

BROOK HOUSE INQUIRY

PRELIMINARY HEARING 25 SEPTEMBER 2020

NOTE FROM COUNSEL TO THE INQUIRY

1. Agenda for the hearing:
 - (i) Update on evidence gathering;
 - (ii) Expert evidence;
 - (iii) Undertakings from the Home Secretary and Attorney-General;
 - (iv) Proposed timetable for the Inquiry;
 - (v) Renewed applications for Core Participant status.

Update on evidence gathering

- (i) **Documentary evidence**
2. The Inquiry has issued eight Rule 9 requests for documentation from key organisations. These include G4S Care and Justice, G4S Healthcare, the Home Office and the BBC.
 3. G4S disclosure to the Inquiry is nearly complete. G4S has disclosed a total of 5,594 documents. The material disclosed so far runs to over 56,000 pages. Much of it names individual detainees. In order to protect the privacy of these individuals, the Inquiry is going through the process of redacting all such names and replacing them with ciphers.
 4. The Inquiry has deliberately not yet made a request for the confidential medical records relating to individual detainees (other than Rule 35 reports). The Inquiry is very conscious that medical records are likely to include highly personal information relating to individuals, much of which may be irrelevant for the Inquiry's purposes. The Inquiry therefore intends to liaise with each individual detainee whom the Inquiry can trace, with a view to arranging disclosure in the first instance to that person or his legal

representatives, with onward disclosure to the Inquiry of material that may be relevant to its work. The Inquiry may have to consider in due course the anonymised disclosure of records relating to individuals who cannot be traced.

5. Home Office disclosure to the Inquiry is nearly complete. The Home Office has disclosed a total of 2,194 documents. The material disclosed so far runs to approximately 10,600 pages. The outstanding material consists largely of individual detainee records. The Home Office has confirmed that it has retrieved and preserved the records of all detainees who were at Brook House in the relevant period. The Inquiry will be asking the Home Office to prioritise disclosure of the records relating to detainees with whom the Inquiry is in contact.
6. The BBC has co-operated with the Inquiry in the disclosure of its unbroadcast footage and has done a huge amount of work on that footage. We understand that the covert recordings made by Callum Tulley were made in six minute sections; the BBC is working on putting them together and is prioritising the creation of versions that will show all the filming that was done on a day on which an incident of mistreatment was recorded. The recordings last, in total, for approximately 109 hours.
7. Some of the footage will not be relevant to the Inquiry. A large proportion includes sensitive content. The very nature of covert filming means that those who are seen or heard on the film are not aware that they are being recorded. People may be seen undressed, or heard discussing their medical conditions or other intimate and irrelevant personal matters. Irrelevant but sensitive documents may be caught by the camera. The footage may also show details of locks or other security measures. None of this material, unless relevant to the Inquiry's work, can be disclosed to Core Participants or the wider public. Material that is relevant may require pixellation or audio editing or other forms of redaction. The BBC has itself conducted a very lengthy exercise to highlight the areas of film that give rise to sensitivity, and also those most likely to contain content relevant to the Inquiry's work. The Inquiry is working with the BBC to prioritise disclosure of material most likely to be relevant, and in particular that material relevant to the former detainees with whom the Inquiry is in contact.

8. In addition, Sussex Police, the CPS and Independent Monitoring Board have provided disclosure. Inquiry lawyers have met with Verita, (the company responsible for the Lampard report) and have served a Rule 9 request on it. There has been some further correspondence, and Verita's disclosure is being followed up by the Inquiry.
9. The process of collation and redaction of all of this material is immensely time-consuming. And it is absolutely imperative that the Inquiry gets it right. We have an obligation to protect the privacy of individuals named in documents or shown on film. We owe that obligation to former detainees in particular. The Inquiry's intention is to replace with ciphers the names of all detainees, wherever those names appear. Insofar as film is concerned, the Inquiry intends, as far as possible, to work with the detainees shown in the footage, and consider any representations from them, before arranging for onward disclosure.
10. Disclosure to Core Participants will be arranged in tranches once the redaction process is complete in respect of particular groups of documents. The Inquiry is prioritising G4S and Home Office material.

