

<p>1 Friday, 25 September 2020 2 (2.13 pm) 3 Opening remarks 4 THE INQUIRY CHAIR: Good afternoon. My apologies for the 5 slightly late start to this hearing, owing to some 6 difficult technical issues for a number of parties. 7 I would like to start this preliminary hearing by 8 welcoming all of those in attendance via the virtual 9 link and also any members of the public observing these 10 proceedings via the Inquiry's website. 11 I would also particularly like to formally welcome 12 all core participants, a number of whom I am aware are 13 attending today, and their legal representatives. 14 I regret that the current public health situation has 15 led to this hearing being conducted virtually, but I am 16 very grateful to those who are assisting behind the 17 scenes to facilitate this, including the Inquiry 18 Secretary, Gemma Ludgate, and her team. 19 All of those actively participating in this hearing 20 will have received technical and housekeeping 21 instructions from Ellis Pinnell, Solicitor to the 22 Inquiry, and I would like to remind you to please follow 23 the guidance included in those instructions to ensure 24 the smooth running of this hearing. 25 The agenda for this preliminary hearing, which has</p> <p style="text-align: center;">Page 1</p>	<p>1 same team of counsel and solicitors. 2 I will then hear submissions from counsel for 3 Medical Justice. 4 Before I hand over to Ms McGahey to provide 5 an update on many of the specifics, I would like to take 6 the opportunity to speak for a few moments about my 7 approach to the Inquiry's task. 8 As core participants know, I delivered my opening 9 statement on 21 April. The timing of this, a few weeks 10 after the national COVID-19 restrictions were 11 introduced, resulted in that statement being delivered 12 remotely and broadcast on the Inquiry's website. 13 Despite the challenges that the last six months have 14 brought to us all, I have been determined that the 15 Inquiry adapts as best it can to new ways of working and 16 progresses with as much pace as is possible. It is, 17 however, important to acknowledge that the COVID-19 18 crisis has had an impact on our timetable. 19 The pandemic led to a significant period of time 20 where the Inquiry lost access to our dedicated office 21 and hearing space. Crucially, it has also led to real 22 challenges in gathering vital evidence. I am aware that 23 a number of document providers have faced unavoidable 24 delays in collating and submitting evidence that has 25 been requested of them and I am sympathetic to the</p> <p style="text-align: center;">Page 3</p>
<p>1 been circulated in advance to core participants and is 2 available on the Inquiry's website, is limited to five 3 items. 4 Firstly, Counsel to the Inquiry, 5 Ms Cathryn McGahey QC, will provide an update on the 6 Inquiry's progress to date. 7 She will also outline the Inquiry's current 8 proposals in respect of expert evidence. 9 I will then hear submissions on whether the Inquiry 10 should seek undertakings from the Home Secretary and/or 11 the Attorney General and if so on the terms of those 12 undertakings. 13 Fourthly, Counsel to the Inquiry will address the 14 Inquiry's timetable. 15 Lastly, I will hear submissions from those parties 16 who have applied for core participant status but for 17 whom my provisional decision has been not to grant that 18 status. 19 Written submissions on that matter were requested by 20 11 September and four such submissions were received. 21 When we reach that agenda item, I will ask counsel for 22 Bail for Immigration Detainees to make additional oral 23 submissions on this matter and will then hear 24 submissions on behalf of Detention Action and INQUEST. 25 All three of these applicants are represented by the</p> <p style="text-align: center;">Page 2</p>	<p>1 challenges that they have faced. 2 As Ms McGahey will touch upon, these 3 COVID-19-related delays are not the only ones that we 4 have faced. I am very aware that core participants are 5 extremely keen for the Inquiry's work to progress. 6 I would like to offer them my reassurance that 7 I understand their concerns and am fully committed to 8 carrying out this Inquiry with all due pace, while of 9 course ensuring that it is thorough and rigorous in its 10 approach. 11 In my opening statement of 21 April, I summarised 12 the issues that the Inquiry will address. My statement 13 is available on the Inquiry's website and as such I do 14 not intend to revisit that list in detail as part of 15 this hearing. However, I do think it will be helpful to 16 briefly summarise the five main areas that the Inquiry 17 will focus upon. 18 Firstly, it will seeks to understand the extent of 19 mistreatment of detainees at Brook House between April 20 and August 2017. 21 Secondly, the Inquiry will investigate the extent to 22 which policies, practices, staffing and management 23 arrangements at Brook House caused or contributed to 24 that identified mistreatment. 25 Thirdly, the Inquiry will examine the adequacy of</p> <p style="text-align: center;">Page 4</p>

<p>1 the safeguards designed to detect mistreatment. 2 Fourthly, I will examine the changes that have been 3 made in response to the Panorama documentary. 4 Finally, I will look at whether those changes are 5 adequate to prevent future mistreatment of the same 6 nature. 7 In addition, I consider it important that the 8 Inquiry examines whether some detainees at Brook House 9 in the relevant period were in need of medical care that 10 they did not receive. Specifically, the Inquiry will 11 consider whether unmet mental health needs contributed 12 to detainees' ability to cope and comply with the regime 13 at Brook House. I will examine the operation of rules 14 34 and 35 of the Detention Centre Rules 2001, which 15 include the framework to be used to assess a detainee's 16 fitness for detention where there are concerns about 17 their mental health. 18 I will also consider the degree to which mental 19 health issues may have led to detainees behaving in 20 a way which staff may have interpreted as deliberately 21 disruptive. I intend to commission expert input to 22 assist me in answering this question. 23 A number of core participants have made written 24 submissions concerning the correct interpretation of the 25 terms of reference and on the scope of this Inquiry.</p> <p style="text-align: center;">Page 5</p>	<p>1 one or more other institutions. Therefore, any findings 2 that I make in respect of these policies and procedures 3 may have implications that go beyond Brook House. 4 I will examine the culture and environment in which 5 mistreatment apparently went undetected, and that 6 examination may require me to make comparisons with the 7 management of other institutions. 8 One of my key tasks is to make recommendations for 9 the future. As everyone here is aware, G4S no longer 10 runs Brook House or any other immigration removal 11 centre. I will not, therefore, have the opportunity to 12 look at its current practice in that regard. It will, 13 however, be important to consider the current practice, 14 policies and procedures which operate in IRCs now. This 15 will be crucial to ensure that any recommendations that 16 I make will have relevance and are sufficient to 17 minimise the risk of a recurrence of mistreatment such 18 as that shown on Panorama. If they are not, I will make 19 recommendations for change. 20 It is, therefore, right to say that my task will not 21 be confined to a consideration solely of events at 22 Brook House. However, I should emphasise the Inquiry's 23 starting point and principal focus will be the treatment 24 and mistreatment of detainees once they had arrived at 25 Brook House. This may involve consideration of whether</p> <p style="text-align: center;">Page 7</p>
<p>1 I am keen to hear submissions from other 2 core participants on this issue, including those who may 3 be granted that status following this hearing. I intend 4 therefore to hold a further preliminary hearing in 5 November, details of which Ms McGahey will provide, at 6 which those submissions can be considered. I will not, 7 therefore, hear oral submissions on the terms of 8 reference or scope today. I do, however, at this stage 9 think it may be helpful if I make a few points to 10 indicate the issues and areas on which I intend to 11 concentrate. 12 Other investigations have taken place into the 13 events at Brook House in 2017. This Inquiry must build 14 upon and add to those findings. It is my view that this 15 Inquiry's role is fundamentally to address the questions 16 of: what happened at Brook House between April and 17 August 2017; and, crucially: how can such events be 18 prevented? 19 I have been urged to consider matters that go beyond 20 those relating solely to Brook House. As part of my 21 work, I will examine policies and procedures in place at 22 Brook House, including those of the Home Office, G4S 23 Care and Justice and the healthcare providers. Some or 24 all of those policies and procedures were almost 25 certainly applied nationally, or at the very least in</p> <p style="text-align: center;">Page 6</p>	<p>1 some detainees, as a result of their physical or mental 2 health needs, should have remained at Brook House at 3 all, or should have received medical care that they did 4 not receive. 5 In particular, as I have said, the Inquiry will look 6 at the operation of rules 34 and 35 of the Detention 7 Centre Rules 2001, but it is not within this Inquiry's 8 terms of reference to consider immigration detention 9 policy more widely or to have specific regard to any 10 individual's immigration or asylum status. 11 This will be a thorough inquiry, but it must also be 12 manageable and conducted within a reasonable time. 13 There would be no point in an inquiry that investigated 14 every possible aspect of individual's detention, but 15 took so long that many other detainees suffered while it 16 carried out its work; or an inquiry that made 17 recommendations that were hopelessly out of date by the 18 time that they were published. 19 This Inquiry has to be pragmatic. It must 20 concentrate on its terms of reference and it must focus 21 on making recommendations that will be of practical use 22 in protecting those held in immigration detention in 23 future. 24 I will, of course, listen with an open mind to 25 further submissions on the scope of this Inquiry, but</p> <p style="text-align: center;">Page 8</p>

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<p>1 thought it would be helpful to core participants if 2 I set out my current thinking. 3 That concludes my introductory comments. 4 Ms McGahey, I will now turn to you and ask that you 5 please provide an update on the Inquiry's progress. 6 Update on the Inquiry's Progress 7 MS McGAHEY: Thank you, madam. 8 Madam, may I first introduce the representatives who 9 are present today and who will, throughout the Inquiry, 10 be representing their particular clients. 11 Firstly, with Ms Saoirse Townshend and Ms Jo Moore, 12 I appear as Counsel to the Inquiry. 13 I turn now to the core participants. The 14 core participants who are former detainees have been 15 anonymised and given ciphers in order to protect their 16 privacy. 17 The former detainee who is known as MA, along with 18 the Reverend Nathan Ward, are represented by 19 Ms Stephanie Harrison QC and Mr Alex Goodman. 20 The former detainees SR and KK are represented by 21 Ms Harrison QC and Ms Shu Shin Luh. 22 Medical Justice, an applicant for core participant 23 status, is represented again by Ms Harrison, 24 Ms Shu Shin Luh and Ms Laura Profumo. 25 A fourth detainee, BB, is represented by</p> <p style="text-align: center;">Page 9</p>	<p>1 addressed fully. 2 May I turn first now to an update on the evidence 3 gathering of the Inquiry, and turn first to documentary 4 evidence. 5 The Inquiry has issued eight rule 9 requests for 6 documentation from key organisations. These include G4S 7 Care and Justice, G4S Healthcare, the Home Office and 8 the BBC. 9 G4S's disclosure to the Inquiry is nearly complete. 10 G4S has disclosed a total of nearly 5,600 documents, 11 running to about 56,000 pages. Much of it names 12 individual detainees, and in order to protect the 13 privacy of those individuals the Inquiry is going 14 through the process of redacting all those names and 15 replacing them with ciphers that those participants and 16 the Inquiry can then use. 17 The Inquiry has deliberately not yet made a request 18 for confidential medical records relating to individual 19 detainees. The Inquiry is very conscious that medical 20 records are likely to include highly personal 21 information relating to individuals, much of which is 22 going to be irrelevant for the purposes of the Inquiry. 23 The Inquiry therefore intends in the first instance 24 to liaise with each individual detainee whom the Inquiry 25 can trace, with a view to arranging disclosure initially</p> <p style="text-align: center;">Page 11</p>
<p>1 Mr Nick Armstrong and Mr Jesse Nicholls. They also 2 represent the Gatwick Detainees Welfare Group and the 3 applicants for core participant status Detention Action, 4 INQUEST, and Bail for Immigration Detainees. 5 Another former detainee, known as IA, is represented 6 by Mr Zainul Jafferji. 7 The Home Office is represented by Mr Julian Blake 8 and Ms Emily Wilsdon. 9 G4S by Mr Daniel Isenberg. 10 The BBC by Mr Jude Bunting. 11 Her Majesty's Inspector of Prisons, Ms Clair Dobbin. 12 And, finally, the Independent Monitoring Board by 13 Mr Jonathan Dixey. 14 This hearing was initially timetabled to begin this 15 morning. It was re-scheduled to start this afternoon in 16 order to accommodate one of the core participants. That 17 is absolutely fine, and this Inquiry will always try to 18 accommodate participants wherever it can. However, that 19 does mean that the Inquiry is necessarily somewhat 20 shorter than it might otherwise have been, so we will 21 have to ask core participants to be as succinct as they 22 properly can be when making their oral submissions. 23 However, the chair has asked me to say that she is 24 willing to sit late this afternoon to ensure that all 25 the agenda items can be dealt with properly and</p> <p style="text-align: center;">Page 10</p>	<p>1 to that detainee's legal representative or to him 2 himself, with onward disclosure to the Inquiry and 3 ultimately to core participants of material that may be 4 relevant to the Inquiry's work. 5 The Inquiry does, though, recognise very clearly 6 that medical records may contain highly relevant 7 information. It has already sought disclosure of 8 documents that may well contain medical information that 9 we know already to have been shared, for example, with 10 G4S and the Home Office. For example, ACDT records and 11 rule 35 reports. 12 These records, while confidential, are less likely 13 than medical records to contain highly personal and 14 irrelevant material. But the Inquiry recognises that it 15 may well, in due course, have to consider the anonymised 16 disclosure of medical records relating to individuals 17 who cannot be traced. 18 Home Office disclosure to the Inquiry is also nearly 19 complete. The Home Office has disclosed a total of 20 2,194 documents, going to over 10,000 pages. The 21 outstanding documents relate mainly to the individual 22 detainees and the records of those detainees. As 23 core participants are aware, the Home Office has 24 confirmed this week that another 3,949 documents will be 25 submitted to the Inquiry by the end of today, bringing</p> <p style="text-align: center;">Page 12</p>

