HMIP status as a Core Participant to the Brook House Inquiry.

Legal Representative

14. Applications for designation as the recognised legal representative of a core participant are governed by rules 6 and 7 of the Inquiry Rules 2006, which provide as follows:

6(1) Where - (a) a core participant, other than a core participant referred to in rule 7; or (b) any other person required or permitted to give evidence or produce documents during the course of the inquiry, has appointed a qualified lawyer to act on that person's behalf, the chairman must designate that lawyer as that person's recognised legal representative in respect of the inquiry proceedings.

7(1) This rule applies where there are two or more core participants, each of whom seeks to be legally represented, and the chairman considers that - (a) their interests in the outcome of the inquiry are similar; (b) the facts they are likely to rely on in the course of the inquiry are similar; and (c) it is fair and proper for them to be jointly represented.

(2) The chairman must direct that those core participants shall be represented by a single recognised legal representative, and the chairman may designate a qualified lawyer for that purpose.

(3) Subject to paragraph (4), any designation must be agreed by the core participants in question.

(4) If no agreement on a designation is forthcoming within a reasonable period, the chairman may designate an appropriate lawyer who, in his opinion, has sufficient knowledge and experience to act in this capacity.

15. Accordingly, as I am satisfied that HMIP has appointed Emma Morris of the Government Legal Department as its qualified lawyer, I designate Ms Morris as HMIP recognised legal representative in accordance with Rule 6(1) of the Inquiry Rules 2006.

Kate Eves

Chair to the Brook House Inquiry

11 August 2020