(ii) Witness tracing

11. The Inquiry's invitation to former detainees to apply for Core Participant status led to three applications being made, in addition to those already made by, and granted to, MA and BB. All three of the recent applications have been granted, although matters relating to their legal representation still have to be resolved.
12. In addition, the Inquiry believes it knows the identity of 28 individuals who can be seen on the broadcast *Panorama* recordings. The Inquiry has also identified two former detainees from a reported judgment in recent litigation.
13. The Inquiry is treating this group of 35 former detainees as the priority group. Where we do not already have reliable contact details for them, the Inquiry is in the process of instructing tracing agents to assist in obtaining up to date addresses. The Home Office will also be asked to assist, where necessary.

14. The Inquiry is very conscious that some former detainees may be suspicious or even frightened to receive official-looking correspondence. For some, the idea of being asked to relive trauma experienced in detention may be distressing or damaging. Letters to detainees will, insofar as is possible, be translated into the first language of the recipient where that is not English, and the letters will contain contact details for support services. The Inquiry's hope is that it will be able swiftly to follow up initial contact with the provision of documentary material relating to that former detainee, and with a request for an interview at which a statement can be taken. These former detainees will, of course, be entitled to legal assistance at public expense.

(iii) Taking witness statements

15. The Inquiry is currently collating from the various document providers the evidential material relating to this priority group of former detainees.

16. The Inquiry's plan over the coming weeks is to send to each former detainee with whom we are in contact (or their legal representatives, where they have one) a bundle of documentary material relating to that person, and to make arrangements for Inquiry staff to take witness statements from each individual. The specific arrangements, including the need for interpreters, will be discussed well in advance with the individual or his lawyers.

17. The sensitivities involved mean that it is very undesirable for the Inquiry's contact to be entirely remote, whether by letter, telephone or video. We had hoped very much that it would be possible by now to conduct face-to-face interviews. The reality is that this is likely to be impracticable for the foreseeable future. Inquiry lawyers are willing to meet witnesses in a suitable, socially distanced environment, but will respect the wishes of any witness who does not in the current circumstances want face-to-face contact.

18. The Inquiry plans to obtain as much evidence as possible at an early stage from former detainees, so that their accounts can be put to the G4S staff who will then be asked for statements.

19. The Inquiry is also treating as a priority the obtaining of a statement from Callum Tulley and, possibly, others involved in the making of the *Panorama* programme. We need full disclosure from the BBC before the Inquiry makes a formal request for a statement.

Expert evidence

20. It is the Inquiry's intention to seek expert evidence on:

- (i) the extent to which mental health issues of detainees played, or may have played, a part in the treatment to which those detainees were subjected;
- (ii) whether Rule 35 processes were properly followed and reports were made appropriately;
- (iii) whether detainees received appropriate medical – and in particular, mental health – care while in detention;
- (iv) whether oversight bodies could have done more to identify any shortcomings in medical – particularly mental health – provision; and
- (v) what structures or policies could be put in place in future to identify and act upon any such shortcomings.

21. It seems to the Chair that expert evidence is likely to be required from an appropriately experienced GP or an expert in the policies and practice of medical care in the detained environment. It is possible that the same person could fulfil both roles.

22. The Inquiry has already held preliminary discussions with Dr Juliet Cohen, Head of Doctors at Freedom from Torture.

23. In addition, the Chair is considering whether to appoint an expert to examine: (a) the extent to which race, or more specifically race discrimination, may have played a part in the treatment to which detainees were subjected; and (b) if it did play a part, what steps the Home Office and/or contractor should take, and what processes and safeguards they should have in place, to prevent a recurrence.

24. The Inquiry would welcome suggestions from Core Participants at this stage as to suitably qualified experts.

Undertakings

25. The Chair has received submissions from MA and the Reverend Ward, BB and Gatwick Detainees Welfare Group and the Home Office in respect of the proposed undertakings.