<p>1 the total number of documents disclosed to around 6,000 2 and to a total number of pages of around 33,000. 3 The Home Office has confirmed that it has retrieved 4 and preserved the records of all the detainees who were 5 at Brook House in the relevant period, in other words 6 between April and August 2017. The Inquiry will be 7 asking the Home Office to prioritise disclosure to it of 8 records relating to detainees with whom the Inquiry is 9 in contact. 10 The BBC has cooperated with the Inquiry in the 11 disclosure of its unbroadcast footage and we must 12 acknowledge it has done a huge amount of work on that 13 footage. We understand that the covert recordings made 14 by Callum Tully were made in sections of varying 15 lengths, not necessarily six-minute lengths as I stated 16 in the note that was sent out to all core participants. 17 The BBC is working, and has worked, on putting those 18 sections together and is prioritising the creation of 19 versions that will show all of the filming on specific 20 days, and in particular those days on which an incident 21 of mistreatment was recorded. We understand that the 22 recordings total around 109 hours. 23 Some of the footage will not be relevant to the 24 Inquiry, and a large proportion includes sensitive and 25 personal footage. The very nature of covert filming</p> <p style="text-align: center;">Page 13</p>	<p>1 correspondence and Verita's disclosure is being followed 2 up by the Inquiry. 3 The process of collation and redaction of all of 4 this material is immensely time consuming, and it is 5 absolutely imperative that the Inquiry gets it right. 6 We have an obligation to protect the privacy of 7 individuals named in documents or shown on film. We owe 8 that obligation to former detainees in particular. The 9 Inquiry's intention, as I have mentioned, is to replace 10 with ciphers the names of all detainees wherever those 11 names appear. 12 Insofar as the film is concerned, the Inquiry 13 intends, so far as it can, to work with the detainees 14 shown in the footage and consider any representations 15 from them before arranging for onward disclosure. 16 Disclosure to core participants will be arranged in 17 tranches once the redaction process is complete in 18 respect of particular groups of documents. The Inquiry 19 is prioritising G4S and Home Office material. It may be 20 possible to give early disclosure to core participants 21 of documents that do not require extensive or indeed any 22 redaction. But this is subject to two matters. 23 Firstly, the Inquiry does not want to be distracted 24 from the task of dealing with prioritised material. 25 Secondly, disclosure must be meaningful. There is</p> <p style="text-align: center;">Page 15</p>
<p>1 means that those who are seen and heard on the film are 2 not aware that they are being recorded. People may be 3 seen undressed, or may be heard discussing their medical 4 conditions or other intimate and completely irrelevant 5 personal matters. Irrelevant but very sensitive 6 documents may be caught by the camera. The footage may 7 also show details of locks or other security measures. 8 None of this material, unless it is relevant to the 9 Inquiry's work, can be disclosed to core participants or 10 to the wider public. 11 Material that is relevant may require pixelation or 12 audio editing or other forms of redaction. The BBC 13 itself has conducted a very lengthy exercise to 14 highlight the areas of film that may give rise to 15 sensitivity and also those most likely to contain 16 content relevant to the Inquiry's work. The Inquiry is 17 working with the BBC to prioritise disclosure of 18 material most likely to be relevant and in particular 19 that material relevant to the former detainees with whom 20 the Inquiry is in contact. 21 In addition, Sussex Police, the CPS and the 22 Independent Monitoring Board have provided disclosure. 23 Inquiry lawyers have met with Verita, the company 24 responsible for the Lampard Report, and have served 25 a rule 9 request on it. There has been some further</p> <p style="text-align: center;">Page 14</p>	<p>1 no point in the Inquiry sending out tranches of 2 disparate and unrelated documents or only part of a set 3 of related documents. But the Inquiry is very, very 4 conscious that core participants are keen to see 5 material as soon as possible, and will do everything it 6 can to expedite useful disclosure. 7 May I turn now to witness tracing? The Inquiry's 8 invitation to former detainees to apply for core 9 participant status led to three applications being made, 10 in addition to those that had already been made by and 11 granted to BB and MA. All three of the recent 12 applications have been granted, although matters 13 relating to their legal representation still have to be 14 resolved. 15 In addition, the Inquiry believes that it knows the 16 identity of 28 individuals who can be seen on the 17 Panorama recordings. The Inquiry has identified two 18 former detainees from a reported judgment in recent 19 litigation, Soltany v The Secretary of State for the 20 Home Department. 21 The Inquiry is treating this group of 35 former 22 detainees as a priority group. Where we do not already 23 have reliable contact details for them, the Inquiry is 24 in the process of instructing tracing agents to assist 25 in finding up-to-date addresses. The Home Office will</p> <p style="text-align: center;">Page 16</p>

<p>1 also be asked to assist and has offered its assistance. 2 The Inquiry is very conscious that some former 3 detainees may be suspicious or even frightened to 4 receive official looking correspondence from an inquiry. 5 For some, the idea of being asked to relive trauma 6 experienced in detention may be distressing or even 7 damaging. Letters to detainees will, as far as we can, 8 be translated into the first language of the recipient 9 where that language is not English. And the letters 10 will contain contact details for support services. 11 The Inquiry's hope is that it will be able swiftly 12 to follow up initial contact with the provision of 13 documentary material relating to that former detainee, 14 and with a request for an interview at which a statement 15 can be taken. The intention is that the detainees 16 should understand immediately, or as soon as we possibly 17 can, the reason for which we are contacting them, and 18 the material that we have that we want to ask them 19 about. 20 The detainees will, of course, be entitled to legal 21 assistance at public expense. 22 Some core participants have suggested that efforts 23 should have been made earlier to contact detainees, and 24 that wider efforts should be made now to contact 25 a greater group.</p> <p style="text-align: center;">Page 17</p>	<p>1 interpreters, will be discussed well in advance with the 2 individual or his lawyers. 3 The sensitivities involved mean that for obvious 4 reasons it is very undesirable for the Inquiry's contact 5 to be entirely remote, whether that is by letter or 6 telephone or video. We had hoped very much that it 7 would be possible by now to conduct face-to-face 8 interviews. The reality the Inquiry has to recognise is 9 that this is likely to be impracticable for the 10 foreseeable future. 11 Inquiry lawyers are willing to meet witnesses in 12 a suitable socially distanced environment, but the 13 Inquiry will respect the wishes of any witness who does 14 not, in the current circumstances, want face-to-face 15 contact. 16 The Inquiry plans to obtain as much evidence as 17 possible at an early stage from former detainees, so 18 that their accounts can then be put to the G4S staff who 19 will then be asked for statements. 20 The Inquiry is also treating as a priority the 21 obtaining of a statement from Callum Tully, BBC 22 reporter, and possibly from others who were involved in 23 the making of the Panorama programme. We need full 24 disclosure from the BBC before the Inquiry makes 25 a formal request for a statement, and the Inquiry is in</p> <p style="text-align: center;">Page 19</p>
<p>1 There are advantages and disadvantages in any 2 strategy for conducting this group of particularly 3 vulnerable witnesses. Because of the risk of causing 4 fear or even real damage to former detainees through 5 contact, the Inquiry wanted, firstly, to ensure that it 6 was approaching people who are likely to be able to give 7 relevant evidence, and, secondly, that the Inquiry would 8 be able to engage with them constructively soon after 9 contact was made. 10 This approach required the Inquiry to have 11 documentary material in its possession before 12 identifying those to be contacted. This was felt to be 13 preferable to making initial contact and then not being 14 able to get back properly for weeks or even months. 15 May I turn now to the issue of taking witness 16 statements? The Inquiry is currently collating from the 17 various document providers the evidential material 18 relating to this priority group of detainees. 19 The Inquiry's plan over the coming weeks is to send 20 to each former detainee with whom we are in contact, or 21 their legal representatives where they have one, 22 a bundle of documentary material relating to that 23 person, and to make arrangements for Inquiry staff to 24 take witness statements from each individual. The 25 specific arrangements, including the need for</p> <p style="text-align: center;">Page 18</p>	<p>1 very constructive dialogue with the BBC about that. 2 Next, I would like to turn to expert evidence. It 3 is the Inquiry's intention to seek expert evidence on, 4 firstly, the extent to which mental health issues of 5 detainees played or may have played a part in the 6 treatment to which detainees were subjected. 7 Secondly, whether rule 35 processes were properly 8 followed and reports were made appropriately. 9 Thirdly, whether detainees received appropriate 10 medical and in particular mental health care while in 11 detention. 12 Fourthly, whether oversight bodies could have done 13 more to identify any shortcomings in medical and 14 particularly health provision. 15 Fifthly, what structures or policies could be put in 16 place in future to identify and act upon any 17 shortcomings. 18 It seems to the chair that expert evidence is likely 19 to be required from an appropriately experienced GP, or 20 an expert in the policies and practices of medical care 21 in the detained environment. It is possible that the 22 same person could fulfil both roles. 23 As core participants are aware, the Inquiry has 24 already held preliminary discussions with 25 Dr Juliet Cohen, head of doctors at Freedom from</p> <p style="text-align: center;">Page 20</p>

