

NOTICE OF DETERMINATION
CORE PARTICIPANT APPLICATION – IMB

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 the Independent Monitoring Board ('IMB') for Core Participant status dated 18 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 its behalf, the IMB describes its function in relation to Brook House as follows:

“The Prison Act 1952 and the Immigration and Asylum Act 1999 require every prison and immigration removal centre (IRC) to be monitored by an Independent Monitoring Board appointed by the Secretary of State from members of the community in which the establishment or IRC is situated. IMB members are unpaid volunteers. Pursuant to r.61 of the Detention Centre Rules 2001, the IMB has various duties, including:

a. a duty to satisfy themselves as to the state of the detention centre premises, the administration of the detention centre and the treatment of the detained persons;

b. a duty to direct the attention of the manager to any matter which calls for his attention, and report to the Secretary of State any matter which they consider expedient to report; and

c. a duty to inform the Secretary of State immediately of any abuse which comes to their knowledge”.

5. I have noted that the application is submitted on behalf of the National Chair and Management Board of the IMB and not individual members of the Brook House IMB. The extent to which the IMB seeks to represent individuals who were members of the Brook House IMB at the relevant time but are no longer members is not clear, and I will seek further information from the IMB in this respect.
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 the IMB 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 the IMB's remit and how it may specifically relate to the events at Brook House in the relevant period. Two of the IMB's central functions within IRCs relate closely to the Inquiry's terms of reference. Firstly, IMB members have a duty to satisfy themselves as to the treatment of detainees and, secondly, they have a duty to notify the Secretary of State of any abuse.
9. The application indicates that four individuals who worked as IMB members at Brook House during the relevant period are still members of the IMB. It is apparent that those individuals are likely to have direct and significant insights both into events at Brook House in 2017 and into any changes that may have followed the broadcast of the Panorama documentary.
10. I therefore find that the application meets the criteria in Rule 5(2)(a) of the Inquiry Rules.

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

11. As acknowledged in the application submitted on behalf of the IMB, 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."

12. I consider that the IMB's significant interest in the matters to which the Inquiry relates is clear. Following an assessment of the extent and nature of any mistreatment 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 the IMB.

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

13. I turn now to the possibility that the IMB, or individual IMB members, may face explicit or significant criticism during the Inquiry's proceedings or in its reports. The application references the investigation commissioned by G4S in November 2017 (commonly referred to as the Lampard Review), citing the criticism of the IMB contained within that report. This Inquiry's own terms of reference are distinct from those of the Lampard Review, and I will consider the IMB's role afresh. However, I accept that the bases for those criticisms may also form part of this Inquiry's evidence base and it is therefore reasonable to consider that these current proceedings may too result in criticism.

Conclusion

14. I have considered the statutory tests and determined that the IMB'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 the IMB status as a Core Participant to the Brook House Inquiry.

Legal Representative

15. 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.

Accordingly, as I am satisfied that the IMB has appointed Mr Jonathan Dixey (of counsel) as its qualified lawyer, I designate Mr Dixey as the IMB's recognised legal representative in accordance with Rule 6(1) of the Inquiry Rules 2006.

Kate Eves
Chair to the Brook House Inquiry
10 August 2020