26. In essence, the key questions raised are:

- (i) Should undertakings be sought at all from the Home Secretary and/or Attorney General at this stage? And if so:
- (ii) Should the undertakings be restricted to natural persons only, and not extend to corporate entities?
- (iii) Should they be restricted to oral evidence and witness statements taken for Inquiry purposes, and not to other documents?
- (iv) Should the wording of the Home Secretary's undertaking make clear that it applies to the evidence supplied by detainees only, and that it will not apply if the detainee seeks in any immigration application to rely selectively on evidence that he provided to the Inquiry?

27. All Core Participants will have the opportunity at the hearing to make oral submissions about the proposed undertakings.

Proposed timetable

28. MA and the Reverend Ward, and BB and Gatwick Detainees Welfare Group have made written submissions about the delays already experienced in this inquiry.

29. There is not much to be gained at this stage by a day-by-day analysis of the difficulties experienced in the past. However, in summary:

- (i) The inquiry was established in November 2019;

- (ii) The Home Office was required to set a budget for it, and was also responsible for putting in place the Inquiry's computer system and document management system and for obtaining premises for the Inquiry;
- (iii) Of those resources, the key element for the Inquiry was the document management system. While the Inquiry could – and did – identify the documents that it wanted, and could – and did – prepare Rule 9 letters, it was not possible to ask document providers for material until we were confident that we had somewhere secure to receive and store it;
- (iv) We sent out the first Rule 9 letters in the spring, before the systems were in place, in anticipation that the systems would be established by the time the documents were available;
- (v) At that point, the Covid-19 lockdown meant that many providers who would have collated and disclosed documents had to send their staff home, and their access to the material was lost;
- (vi) In fact, the Inquiry's document management systems were not fully operational until the summer.

30. With respect to the submissions made by Core Participants about delays to this Inquiry, comparison with the progress of other inquiries during the pandemic is not appropriate. The first period of any inquiry is crucial; it is the time at which the infrastructure is established and during which evidence is gathered and analysed for use at subsequent hearings. Comparisons cannot be made with other inquiries such as IICSA, UCPI and Manchester, all of which were far advanced in terms of evidence gathering and all of which, by March 2020, had existing timetables for substantive hearings. It is also right to note that all of those hearings have been delayed.

31. There is a further factor relevant to the pandemic. The Inquiry believes it is really important that the oral evidence hearings, whenever they take place, should be “in person” hearings if at all possible. It is likely that certain witnesses will need an interpreter. It is also likely that other witnesses will face criticism, and some will be asked to explain conduct that, on the basis of the *Panorama* footage alone, appears indefensible. It is difficult, although not impossible, to hear remote evidence with the use of an

interpreter. It is very undesirable, although again not impossible, to deal remotely with evidence that will be the subject of vigorous challenge.

32. For this reason, the Chair has reached the provisional view that the oral evidence hearings should be timetabled to begin not before mid-June 2021, will not be held in August and will continue, as needed, in September 2021. While the delay is regrettable, a hearing in summer 2021 should give everyone enough time to prepare, and also enable the Inquiry to determine whether “in person” hearings will actually be possible, or whether virtual hearings have to be arranged. The risk of selecting an earlier date is that it causes inconvenience to everyone if it then has to be moved.
33. Core Participants will be invited at the hearing on 25 September to make submissions on this proposal.

The scope of the Inquiry

34. This is a matter that the Chair will address briefly on 25 September. Detailed written submissions have been made on this issue by MA and the Reverend Ward, and by BB and Gatwick Detainees Welfare Group. CtI respectfully agrees that there will be insufficient time for oral submissions to be made on this question at the hearing on 25 September. Further, it would be preferable for the Chair to make a decision on this issue after determining all applications for Core Participant status; anyone granted that status as a result of today’s hearing should be heard on the issue of scope. A further preliminary hearing is planned for November so that detailed submissions can be made by all Core Participants.

Funding

35. The issue of funding for legal representatives has been raised by some Core Participants. It is CtI’s view that these matters should be raised in correspondence with the Solicitor to the Inquiry, and are not appropriate for a preliminary hearing.

Renewed applications for Core Participant status

36. Renewed applications have been made by Bail for Immigration Detainees, Detention Action, Inquest and Medical Justice.

37. These oral applications will be heard on 25 September.

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SAOIRSE TOWNSHEND

JO MOORE

18 September 2020