<p>1 Torture.</p> <p>2 In addition, the chair is considering whether to</p> <p>3 appoint an expert to examine, firstly, the extent to</p> <p>4 which race or more specifically race discrimination may</p> <p>5 have played a part in the treatment to which detainees</p> <p>6 were subjected, and, secondly, if it did pay a part,</p> <p>7 what steps the Home Office and/or contractors should</p> <p>8 take, and what processes and safeguards should be in</p> <p>9 place to prevent a recurrence?</p> <p>10 The Inquiry is very grateful for the suggestions</p> <p>11 already made recently by core participants at this stage</p> <p>12 as to suitably qualified experts. The Inquiry also</p> <p>13 welcomes the suggestions that have been made in respect</p> <p>14 of experts in other fields for the chair to consider.</p> <p>15 The Inquiry would ask that any further</p> <p>16 recommendations be made by 9 October 2020. At the end</p> <p>17 of the hearing, subject to any submissions made by any</p> <p>18 core participants now, I would invite you, madam, to</p> <p>19 rule that that deadline should be applied.</p> <p>20 I will now pause so that core participants can make</p> <p>21 oral submissions in relation to the appointment of</p> <p>22 experts. The order in which I suggest that submissions</p> <p>23 be made is firstly Ms Harrison QC on behalf of her core</p> <p>24 participant clients. Then Mr Armstrong, on behalf of</p> <p>25 his core participant clients. Then Mr Jafferji,</p> <p style="text-align: center;">Page 21</p>	<p>1 an inappropriate and abusive way. Again, psychiatric</p> <p>2 input on the way in which mental illness is treated and</p> <p>3 managed is going to be important, as well as assisting</p> <p>4 to understand clearly the impact of those methods on the</p> <p>5 detainee experience, and whether, as we say, they</p> <p>6 indicate treatment that crosses the article 3 threshold</p> <p>7 for inhuman and degrading treatment. A psychiatrist is</p> <p>8 going to be of great assistance in respect of that.</p> <p>9 We do strongly endorse -- and have repeatedly</p> <p>10 said -- that it will be critically important for the</p> <p>11 Inquiry to have expertise from a person with</p> <p>12 understanding of both the communities and the people who</p> <p>13 are subject to immigration control, by definition ethnic</p> <p>14 minorities who may also be religious minorities, and</p> <p>15 critically important that they have a keen experience</p> <p>16 and understandings of institutional discriminatory</p> <p>17 practices, of racism, othering and dehumanising that is</p> <p>18 evident and was identified by the judge who heard the</p> <p>19 judicial review as being disclosed in the Panorama</p> <p>20 documentary.</p> <p>21 We say that is critically important to the Inquiry's</p> <p>22 work, and we have made individual recommendations.</p> <p>23 I don't know if you want me to advance who those</p> <p>24 individuals are, but we have put them in writing.</p> <p>25 MS MCGAHEY: Madam, I can confirm that the Inquiry has</p> <p style="text-align: center;">Page 23</p>
<p>1 Mr Blake, Mr Isenberg, Mr Bunting, Ms Dobbin and</p> <p>2 Mr Dixey.</p> <p>3 May I pause now and ask whether Ms Harrison has any</p> <p>4 submissions she would like to make on the subject of</p> <p>5 experts?</p> <p>6 MS HARRISON: We have set out in detail our position on</p> <p>7 experts in a written letter that I hope that the Inquiry</p> <p>8 should have obtained this morning.</p> <p>9 Our position is that we would certainly endorse</p> <p>10 Juliet Cohen as being an independent expert with the</p> <p>11 appropriate medical expertise and in addition, which is</p> <p>12 critically important, deep understanding of how the</p> <p>13 policies and practices of the Home Office work in</p> <p>14 respect of vulnerable detainees. So we would certainly</p> <p>15 endorse her as an appropriate expert.</p> <p>16 We would also submit, in particular, that it is</p> <p>17 important to have expertise from a suitably qualified</p> <p>18 consultant psychiatrist, who is able to also assist the</p> <p>19 Inquiry on matters that are particularly relevant to MA</p> <p>20 and others, who suffered from mental disorder whilst in</p> <p>21 detention. We think that it will be important for the</p> <p>22 Inquiry to have that expertise, as well as to be able to</p> <p>23 have input on the methods of use of force, restraint,</p> <p>24 segregation and control that it is clear are used to</p> <p>25 manage people with serious mental illness in</p> <p style="text-align: center;">Page 22</p>	<p>1 received those submissions and it is probably not in the</p> <p>2 circumstances, unless Ms Harrison wishes to do so, to go</p> <p>3 through the names and the reasons for the</p> <p>4 recommendations.</p> <p>5 MS HARRISON: I would invite you to read those in full.</p> <p>6 Those individuals, we propose, have the necessary</p> <p>7 competence and expertise.</p> <p>8 THE INQUIRY CHAIR: Thank you. I will do so.</p> <p>9 Thank you.</p> <p>10 MS HARRISON: In addition to that, we do submit that it is</p> <p>11 necessary and could be of advantage to the Inquiry to</p> <p>12 have input from an expert who understands the</p> <p>13 contractual arrangements and the procurement process</p> <p>14 between G4S and the Home Office. We are of the view</p> <p>15 from the information that we are aware of that that can</p> <p>16 play a critical role in the arrangements that are in</p> <p>17 place and the policies and practices and how they are</p> <p>18 implemented. They are underscored by the contractual</p> <p>19 arrangements and have a significant role to play in what</p> <p>20 we believe is evidence of systemic failure that led in</p> <p>21 part to the abuse of MA and others.</p> <p>22 We have also made recommendation of an individual</p> <p>23 who has that kind of expertise that we think will be</p> <p>24 important both for understanding the systemic failures</p> <p>25 that occurred at Brook House, but also in order to make</p> <p style="text-align: center;">Page 24</p>

1 informed recommendations for the future.
 2 Those were all the submissions that I make on
 3 experts.
 4 MR ARMSTRONG: Can I be heard? Thank you, Ms McGahey,
 5 thank you, chair. I am just going to lend my voice of
 6 support to what Ms Harrison has just said and I am not
 7 going on develop that much more. You have also,
 8 I think, had correspondence from those who instruct me
 9 agreeing with the Duncan Lewis letter which was sent
 10 yesterday and to which Ms Harrison has referred.
 11 Can I just say this, it doesn't require me to
 12 rehearse and reflect on the importance of this Inquiry,
 13 which is the first of its kind in the difficult area of
 14 immigration detention and which makes it extremely
 15 important. Prompted by abuse at the highest and most
 16 systemic level, reflected in ministerial comment,
 17 reflected in what the High Court and indeed the Court of
 18 Appeal had to say about it last year. That requires
 19 a particularly intensive examination of a kind, we say,
 20 that has not previously taken place.
 21 That means, in our submission, one needs to go
 22 further. In order to do that, we say, the Inquiry may
 23 need more help than previous investigations have had.
 24 That requirement extends to expert evidence.
 25 If in doubt, we say get experts involved. We have

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1 lent our voice in support to Juliet Cohen who is
 2 obviously qualified, which is no doubt why the Inquiry
 3 has already approached her. If I need to develop these
 4 point, then I will, but we reject the apparent
 5 objections that are made in the Home Office's latest
 6 submission about her. She is eminently well qualified,
 7 she's a doctor who answers to a professional code, the
 8 Home Office has not identified anything that she has
 9 said, publicly or otherwise, that might disqualify her
 10 from that. They are raising issues of independence with
 11 her. There are plenty of people who come from various
 12 sides on immigration detention involved in this Inquiry
 13 and none of that should disqualify someone of her
 14 obvious qualifications.
 15 I would also support in particular the need we say
 16 is essential for an expert on race. That is -- just to
 17 say something additional about that -- a particularly
 18 complex often nuanced and sensitive issue, with which we
 19 are going to require help in my respectful submission.
 20 I know, chair, that you are aware of the inquest
 21 into the death of Prince Fosu, which took place in
 22 February this year and was a particularly dramatic
 23 example of the failures that can occur in this area.
 24 A lot of the evidence in that case touched upon, at
 25 least indirectly, race elements because that was a man

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1 from whom everybody walked away. That was man from whom
 2 doctors, detention officer, IMB members, all of them
 3 walked away and saw him but did not see him.
 4 The overtones behind all of that were treating him
 5 as somehow less for whatever reason. Whether that is
 6 race, whether that is because he is a migrant, whether
 7 that is because he is seen as odd because he was
 8 demonstrating mental health issues or for some other
 9 reason, all of that was hopelessly wrong but it did mean
 10 that all of the safeguards in that case failed and it is
 11 certainly strongly arguable that something similar
 12 happened here, because the evidence so far disclosed in
 13 Panorama and seen in the judicial review is that
 14 a number of professionals put aside their obvious
 15 professional obligations and did something directly the
 16 opposite of what they were required to do.
 17 Understanding the reason for that and understanding
 18 whether race or regarding him as a migrant and somehow
 19 less was a part of that is, we say, critical and you
 20 would benefit from expert evidence in relation to that.
 21 We also agree with what has been said about somebody
 22 on public procurement, that is something that needs to
 23 be properly understood.
 24 Can I also just formally lend my support to the
 25 suggestion of Mary Bosworth, who is a well-known

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1 criminologist who may be able to assist across two
 2 different parts of the evidence that you might need
 3 expertise on. Can I just refer specifically to the
 4 written comments that are made in the correspondence
 5 that you have seen.
 6 Unless I can assist further, that is all I want to
 7 say on experts.
 8 THE INQUIRY CHAIR: Thank you.
 9 To you as well, Ms Harrison. I am sorry, I failed
 10 to take myself off mute to say that.
 11 MS MCGAHEY: Madam, may I invite Mr Jafferji to make any
 12 submissions he would like to make?
 13 MR JAFFERJI: Thank you, madam, can you hear me?
 14 THE INQUIRY CHAIR: I can hear you. I can't see you, but
 15 I can hear you.
 16 MR JAFFERJI: I am not sure why that is. I have checked my
 17 video and my video seems to be on. It is telling me
 18 I can stop the video but not start it. So I apologise
 19 for that.
 20 THE INQUIRY CHAIR: No problem, we can hear you very
 21 clearly, thank you.
 22 MR JAFFERJI: Thank you, madam.
 23 I have read the submissions made on behalf of BB and
 24 MA. I have read the letter from Duncan Lewis that was
 25 sent to core participants I think yesterday or this

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1 morning.
 2 I have heard the submissions made by my learned
 3 friends Ms Harrison and Mr Armstrong.
 4 We would adopt all of that and support everything
 5 that is said. There is just one short point that we
 6 would make in relation to expert evidence, and that
 7 relates to expertise in relation to mental health issues
 8 and psychiatric expertise.
 9 It seems to us -- you will note that my client was
 10 granted core participant status relatively recently, so
 11 we are relatively new to all the material that is before
 12 the Inquiry, and we are not fully aware of the
 13 circumstances of the other core participants, in
 14 particular the former detainees. But the focus seems to
 15 be upon existing mental health issues and identifying
 16 those at the point of detention and exacerbation of
 17 those mental health issues whilst in detention.
 18 We would also point out that there ought to be focus
 19 on development of mental health issues whilst in
 20 detention. What can be learnt about that issue. How
 21 that can be prevented in the future and what about the
 22 circumstances of detention overall contributes to that?
 23 Madam, apart from, that there is nothing else that
 24 we would like to say on the issue of expert evidence.
 25 THE INQUIRY CHAIR: Thank you very much.

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1 MS McGAHEY: Mr Blake?
 2 MR BLAKE: Thank you.
 3 Can I begin by thanking the Inquiry for setting up
 4 this remote hearing and for all the work that has gone
 5 into making this Inquiry possible, despite all of the
 6 restrictions which have resulted from the COVID-19
 7 pandemic.
 8 In terms of experts, the Inquiry must be free to
 9 select its own experts. On behalf of the Home Office
 10 all that we ask is that the selection of experts
 11 complies with the ordinary requirements to be
 12 independent and that there is no appearance of bias.
 13 We are happy to propose experts by 9 October, and
 14 also to provide any comment on other suggestions for
 15 experts. We have made brief representations in writing
 16 in respect of Dr Cohen. We understand that any further
 17 representations concerning Dr Cohen and any others can
 18 be filed in writing prior to the 9 October date.
 19 I can address you on the specifics today if you
 20 would like, but I am happy to do so in writing prior to
 21 9 October.
 22 THE INQUIRY CHAIR: Thank you. If you could do so in
 23 writing prior to the 9th, that would be very helpful.
 24 Thank you.
 25 MR BLAKE: I am grateful.

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1 I have no further submissions in that case.
 2 MS McGAHEY: Madam, Mr Isenberg.
 3 MR ISENBERG: Thank you, Ms McGahey.
 4 You and the chair will have seen from our written
 5 submissions that on the matters of expert evidence G4S
 6 is currently considering the representations that have
 7 been made so far and the issues of experts more broadly.
 8 It is probably best for us to address those in
 9 writing by the deadline put forward by the chair.
 10 Thank you.
 11 THE INQUIRY CHAIR: Thank you.
 12 MS McGAHEY: Mr Bunting?
 13 MR BUNTING: Thank you, madam, the BBC has no submissions on
 14 experts.
 15 MS McGAHEY: Ms Dobbin?
 16 MS DOBBIN: Thank you, Ms McGahey. Thank you, chair. We
 17 don't have any submissions to make on this today.
 18 Thank you.
 19 MS McGAHEY: Lastly, Mr Dixey.
 20 MR DIXEY: Madam, I have no submissions to make on the
 21 question of expert evidence.
 22 THE INQUIRY CHAIR: Thank you.
 23 MS McGAHEY: Madam, may I turn now then to the question of
 24 undertakings. The Inquiry is grateful for the
 25 submissions received from the core participants in

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1 respect of the proposed undertakings that could be
 2 sought from the Attorney General and/or the
 3 Home Secretary.
 4 The core participants know what the issues are, but
 5 for those members of the public attending the hearing
 6 I can say that the key questions raised are.
 7 Firstly, should undertakings be sought at all from
 8 the Home Secretary and/or the Attorney General at this
 9 stage? Those undertakings being in respect of
 10 undertakings not to use evidence supplied to this
 11 Inquiry in any subsequent decision or investigation
 12 leading to criminal proceedings or in relation to, so
 13 far as the Home Secretary is concerned, immigration
 14 matters.
 15 If undertakings should be sought, should the
 16 undertakings be restricted to natural persons only and
 17 not extend to corporate entities?
 18 Thirdly, should they be restricted to all evidence
 19 and witness statements taken for Inquiry purposes and
 20 not to other documents?
 21 Finally, should the wording of the Home Secretary's
 22 undertaking make clear that it applies to the evidence
 23 supplied by detainees only and that it will not apply if
 24 the detainee seeks in any immigration application to
 25 rely selectively on evidence that he provided to the

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<p>1 Inquiry. 2 Again, I will ask core participants to make any oral 3 submissions they wish to make about the proposed 4 undertakings. With your permission, madam, I suggest 5 they are taken in the same order, starting with 6 Ms Harrison. 7 MS HARRISON: We obviously also made very detailed 8 submissions in respect of this matter in writing. We 9 would want to make clear from the outset from the 10 perspective of MA, and other detainees who were subject 11 to what has been described as appalling abuse, the 12 possibility of criminal prosecution as the primary 13 mechanism for accountability and punishment for 14 wrongdoing has always been a central concern for Mr MA 15 and others. 16 The Inquiry will be aware that for reasons of 17 institutional failure and incompetence on the part of 18 the police, and others, no actual criminal prosecution 19 has taken place in respect of the clearly criminal 20 conduct to which my client, Mr MA, was subject. That is 21 a matter of grave concern. 22 It is also an important context for why this Inquiry 23 is taking place, at least in part, as a substitute for 24 what ought to have been the state's primary response to 25 evidence of abuse of this gravity: a criminal</p> <p style="text-align: center;">Page 33</p>	<p>1 administrative detention -- are seeking to indicate that 2 they will not be prepared to cooperate without such 3 undertaking, that should be done in public and clearly. 4 For those reasons we have suggested to the Inquiry 5 that rather than giving at this stage wide-ranging 6 blanket undertakings, the appropriate course to take is 7 a staged one. That only when it is actually 8 demonstrated to be necessary and individuals have sought 9 it with explanation, should the Inquiry undertake that 10 process of seeking the Attorney General's undertaking. 11 We of course recognise that the right against self 12 incrimination is an important right and that it is both 13 a common law protection and reflected in section 22 of 14 the Inquiries Act. 15 We of course also recognise -- because again it was 16 part of the reason why this Inquiry was necessary with 17 its powers to compel the presence of witnesses and 18 documents -- that there may well be individuals, 19 particularly the perpetrators of abuse, who have refused 20 to cooperate effectively with police investigations and 21 other investigations who may well seek such 22 an undertaking, but we say those individuals should be 23 expected to ask for it on an individual basis, and that 24 the form of undertakings that are being proposed at the 25 moment are too wide.</p> <p style="text-align: center;">Page 35</p>
<p>1 prosecution and appropriate punishment of perpetrators 2 both individuals, and insofar as there was misfeasance 3 in public office, on a wider basis. 4 So we start from that premise, when we see 5 wide-ranging applications for undertakings from the 6 Attorney General to inhibit evidence which comes before 7 this Inquiry ever being the subject, if appropriate, of 8 a criminal investigation. 9 We say that one has to start from the proposition 10 that the seeking and the giving of such undertakings 11 must be in the most limited and confined circumstances, 12 recognising that there are a number of important public 13 interests at stake when such undertakings are given. 14 First and foremost, as I have indicated, the need to 15 ensure that those who have committed wrongdoing are held 16 accountable. 17 It would be wrong and send out the wrong message to 18 the public that any criminal conduct is being either not 19 properly investigated or condoned by the giving of such 20 undertakings. 21 Of course, we say what is critically important is 22 that if individuals -- in particular individuals who 23 have roles within public authorities, where their 24 responsibility and obligations is to provide a lawful, 25 safe environment for those that they subject to</p> <p style="text-align: center;">Page 34</p>	<p>1 We do say that if they are to be sought at this 2 stage, then it is important that they are confined to 3 natural persons and don't cover legal or corporate 4 entities. We see from the submissions that are made by 5 G4S in particular, wishing to endorse the inclusion of 6 legal persons and relying on the fact that those have 7 recently been made in the Grenfell Tower Inquiry. 8 However, what is significant about that is that that 9 inquiry took it as a staged process, so they weren't 10 made at the outset. There has been a specific, detailed 11 basis upon which the undertakings were extended to legal 12 persons, which has not been developed in any way, shape 13 or form by G4S at this stage, precisely because no real 14 process -- not one that is transparent to us, in any 15 event -- has taken place in terms of documents. So they 16 are seeking this on a preemptive basis. 17 We respectfully submit that the Inquiry should not 18 extend to legal persons and we certainly submit that it 19 should not extend to public authorities, including G4S 20 insofar as it was exercising public law functions, in 21 providing detention facilities and services. In 22 Grenfell those legal persons do not include public 23 authorities, including the local authorities, despite 24 their obviously being in a situation where their 25 culpability for the consequences may be an issue.</p> <p style="text-align: center;">Page 36</p>

<p>1 We do say that it is important for any undertakings 2 to be limited to natural persons and that it is also 3 limited to the witness evidence and/or material that's 4 produced in witness statements, or in preparation of 5 witness statements is the only material that's covered. 6 Again, we submit that if it is extended in the way 7 that is sought by G4S to all documents, then it has the 8 potential to be disproportionate and excessive, and 9 unnecessary. Clearly public authorities are under 10 a duty of candour. In other proceedings they would have 11 to produce documents. There is no reason why this 12 Inquiry should have special extended protections for 13 documents. 14 Again, it needs at this stage to see if that is 15 really a difficulty, rather than a preemptive order -- 16 undertaking -- at this stage. 17 One should expect -- and certainly publicly both the 18 Home Office and G4S have said that they will wish to 19 cooperate fully with the Inquiry, and that should, first 20 of all, be taken at its word rather than seeking now to 21 prevent any material that comes in a documentary form 22 ever being made available if it were a possibility for 23 criminal prosecution. 24 Finally, in terms of the further extension that G4S 25 have recently indicated that they would wish to seek</p> <p style="text-align: center;">Page 37</p>	<p>1 submissions next? 2 MR ARMSTRONG: Thank you, chair. Can I again align myself 3 with everything that Ms Harrison has just said. 4 Can I just start with this though. We are in large 5 part responding to submissions that were made by G4S, 6 and partly the Home Office, but also G4S. Can I just 7 note with some regret the fact that the G4S submissions 8 were received late on Wednesday night, which was 9 a spectacular three weeks after the deadline that the 10 chair set. 11 We are, we hope, able to deal with that. But that 12 was done without apology or explanation on the part of 13 G4S, and, putting it gently, we would have thought that 14 G4S, of all organisations involved in this Inquiry, were 15 the one most anxious to be compliant, and apologise or 16 explain if they are not able to be compliant. I don't 17 know if the chair has heard anything about, that but we, 18 the other core participants, certainly have not. 19 MS McGAHEY: Perhaps I can assist in that, if Mr Armstrong 20 would like me to do so. 21 G4S's counsel was elevated to the bench, so it 22 required a change of team. That was the explanation we 23 were given. 24 MR ARMSTRONG: I am grateful for that, it is still a long 25 period of time and makes life difficult if it is that</p> <p style="text-align: center;">Page 39</p>
<p>1 based on lines of enquiry, that was only put in writing 2 yesterday. What is relied upon there in support of that 3 is that it was an undertaking that was given in the 4 Baha Mousa Inquiry. We have not, in the time available, 5 been able to fully research that. That was obviously 6 an extensive inquiry that took place over a protracted 7 period. It would be important to see at what stage such 8 additional undertakings were agreed and why. 9 Again, effectively we say that this would cover 10 virtually all forms of material that came into the 11 Inquiry's possession and have an inappropriate and 12 disproportionate impact on the possibility of material 13 subsequently being relevant to criminal proceedings. 14 Again, we say what is necessary is not a blanket 15 request at an early stage, but a detailed one that 16 actually is based on identifiable particular need, 17 arising if it ever does, for such an extensive 18 undertaking to be sought and given. 19 In summary, we say it is not necessary to seek those 20 undertakings now. If it is, then it should be limited 21 to natural persons and oral evidence and witness 22 statement evidence only. 23 Those are my submissions. 24 THE INQUIRY CHAIR: Thank you, Ms Harrison. 25 MS McGAHEY: Madam, may I invite Mr Armstrong to make</p> <p style="text-align: center;">Page 38</p>	<p>1 late. 2 Can I associate myself in particular with the 3 importance of public accountability. That's critical. 4 And criminal accountability is particularly critical, as 5 Ms Harrison has said. The reason why we have said -- 6 and we emphasise in particular -- in our written 7 submission the point of staged undertaking and don't 8 require it first but instead require anybody who wants 9 it to ask for it, is precisely, and it is a similar 10 approach to what was taken in Grenfell, where there was 11 no undertaking asked for at the start, is to flush out 12 the individuals who want it and ask them to explain why 13 they want it. That is an important thing to do in order 14 to explain why they should not be accountable in that 15 particular way and understand who it is who is doing it, 16 and apply a threshold to such a request by making them 17 do it and do it in the course of the public inquiry. 18 We say that that is all the more important where, at 19 the moment, the undertakings extend to not just natural 20 persons but legal persons because the obvious 21 organisation to whom that applies is G4S. 22 G4S have gone out of its way, in response firstly to 23 Panorama and secondly to the Lampard investigation which 24 it commissioned, to say that it is very concerned about 25 all of these matters. It completely accepts in</p> <p style="text-align: center;">Page 40</p>

<p>1 an unqualified way everything that Kate Lampard said 2 about it and will comply with those recommendations. If 3 it is now saying, as it appears to be saying, that it 4 may not want to do this, that it may not fully 5 co-operate because it may not be -- it doesn't 6 particularly want to fully cooperate without 7 an undertaking, then G4S ought to be asked to say that, 8 say it clearly and explain why. 9 That is why we say a staged approach should be 10 taken. That is also linked to why we say there ought to 11 be a distinction between natural persons and legal 12 persons. 13 I understand, by the way, that there was 14 a discussion in Grenfell -- I was not there, but 15 I understand there was a discussion in Grenfell about 16 the legal and natural distinction and it was not adopted 17 in Grenfell. But the reason why it was not adopted in 18 Grenfell was because of the large number of small 19 companies that were involved there that made it 20 impossible to draw that distinction. But that is not 21 true of G4S. 22 The other point I should make also is if legal 23 persons are to be covered by this, then it absolutely 24 should cover their witness evidence only and not 25 documents. In particular, pre-existing documents. My</p> <p style="text-align: center;">Page 41</p>	<p>1 anything that is produced by somebody before the 2 Inquiry. 3 If the Home Office produces it, that is not covered 4 by the undertaking. It is not just for detainees or 5 former detainees, it might also be the subject of people 6 who are migrants. There may be circumstances in which 7 you have a migrant who is concerned about this, but who 8 was not detained. That, too, ought to be covered by the 9 undertaking. 10 I also say the line of Inquiry submission that is 11 made in respect of G4S must be true in the 12 Home Secretary undertaking context, because if there is 13 going to be evidence caused or obtained as a result of 14 something that somebody has said, then that will need to 15 be protected as well. 16 Finally, my final submission in relation to this is 17 on the fourth point which Home Office make in their 18 submission, which is where they talk about the idea that 19 a migrant might be before the tribunal in some other 20 kind of proceedings and may say something about their 21 own evidence which misrepresents the position. 22 My submission about that is that that is a problem 23 that is very unlikely to arise. It is a speculative 24 submission made by the Home Office. If that was to 25 arise in tribunal proceedings, the idea that</p> <p style="text-align: center;">Page 43</p>
<p>1 understanding is that all the G4S material is in in any 2 event. No other documents should be caught by 3 an undertaking. 4 That's all I want to say about the Attorney General 5 undertaking. 6 Can I just deal briefly with the Home Secretary 7 undertaking, which we support? 8 The position of the potential victims is different 9 to the position of G4S or Home Office employees. That 10 is because -- just one moment, can I just stop a bit of 11 banging that is going on behind me. 12 Thank you. 13 It is those individuals will have much more cause to 14 be nervous about coming forward, and will be, as the 15 chair will no doubt understand, much more vulnerable. 16 What is important for them is that the protection should 17 be broad and it is vital that it is broad and also 18 capable of being understood in order to be effective. 19 I make that point because if some of what the 20 Home Office is saying -- Mr Blake has said in his 21 submission -- is that there ought to be qualifications 22 to this and additions and circumstances in which the 23 Home Office might be able to put in evidence in response 24 if things are being misrepresented or contextualised or 25 contextualisation is required. This ought to cover</p> <p style="text-align: center;">Page 42</p>	<p>1 a Home Office presenting officer would be in a position 2 to deal with it on the fly is very unlikely, but in the 3 unlikely event that something like that arose, we say 4 that the correct answer to that would be to apply to 5 have that undertaking discharged, not to not have the 6 undertaking in the first place or to have a qualified 7 undertaking in the first place. 8 Those are all my submissions in relation to that. 9 The Attorney General's undertaking ought not to be 10 sought and there ought to be a staged approach where 11 people ask for it rather than having it automatically. 12 The Home Secretary undertaking is required for 13 obvious reasons, but those need to be simple and clear 14 and unqualified in order to be properly understood and 15 therefore effective for the purpose that you want for 16 them, which is to encourage people to come forward and 17 be fulsome in their evidence and open in their evidence 18 and unafraid in their evidence. 19 Unless I can assist further, those are my 20 submissions. 21 THE INQUIRY CHAIR: Thank you, Mr Armstrong. 22 MS McGAHEY: Mr Jafferji? 23 MR JAFFERJI: Thank you, madam. 24 Madam, I adopt the submissions made on behalf of MA 25 and BB. I have nothing to add.</p> <p style="text-align: center;">Page 44</p>

<p>1 THE INQUIRY CHAIR: Thank you. 2 MS McGAHEY: Mr Blake? 3 MR BLAKE: Thank you madam. Our position is that like with 4 the issue of experts, if the Inquiry considers that it 5 needs undertakings, we are supportive of the requests 6 being made to the Attorney General and to the 7 Home Secretary. 8 On the Attorney General undertaking, in our 9 submission it is sensible to seek those undertakings now 10 so as to avoid any last minute derailing of the 11 timetable. Everybody is united in wanting to avoid 12 delay in this Inquiry. 13 The wording that the Inquiry has proposed quite 14 clearly follows a great deal of thought on the issue, 15 including the issue of whether it should include both 16 natural and legal persons. We certainly don't seek to 17 interfere with that proposed wording. 18 As G4S identify in their written submissions, there 19 was an instance in the Grenfell Tower Inquiry, where the 20 inquiry had to go back to the Attorney General to seek 21 a wider undertaking. I don't believe it was 22 an intentionally staged process, I think circumstances 23 just called for that extension. That should be avoided 24 if possible purely for a timing perspective. 25 On the Home Secretary's undertaking, I make clear</p> <p style="text-align: center;">Page 45</p>	<p>1 G4S agrees that it is appropriate for the chair to 2 seek undertakings from the Attorney General and indeed 3 from the Home Secretary at this stage, so as to avoid 4 potentially significant and prejudicial delays further 5 down the line, especially in light of the understandable 6 desire for timely progress sought by the core 7 participants. 8 The alternative, the staged approach primarily 9 sought by the detainee core participants, BB and MA, we 10 say is not the appropriate approach to take. In my 11 submission I will deal firstly with why we say the 12 undertaking should be sought now from the 13 Attorney General and then I will go on to deal with the 14 second issues of the scope of the undertaking. 15 The key we say to why the staged approach is 16 inappropriate in these circumstances is the need for the 17 Inquiry to progress in an orderly, predictable and 18 efficient manner. The important context to this are the 19 other core participant's concerns -- quite 20 understandable ones -- about delay. Even if the Inquiry 21 sets down a timetable now, there can be quite 22 disproportionate delays if that timetable has to be 23 subsequently amended, potentially late in the day, by 24 reason of applications and correspondence relating to 25 undertakings, especially when this could occur more than</p> <p style="text-align: center;">Page 47</p>
<p>1 that although I represent the Home Office today, the 2 decision as to whether to grant an undertaking and in 3 what form will be an independent decision for the 4 Secretary of State, and it is important to keep that 5 separation. It would not be right for me, today, to 6 make submissions on the wording, other than to point 7 out, as we already have in correspondence, the 8 difficulties that may arise with the current wording. 9 But, once again, the wording that's been proposed by 10 the Inquiry is clearly the result of a great deal of 11 thinking on the issue. All we suggest at this stage is 12 to seek to avoid any misunderstanding or misuse of the 13 undertaking and ask that any proposed undertaking makes 14 very clear who it applies to, makes clear what it 15 applies to, and is worded in such a way that it can't be 16 misused to one party's advantage. Whether that is by 17 some sort of discharge provision, as suggested by 18 Mr Armstrong, or by way of some other clarification. 19 In other words, all we ask for is that the proposed 20 form of words that is sent to the Secretary of State is 21 clear and is fair. 22 Apart from that, I have no further submissions. 23 THE INQUIRY CHAIR: Thank you, Mr Blake. 24 MS McGAHEY: Mr Isenberg? 25 MR ISENBERG: Thank you.</p> <p style="text-align: center;">Page 46</p>	<p>1 once. 2 The staged approach appears to suggest that the 3 Inquiry should essentially wait for a person to invoke 4 the privilege against self incrimination or the use of 5 section 22 of the Inquiries Act and at that stage 6 potentially seek an undertaking from the 7 Attorney General. 8 The problem with that approach is that it allows for 9 the potential for significant delays, as the process 10 could even be an iterative one. Say, for example, you 11 have witness X who seeks to rely on the privilege 12 against self incrimination at one point during the 13 evidence-gathering process. There is then a protracted 14 period of correspondence, submissions and maybe even 15 a hearing dealing with the potential for an undertaking 16 to be sought in relation to the issues raised by 17 witness X and to those in a similar position. 18 An undertaking may then be sought from or given by 19 the Attorney General. 20 It may then be that a month later witness Y or core 21 participant Z refuses to produce a document on grounds 22 of the privilege against self incrimination. There 23 could then be a further round of correspondence and 24 submissions with a hearing in respect of whether the 25 first undertaking ought to be extended to cover, for</p> <p style="text-align: center;">Page 48</p>

<p>1 example, documents or legal persons, issues that were 2 not previously considered when the first undertaking was 3 sought and provided. 4 All of this, we say, militates towards dealing with 5 the issue comprehensively at this stage. 6 Just dealing then with some of the points raised in 7 the submissions by BB and MA on this it is suggested 8 that seeking an undertaking at this point could render 9 accountability through the criminal courts less likely. 10 However, that is not, we say, an accurate 11 characterisation. 12 The essence to the undertaking is that it does not 13 go further than the scope of privilege against self 14 incrimination, as reflected in section 22 of the 15 Inquiries Act. An undertaking does not render 16 prosecution less likely where it goes no further than to 17 cover material or evidence in respect of which a person 18 could, and likely would, refuse to produce by virtue of 19 the privilege. 20 BB suggests that the public interest balance falls 21 differently in respect of the undertaking to be sought 22 from the Attorney General than that proposed to be 23 sought from the home of Home Secretary, which BB agrees 24 should be sought at this stage. 25 But the crucial difference between the two forms of</p> <p style="text-align: center;">Page 49</p>	<p>1 incrimination is likely to be adopted by at least some 2 witnesses and the privilege is a fundamental right and 3 no adverse influence could or should be drawn against 4 a person relying on it. 5 In any event, we say, any limited benefit as 6 identified in this way is heavily outweighed by the 7 likely delays to be caused by adopting the staged 8 approach. 9 Indeed, BB has pointed to Grenfell as a precedent 10 for the staged approach, but that example should 11 actually be a warning note for this Inquiry, given that 12 it caused material delays to that inquiry given the 13 timings and manner in which the undertakings were sought 14 and indeed extended from the Attorney General. 15 Moving on then to the scope of the undertaking to be 16 sought. We have provided draft wording appended to our 17 written submissions, which I would invite the chair to 18 consider. Those are marked up against -- we have marked 19 up there the proposed amendments to the chair's original 20 draft. There are three key points on the scope of the 21 undertaking that I would like to draw out. 22 First, is that they ought to cover both legal and 23 natural persons. 24 Secondly, that they apply to both documents as well 25 as oral evidence.</p> <p style="text-align: center;">Page 51</p>
<p>1 undertaking is that the relevant witnesses could always 2 rely -- in respect of the Attorney's General's 3 undertaking -- on the privilege against self 4 incrimination or section 22. That undertaking goes no 5 wider than to cover material that the person could, in 6 any event, refuse to produce. 7 However, that consideration does not apply to the 8 Home Secretary undertaking, because the privilege 9 against self incrimination does not apply to material 10 which is adverse to, for example, a potential 11 immigration decision. We say it is even more 12 appropriate at this stage that the undertakings should 13 be sought from the Attorney General, if indeed it is to 14 be sought at this stage from the Home Secretary. 15 It is also suggested by BB that there is a specific 16 public interest in having the relevant witnesses or the 17 core participants kind of "put their cards on the table" 18 by asserting the privilege against self incrimination 19 before an undertaking is sought, and that to do so would 20 prevent a person from publicly stating that they are 21 fully co-operating, when in truth they are only doing so 22 by way after undertaking. 23 Insofar as there is any true public interest in 24 this, as BB asserts, it, we say, is limited. In any 25 event, as MA recognises, the privilege against self</p> <p style="text-align: center;">Page 50</p>	<p>1 Thirdly, that they should apply to what we have 2 termed the line of enquiry undertaking, the derivative 3 evidence. 4 Dealing firstly then with legal and natural persons. 5 BB suggests that there is no basis for seeking 6 an undertaking in relation to legal persons at this 7 stage, but, again, we say this falls into the trap of 8 seeking a staged approach by the back door, which is 9 likely to cause further delays further down the line as 10 I have already set out. 11 In any event, it create an artificial and 12 an unjustified distinction. Once it is considered 13 appropriate to seek an undertaking, it is then 14 unjustified to seek that it is applied only to natural 15 and not to legal persons. The touchstone here remains 16 ensuring that all relevant information is before the 17 Inquiry and that a privilege against self incrimination 18 does not prevent that from taking place. Legal persons 19 are just as entitled to rely on that privilege as 20 natural persons are, and thus the justification for 21 including them within the scope of the undertaking is 22 the same. 23 It is not enough that the relevant legal persons 24 here are organisations providing services to the public 25 to upset that public interest balance.</p> <p style="text-align: center;">Page 52</p>

<p>1 Secondly, then, to the inclusion of documents within 2 the scope of the undertaking, not just to oral evidence 3 and the associated witness statements. 4 Again, we say the touchstone is the privilege 5 against self incrimination. That privilege covers not 6 just oral evidence but also the provision of 7 documentation. Were documents to be omitted from the 8 undertaking sought, that would leave a category of 9 relevant material outside of the undertaking but in 10 respect of which the privilege could be asserted. Thus, 11 the narrower the undertaking sought at this stage, the 12 greater the likelihood that the privilege will be 13 invoked and that time will be taken further down the 14 line dealing with whether the chair should seek that the 15 undertaking from the Attorney General be extended to 16 include documentation. 17 MA seeks reliance on the approach again taken in 18 Grenfell, and refers to the fact that following 19 extensive arguments Sir Martin Moore-Bick sought 20 an undertaking limited to oral evidence only. 21 I should point out, however, the application made in 22 that inquiry was only for an undertaking covering oral 23 evidence. It was not in that case sought that 24 a document undertaking should also be provided and that 25 that was refused. So we say that no such reliance can</p> <p style="text-align: center;">Page 53</p>	<p>1 than the scope of the privilege against self 2 incrimination. 3 See again our reference to the Al-Sweady Inquiry on 4 these points, which made clear that the line of enquiry 5 elements of the undertaking falls within the scope of 6 the privilege against self incrimination. 7 This element of the undertaking has already been 8 used in materially similar inquiries, both Baha Mousa 9 and also in Al-Sweady, as well as the others referred to 10 in our notes. 11 This is not in truth, an extension, but rather it is 12 ensuring that the undertaking sought mirrors the scope 13 of the privilege against self incrimination, on the same 14 basis that I set out before. The wider the gap between 15 the undertaking and the privilege, the greater the 16 likelihood for applications and delays to the timetable 17 in due course. 18 MA has submitted that there is to be no prosecution 19 in his case, and thus the Inquiry is the only means by 20 which he may vindicate his entitlement to factual 21 findings and it is therefore precisely for this reason 22 that the Inquiry needs to be confident that it will 23 obtain all relevant material. To do that it requires 24 an undertaking from the Attorney General, so far as 25 possible coextensive with the privilege against self</p> <p style="text-align: center;">Page 55</p>
<p>1 be placed on Grenfell. In fact, looking at properly 2 comparable cases, for example the Undercover Policing 3 Inquiry and Azelle Rodney, those were inquiries in which 4 the relevant undertaking did cover documentation. 5 Finally, then, what we have termed the line of 6 enquiry element of the undertaking, that it should 7 extend to prosecutions not just reliant on documents and 8 evidence directly produced to this Inquiry, but also 9 produced by an investigation that has itself been 10 commenced as a result of evidence provided to the 11 Inquiry, ie derivative evidence. 12 We take as our starting point the chair's own notes 13 that witnesses to this Inquiry should be able to give 14 evidence freely, without the fear that doing so might 15 lead to criminal investigation. The key point there is 16 "investigation", it is not just prosecution reliant on 17 evidence given to the Inquiry directly but further 18 criminal investigation. 19 To that end we have proposed that the undertaking 20 covers what we have termed this line of enquiry 21 evidence, and I direct the chair to consider our written 22 submissions on this point, which are at paragraph 11C of 23 those submissions. 24 This is about ensuring the witnesses give a full and 25 frank account and, crucially, that it goes no further</p> <p style="text-align: center;">Page 54</p>	<p>1 incrimination. 2 Unless I can assist further, those are my 3 submissions on the undertakings. 4 THE INQUIRY CHAIR: Thank you. 5 MS McGAHEY: Mr Bunting? 6 MR BUNTING: No submission from the BBC on this point 7 either. 8 MS McGAHEY: Ms Dobbin. 9 MS DOBBIN: Madam chair, we don't have any submissions to 10 make on this point. Thank you. 11 MS McGAHEY: Mr Dixey? 12 MR DIXEY: No submissions, thank you. 13 MS McGAHEY: Madam, may I go on now to address the proposed 14 timetable? You have already submissions about the 15 delays that have occurred in this Inquiry. 16 There is, in my submission, very little to be gained 17 at this stage by having a detailed day-by-day analysis 18 of the difficulties that this Inquiry has suffered in 19 the past. However, it is important that the public 20 should know what has happened so I can provide a brief 21 summary. 22 The Inquiry was established in November 2019. The 23 Home Office had set a budget for it and was also 24 responsible for putting in place the Inquiry's computer 25 system and the document management system and for</p> <p style="text-align: center;">Page 56</p>

<p>1 obtaining premises for the Inquiry. 2 I should halt there to say that the branch of the 3 Home Office responsible for making this provision is not 4 the branch of the Home Office represented today by 5 Mr Dixey. There is, and always, is when the Home Office 6 is a sponsoring unit a Chinese wall between the 7 sponsorship unit and the Home Secretary as a participant 8 in any inquiry. 9 But of those resources, the key element for the 10 Inquiry was the document management system, because 11 without it, it was absolutely impossible for us to 12 process the thousands of documents that we knew would be 13 made available to us. While we could, and we did, in 14 advance prepare rule 9 letters, the letters requesting 15 individuals or corporate bodies to provide material to 16 us, it wasn't possible for us actually to send those 17 letters out and to ask for material until we were 18 confident that we had somewhere secure to receive it and 19 store it. 20 We did send out, in fact, the first rule 9 letters 21 in the spring in the anticipation that we would very 22 shortly have a working document management system. As 23 it turned out, the systems were not properly in place 24 until the summer, but in any event at the point at which 25 we sent the letters out, the COVID-19 lockdown was put</p> <p style="text-align: center;">Page 57</p>	<p>1 For these reasons, the chair has reached the 2 provisional view that the oral evidence hearing should 3 be timetabled to begin next summer, not before next 4 June. That the Inquiry will not sit in August and that 5 it will continue as needed in September 2021. 6 While the delay is not something anybody would have 7 wanted, a hearing in the summer of 2021 should give 8 everyone enough time to prepare and also enable the 9 Inquiry to determine whether in-person hearings will 10 actually be possible or whether virtual hearings have to 11 be arranged. 12 Allowing this amount of time will also allow for the 13 difficulties that the Inquiry is now bound to face in 14 seeing witnesses and obtaining material, in the light of 15 the COVID restrictions that it appears are going to 16 continue for the next few months. 17 The risk of setting an earlier date for that final 18 hearing, however tempting it may be, is that it causes 19 inconvenience to absolutely everybody if it then has to 20 be moved and the experience of other inquiries really 21 demonstrates that, because many inquiries that were 22 already up and running and had planned hearing dates had 23 to abandon those dates and move them all on until 24 restrictions seemed to be reduced or until they had 25 learnt to cope with the restrictions, with the result</p> <p style="text-align: center;">Page 59</p>
<p>1 in place. 2 That meant that many providers who would have 3 collated and disclosed documents, with whom we had been 4 in discussion and from whom we expected cooperation, had 5 to send their staff home and their access to the 6 material was lost. 7 There is also a further element which is relevant to 8 the pandemic. The Inquiry believes that it is really 9 important that the oral evidence hearings should, when 10 they take place, be in-person hearings if that can at 11 all in practice be achieved. The Inquiry has at all 12 times envisaged a timetable that will allow for such 13 hearings. 14 There is a number of reasons for this. 15 Firstly, it is likely that some witnesses will need 16 an interpreter. It is also likely that other witnesses 17 will face criticism, and others will be asked to explain 18 behaviour that just on the basis of the Panorama footage 19 looks utterly indefensible. 20 Although it is not impossible, and we recognise we 21 may have to do it, it is difficult to hear remote 22 evidence with the use of an interpreter, and it is also, 23 the Inquiry believes, very undesirable although again 24 not impossible to deal remotely with evidence that will 25 be the subject of very vigorous challenge.</p> <p style="text-align: center;">Page 58</p>	<p>1 that many people who had planned their diaries were no 2 longer able to attend them. 3 While the reality of this proposal is that it will 4 mean that any report is unlikely to be produced before 5 2022, it does seem obviously preferable to hold 6 a thorough inquiry and take the time to do it properly, 7 than to undertake a faster but less comprehensive 8 investigation. 9 Clearly one matters that has to be resolved before 10 one looks in great detail at timetable between now and 11 June 2021 is the question of the resolution of scope of 12 the Inquiry. I will come back to it in more detail, but 13 I can say at this point that the chair has decided that 14 a hearing on scope will take place on 30 November of 15 this year. 16 I will pause now to invite core participants to make 17 submissions on the proposed timetable, with a particular 18 focus on the plan to hold the substantive hearing from 19 mid-June of next year. 20 Could I turn to Ms Harrison, please? 21 MS HARRISON: On behalf of MA and others who I represent it 22 is important to put the delay in the context of the 23 legal obligations that are attendant upon an article 3 24 compliant investigation. A critical aspect of such 25 an article 3 compliant investigation is that it is</p> <p style="text-align: center;">Page 60</p>

<p>1 prompt, and it has to be a prompt response by the 2 authorities because that is recognised as being 3 essential in maintaining public confidence in the 4 adherence to the rule of law and in preventing any 5 appearance of collusion or tolerance of unlawful acts. 6 Those are words that were quoted by Mrs Justice May 7 in her judgment in the judicial review at paragraph 44. 8 We do have to put on record that three years after 9 these, what are accepted to be, appalling incidents of 10 abuse and mistreatment became public knowledge, although 11 MA himself had raised them already in a judicial 12 review -- at least some of them -- in June 2017, that we 13 are still only at these very preliminary stages of this 14 Inquiry is plainly unacceptable. We put on record, as 15 we have done in writing, that in our view there is 16 a continuing breach of the obligations under article 3. 17 That context which was in large measure a result of 18 intransigence and opposition from the Home Office to any 19 effective independent investigation does mean that the 20 Inquiry had a particular important and heavily 21 responsibility to act speedily and effectively in 22 getting this Inquiry up and running, and by admission 23 and acceptance it has failed to do so. 24 Insofar as it continues to contribute to the failure 25 to comply with the duty of promptness as an important</p> <p style="text-align: center;">Page 61</p>	<p>1 identified by the judge in the judicial review 2 proceedings, to provide to MA and others the ability to 3 confront abusers on an equal basis, and to do so 4 publicly is an important aspect of the restorative 5 function that this Inquiry can have in returning to him 6 his human dignity and self respect that was taken away 7 by the abusive treatment to which he was subject. 8 In those circumstances MA cannot disagree that we 9 have to find a timetable that is best able to 10 accommodate the ability to hold in-public hearings, and 11 in those circumstances, albeit with regret and 12 reluctance, we do not object to the timetable that is 13 proposed at the dates. 14 What we do, however, request -- and in order to 15 avoid repetition of the experience that we have had for 16 the past year -- is that there needs to be a detailed 17 timetable for steps to be taken in building up to the 18 oral hearings, so that there are regular directions and 19 hearings such as this, that we do have dates pencilled 20 in where we can for further preliminary hearings and for 21 matters relating to disclosure, provision of witness 22 lists and other preparatory matters. 23 Only that kind of involvement is going to begin to 24 remedy the deficit in core participant participation in 25 the Inquiry to date.</p> <p style="text-align: center;">Page 63</p>
<p>1 aspect of the article 3 obligation, then it, too, bears 2 responsibility. 3 We have sought, over a number of months, 4 explanation. The absence of explanation until very 5 recently has contributed to undermining the confidence 6 of MA and others in the ability of this Inquiry to 7 operate effectively and to carry out its important 8 function and the Inquiry should be under no illusions as 9 to how disappointing and dispiriting this delay and lack 10 of communication has been. 11 We see that things have begun to change, and that is 12 welcome, but it doesn't mean that the delay and lack of 13 communication was acceptable when it occurred. 14 In that context, then, we of course are concerned 15 that the Inquiry is now planning such a timetable that 16 would mean that we do not have oral hearings until June 17 of next year. 18 We recognise and we endorse, however, that it is 19 critically important that this Inquiry does do its work 20 in public in the way in which it was anticipated, public 21 hearings being a central part of the effectiveness of 22 the article 3 investigation and has a key role in terms 23 of holding public authorities and those responsible for 24 the abuse that occurred to account, to demonstrate 25 public objection to such conduct, and of course, as was</p> <p style="text-align: center;">Page 62</p>	<p>1 We have sought, on numerous occasions through 2 correspondence that was largely unanswered for many 3 months, attempts to effectively pursue a timetable that 4 was going to be both speedy and effective and have been 5 deeply concerned. Again our confidence in the Inquiry 6 to some extent undermined by the unwillingness or the 7 failure to respond to our suggestions for how progress 8 could be made. 9 We would very much hope that any timetabling that 10 takes place now is detailed and staged so that we all 11 are aware that progress is being made, and so that we 12 can have an effective contribution to how the Inquiry is 13 conducted going forward. 14 In that context, although it is not a matter that 15 the Inquiry wishes to address today, we do say effective 16 funding for the core participants is a key element of 17 making their role useful and effective, and whilst we 18 note from the correspondence that it is indicated that 19 that should be dealt with by way of written submissions, 20 in our respectful submission that's not adequate. 21 The question of effective representation and 22 effective funding for that representation is a matter, 23 as is clear from the judgment of Mrs Justice May, that 24 is an essential element of an effective article 3 25 investigation and we would ask that going forward, and</p> <p style="text-align: center;">Page 64</p>

1 on 30 November if that is a date now set aside to deal
 2 with scope, that we also have an opportunity at that
 3 point to make submissions on the way in which the
 4 question of participation, through legal representation
 5 properly funded, has been addressed so far and will be
 6 addressed in the future. In line with what
 7 timetabling -- detailed timetabling -- we hope the
 8 Inquiry will see fit to put forward, if not at least by
 9 30 November.
 10 Those are my submissions.
 11 THE INQUIRY CHAIR: Thank you, Ms Harrison.
 12 MS McGAHEY: Madam, may I invite Mr Armstrong to make
 13 submissions?
 14 MR ARMSTRONG: Yes, thank you, I will be very brief on this
 15 aspect.
 16 Can I agree again with what Ms Harrison says about
 17 the delay thus far, but emphasise not just the delay but
 18 the absence of communication about delay.
 19 Of course the pandemic circumstances are
 20 exceptional, but participation in a process is
 21 absolutely key to the fairness of a process and the
 22 feeling of fairness in a process, and the detainees in
 23 particular, but all those who we represent, need to feel
 24 that they are participating so that they can feel that
 25 they are being heard and that they are influencing. If

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1 we don't know what is going on, then they don't feel
 2 that way.
 3 I will extend that agreement with Ms Harrison to the
 4 issue of funding. I know it is not an issue for today,
 5 but it is an extremely serious issue. I do want to just
 6 sound, and sound publicly, that the participation needs
 7 to be funded. There is a great deal of frustration on
 8 our side about the absence of funding, and about the
 9 amount of time that is having to be spent, particularly
 10 by DPG and Duncan Lewis about the absence of the
 11 funding. It is taking up an enormous amount of time and
 12 we would -- and it is affecting ... it is taking up the
 13 effectiveness, it impacts on the effectiveness of it and
 14 it impacts upon the impression that those participating
 15 or wanting to participate have.
 16 We are, however, where we are. For our part we
 17 think that June 2021 is probably inevitable. For our
 18 part we are minded to agree with what has been said by
 19 Ms McGahey about the importance of in-person hearings.
 20 You will have noticed the comments in Mrs Justice May's
 21 judgment about confronting and the importance for
 22 article 3 purposes of confronting and you can't, I am
 23 afraid, do full confronting and full effective analysis
 24 of what has happened in this case in this way. It
 25 doesn't work in the same way. I think those of us who

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1 have been doing this for six months will all say the
 2 same thing. We do agree with the emphasis on in-person
 3 hearings if they can be done. We suspect June 2021 is
 4 probably inevitable for that reason.
 5 However, two points about that.
 6 Firstly, if it is going to be June 2021, it needs to
 7 be June 2021 so we would invite you to manage hard
 8 towards June 2021, in order to make sure we don't get
 9 there and then miss it.
 10 The second point is to bear in mind it does, on our
 11 limited experience so far, appear to be more likely to
 12 have hearings, bearing in mind the pandemic, in the
 13 summer than it is in the autumn. Conditions seem to be
 14 better in the summer than they are in the autumn.
 15 I just keep that in mind on the basis of our experience
 16 so far.
 17 That is all I want to say on timetabling.
 18 THE INQUIRY CHAIR: Thank you, Mr Armstrong.
 19 MS McGAHEY: Mr Jafferji?
 20 MR JAFFERJI: Thank you, madam.
 21 I again adopt the submissions made by my learned
 22 friends Ms Harrison and Mr Armstrong. I have nothing to
 23 add.
 24 MS McGAHEY: Mr Blake?
 25 MR BLAKE: Thank you.

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1 As I noted at the beginning, a great deal of work
 2 has gone into the Inquiry. The setting up of
 3 a statutory inquiry in the early stages are not simply
 4 and it may be difficult to appreciate this if you are
 5 not on the end of a disclosure request. Obviously the
 6 Home Office have been working very hard providing
 7 a great deal of documents to the Inquiry, pursuant to
 8 their request.
 9 Looking at the future, rather than the past, no
 10 doubt the Inquiry will take quite a bit of time reading
 11 the many thousands of document -- tens of thousands of
 12 pages -- that have been disclosed. In light of that and
 13 the next steps -- which are disclosure to other core
 14 participants and the taking of payments -- the timetable
 15 that has been proposed we think is realistic.
 16 As far as the November hearing is concerned, I would
 17 ask the Inquiry considers the dates of core participant
 18 availability, and that 30 November is not necessarily
 19 fixed without at least some consideration of
 20 accommodating as many people as possible, if at all
 21 possible.
 22 I have no further submissions to make. Thank you.
 23 MS McGAHEY: Mr Isenberg.
 24 MR ISENBERG: Thank you.
 25 I would just like to echo Mr Blake's submissions in

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1 terms of the hard work that has been done so far, both
 2 by the Inquiry's own staff as well as those managing
 3 document production both by the Home Office and also by
 4 G4S. Counsel to the Inquiry has already noted the large
 5 volume of documentation that has been produced and a lot
 6 of kind of hard work and hours has gone into that.
 7 In terms of next steps going forward, you will have
 8 seen from our written mission submissions that we agree
 9 that next summer, summer 2021, is the appropriate time
 10 for oral hearings. In fact given the recent
 11 announcements in terms of the move towards more
 12 pandemic-related restrictions and what may come over the
 13 coming months, perhaps starting later in early July
 14 rather than mid-June, albeit a small adjustment, may
 15 build in a little bit more breathing space into the
 16 timetable in light of possible coronavirus restrictions,
 17 but we agree that summer 2021 is the appropriate time
 18 for oral hearings.
 19 I have no further submissions to make on the point.
 20 THE INQUIRY CHAIR: Thank you.
 21 MS McGAHEY: Mr Bunting?
 22 MR BUNTING: Madam, thank you for the update. The BBC has
 23 no submissions on this point.
 24 MS McGAHEY: Ms Dobbin?
 25 MS DOBBIN: Madam, we have no submissions or observations to

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1 make either, thank you.
 2 MS McGAHEY: And Mr Dixey?
 3 MR DIXEY: Madam, likewise no submissions.
 4 MS HARRISON: Could I just make one comment about the date?
 5 I would echo what Mr Blake says, I know from my own
 6 diary, I have been reminded by Ms Luh, that in fact
 7 I have a commitment on 30 November that I know that
 8 I will not be able to get out of. It is a Supreme Court
 9 appeal.
 10 I think that that will be necessary to liaise,
 11 although, ultimately, it is obviously important that we
 12 get dates into people's diaries as soon as we can.
 13 Can I just remind the Inquiry that it was the
 14 position that this Inquiry would be concluded within
 15 12 months. So all evidence would have been taken within
 16 6 months and the Inquiry would have itself have
 17 concluded in 12 months, when we are now told that all
 18 reasonable steps have been taken and there has been
 19 cooperation. That clearly could not sit with the idea
 20 that this was going to be resolved within 12 months,
 21 which is what was the indication when the Inquiry was
 22 announced.
 23 MS McGAHEY: Madam, dealing with the point just raised by
 24 Ms Harrison, my own view is that 12 months would have
 25 been quite extraordinarily optimistic had there been no

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1 pandemic and even no delays, simply bearing in mind the
 2 volume of documentation and the number of witnesses who
 3 might be involved in this Inquiry.
 4 On the question of the date, certainly the Inquiry
 5 is more than willing to liaise with core participants.
 6 My suggestion would be that the Inquiry puts forward,
 7 within the next day or so, the early part of next week,
 8 a number of dates and we would ask people to get back to
 9 us by the end of next week.
 10 I will explain now a little more about the Inquiry's
 11 proposals in relation to the scope of the Inquiry, which
 12 will explain to the participants why we came to the date
 13 that we did.
 14 Detailed written submissions have been made about
 15 the scope of the Inquiry by a number of core
 16 participants. It was obvious to everybody that there
 17 was not going to be enough time to deal with those this
 18 afternoon.
 19 Also, it was clearly preferable that the chair
 20 should determine any extant applications for core
 21 participant status before receiving submissions on
 22 scope, because it is a key issue and it is obviously
 23 really important that anyone who is going to be a core
 24 participant, whether individual or an organisation,
 25 should have the opportunity to make submissions on the

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1 issue.
 2 Therefore, anybody who is granted core participant
 3 status as a result of the applications made today needs
 4 to be in a position to make submissions on scope.
 5 The reasons for suggesting 30 November was that the
 6 Inquiry worked on this proposed timetable. Madam, the
 7 dates I am about to give are the ones that I would
 8 invite you to direct be followed.
 9 First of all, the existing core participants make
 10 submissions on experts by 9 October. That does mean,
 11 and is very likely to mean, any core participant who is
 12 made a core participant after today's hearing will not
 13 be able to comply with that timetable. There may be
 14 some flexibility there.
 15 The chair will then make decisions on today's core
 16 participant applications by 9 October. Those
 17 submissions have a relevance to the issue of the legal
 18 representation of SR, KK and IA.
 19 I would invite the chair to direct that any further
 20 submissions on that issue by SR, KK and IA should be
 21 made by 16 October.
 22 That, madam, you then make a decision on
 23 representation by 23 October.
 24 Written submissions on scope, the interpretation of
 25 the terms of reference, should then be made by all core

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<p>1 participants by 9 November, with the proposal for 2 a hearing on scope on 30 November.</p> <p>3 As I have indicated, the Inquiry is willing to be 4 flexible on that date, but it is unlikely it can be 5 moved very much further forward, because all core 6 participants and indeed Counsel to the Inquiry need the 7 opportunity to consider their submissions, make them, 8 and for those written submissions to be taken into 9 account before a hearing takes place.</p> <p>10 Madam, the only outstanding issue now for this 11 afternoon's hearing is the renewed application for core 12 participant status. I am very conscious of the time, 13 and also of the fact that many participants to this 14 hearing do not need to be involved in these 15 applications.</p> <p>16 Of course, everybody who is currently on the Zoom 17 call or watching on YouTube is more than welcome to stay 18 to listen. This is a public hearing. My proposal would 19 be, madam, that you make the rulings on the dates that 20 I have indicated and that we then take a short break of 21 perhaps ten minutes.</p> <p>22 Anybody who wishes to leave the call can then do so. 23 Then, after the break, you hear applications for core 24 participant status from Bail for Immigration Detainees, 25 Detention Action, INQUEST and Medical Justice. If it</p> <p style="text-align: center;">Page 73</p>	<p>1 that have been made. It remains just to say thank you 2 very much for those who are going to be leaving the call 3 at this point, and we shall reconvene at 4.15. 4 Thank you very much. 5 (3.59 pm) 6 (A short break) 7 (4.18 pm) 8 THE INQUIRY CHAIR: Welcome back, everybody. 9 Let's dive straight back into it. If I could ask 10 you, Ms McGahey, to turn to our third item, which is the 11 renewed applications for core participant status, 12 please. 13 MS MCGAHEY: Thank you, madam. 14 First, I should correct something I said earlier. 15 I said that the Home Office was represented by Mr Dixey. 16 The Home Office, of course, is represented this 17 afternoon by Mr Blake and Ms Wilsdon, Mr Dixey 18 represents the IMB. 19 Madam, may I ask you to turn to the last item to the 20 agenda which is the renewed application for core 21 participant status from four applicants. Mr Armstrong 22 represents the first three, so may I invite him to make 23 the first submissions? 24 Application for Core Participant Status on behalf of Bail 25 for Immigration Detainees, Detention Action and Inquest.</p> <p style="text-align: center;">Page 75</p>
<p>1 assists people in the management of their timings this 2 afternoon, it is anticipated that we will need about an 3 hour and a half to deal with those applications. This 4 hearing should finish in the region of 5.30 tonight, or 5 a little bit later.</p> <p>6 THE INQUIRY CHAIR: Very well.</p> <p>7 Thank you, Ms McGahey, I am very happy to rule on 8 those dates. As you suggest, that sounds very sensible. 9 I also suggest that we will confirm those dates. 10 I will ask the Solicitor to the Inquiry, Ellis Pinnell, 11 to circulate confirmation of those dates to core 12 participants at the beginning of next week.</p> <p>13 As you said, very happy to have conversations to try 14 and ensure that we can meet people's availability as 15 much as is possible, but, as you say, I think doing it 16 before 30 November will not be possible, so we will seek 17 to do it as soon after that as we can.</p> <p>18 I suggest, as you say, that we now take a 15-minute 19 break so that we reconvene at 4.15. Anybody who does 20 not wish to continue to participate on the call in 21 respect of the core participant applications can take 22 that opportunity to leave.</p> <p>23 Thank you all very much for the submissions that 24 I have heard so far at this hearing. I want to reassure 25 you that I will carefully consider all of the points</p> <p style="text-align: center;">Page 74</p>	<p>1 MR ARMSTRONG: Thank you, Ms McGahey. 2 Chair, I am going to try to be short about this. 3 I know there has already been extensive written 4 submissions, I adopt all of those. 5 I am obviously representing BID, Detention Action 6 and INQUEST. I know that all three of them are 7 well known to you, I am going to assume quite a high 8 degree of knowledge about the background and it is all 9 set out in writing in any event. I am going to address 10 them in that order, but before I do, can I just make 11 some general points. 12 One is just on the law. I know you know what it is, 13 but just by way of emphasis, the purpose of rule 5 is to 14 allow those directly concerned with or intimately 15 involved with the work of the Inquiry to participate 16 effectively -- I emphasise effectively -- and assist you 17 in your Inquiry. That is what they are all three 18 seeking to do. 19 The way rule 5 breaks that down is as alternatives. 20 You have those with a direct and significant role to the 21 matters. The direct and significant role obviously 22 heightens that threshold slightly, but there is then, 23 which relates to the matters. That obviously softens it 24 again. My submission is that it is not high threshold. 25 But then you have the alternative B, which is</p> <p style="text-align: center;">Page 76</p>

<p>1 "significant interest". You have accepted that all 2 three of them have a significant interest in the 3 relevant matters for the purposes of today. So they are 4 all within rule 5. The question then is the exercise of 5 your, I accept broad, discretion. I am inviting you to 6 exercise it in their favour for the following reasons. 7 Making another general point that applies to all 8 three of them, because they work in the area, and 9 because they have worked in the area for a long time, 10 they have seen system developments, reform efforts and 11 problems that have emerged over many years. They have 12 seen what works, they have seen what does not work, they 13 have their own understanding and insight into why 14 immigration detention and the systemic issues within it 15 can give rise to abuse and mistreatment. 16 And "this is what is happening" and "this is why we 17 think it is happening" is right at the heart of what you 18 are trying to do with this Inquiry. That's very 19 important, because it is not even slightly peripheral 20 to it. It is right at the core. 21 We say you should hear that insight direct from 22 them. 23 We know that you say, and we recognise that you say, 24 part of your response to that point is that you can do 25 it another way. You don't need to be a core</p> <p style="text-align: center;">Page 77</p>	<p>1 was said" or, "The context of that needs to be 2 understood". 3 I am not in reading a set of papers or DPG is not 4 when they are reading a set of papers necessarily going 5 to know that that is something that they have relevant 6 evidence to give. You need BID themselves or Detention 7 Action themselves to be reading that and saying, "all 8 right, we have something to say about that". Even if 9 DPG or whoever does pick it, they can't do anything 10 about it, because if they are not a core participant it 11 can't be shared with them, because we are all subject to 12 confidentiality undertakings. There is an immediate 13 practical problem with all this. It just doesn't work 14 in the same way. They may well have things to say, we 15 may not know what those things are to say until they say 16 it, and even if we do, we can't do anything about it. 17 That's the real problem with just asking them to 18 give a witness statement, rather than be a core 19 participant. 20 I also emphasise that the involvement of those 21 organisations is all the more important when you may not 22 have as many detainees as one might have hoped to have. 23 We are dealing with a relatively short period of time, 24 we don't know how many of them are going to be traceable 25 or contactable or who will play a part. We have a very</p> <p style="text-align: center;">Page 79</p>
<p>1 participant, you can get evidence and they can provide 2 evidence. You said that expressly in relation to BID 3 and Detention Action in particular. 4 Can I just say, with respect, what the difficulty 5 with that point is, which is that if you want them to 6 participate and participate effectively to provide 7 evidence in which you are interested, then they need to 8 know what the other interest is in order to respond 9 to it. They need to know what other core participants 10 are saying, and they need to know -- they may need to go 11 and prepare, they may need to go and consider things, 12 and they cannot effectively do that without being a core 13 participant. 14 The obvious reasons are the confidentiality 15 undertakings that exist. If there is a possibility in 16 theory that somebody like -- somebody within, for 17 example, the legal team of which I am a part, would be 18 looking at material and go, "I wonder if INQUEST, or 19 whoever has something to say about that?" 20 Firstly, that depends upon us picking it up and we 21 do not know, obviously, all that INQUEST, Detention 22 Action and BID know about something. If we are looking 23 at something and there is some Home Office material 24 about what is said in the meeting, BID might say, "Hang 25 on a minute, I was in that meeting and something else</p> <p style="text-align: center;">Page 78</p>	<p>1 small number as core participants at the moment, which 2 will make those other sources all the more important. 3 I also emphasise this, if I am right and there is 4 an upside to having them involved in that way because 5 they might pick up important things that would otherwise 6 not be picked up, and which will help you, the 7 consequence of this is not to make this an unmanageable 8 inquiry, to not have lots of duplication of work, 9 because there are firstly only three of them, as far as 10 I am concerned, and four before you today in total. 11 That is not a large number of organisations. 12 Secondly, as you can see, there is commonality of 13 representation. 14 It is all going to be within the same number of 15 representatives, that's even before you, yourself, or 16 Counsel to the Inquiry controls the questions that are 17 being asked or controls the way things are being put in 18 et cetera, et cetera. 19 There is a significant upside to having them as core 20 participants rather than as mere witnesses, and no real 21 downside in terms of the manageability of the Inquiry, 22 is that submission. 23 The final general point I just want to make is my 24 learned friend for the Home Office has put in the case 25 of EA, which is the EA in the Manchester Inquiry case.</p> <p style="text-align: center;">Page 80</p>

<p>1 I will come back to that if I need to, but it is not 2 a case that helps in relation to this case. It is 3 a case about the people who survived the tragedy in 4 Manchester and whether they could compel core 5 participant status via article 2 of the Convention. 6 That nobody in this case -- certainly I am not 7 suggesting that there is an article 2 or 3 compulsion to 8 make these organisations core participants. None of 9 that helps. As it happens, the EA case is all obiter in 10 any event. In relation to the domestic law provisions 11 in the construction of section 5, all it says is that in 12 the particular context of the Manchester case it was 13 rational for the Inquiry to come to the conclusion that 14 it did. It does not give you any guidance on how you 15 should exercise your discretion in the circumstances of 16 this case. 17 I am saying you should exercise your discretion in 18 the way that we say for the reasons that we give. You 19 are not going to get any resistance from me that there 20 is a broad discretion, it is just about the way that 21 broad discretion ought to be exercised. 22 Those are my general points. Can I now make some 23 more specific points and take them in order? 24 First, BID. You know who they are. They are 25 an important NGO. They have detailed knowledge, they</p> <p style="text-align: center;">Page 81</p>	<p>1 Kate Lampard Inquiry that is given by GDWG. You know, 2 and I think is a genuine concern of yours, is the 3 particular culture that operates within the centre and 4 why it wasn't operating in a way that could prevent this 5 from happening and allow safeguards to work. So why 6 weren't people -- some of that is going to be around 7 things like professional ethics. 8 Why is it that a nurse does not do anything when 9 asked to make notes in a particular way? 10 Why is it that the IMB stands by where GDWG is 11 making -- on the face of it -- perfectly sensible 12 suggestions about doing things differently? 13 What is it about the culture? What is it that 14 influences that culture. 15 You are going to have to reach findings of fact 16 about what the culture was, was it an appropriate 17 culture if it was not appropriate, what caused it, what 18 can be done about it. 19 A key bit of that is what GDWG say about their 20 experience of dealing with G4S in particular, saying, 21 "We are making these representations, we made these 22 suggestions, look at the response we get". 23 The submission that will be developed from that is 24 this is not an organisation that certainly at the time 25 was interested in being reflective and learning and</p> <p style="text-align: center;">Page 83</p>
<p>1 have detailed knowledge of detainees, detention, the 2 conditions in which they are held, et cetera, et cetera. 3 They have obtained that over many years, and that goes 4 back to my point about they may well be in a position to 5 say, hang on a minute, that's been considered before, 6 that was raised in a meeting, the Home Office response 7 to that at the time was this, it was done in 8 a particular way and this is why it was done in 9 a particular way and if it had been done in a different 10 way the outcome might have been different. 11 That's clear general relevance stuff, which might 12 well be helpful to understand that. Particularly if one 13 of the other core participants, like the Home Office, is 14 putting in particular evidence about previous reform 15 efforts. 16 I would also add this. They are, as you know -- and 17 you can see in the submissions -- one of two NGOs, the 18 other one being GDWG, who is a core participant, who are 19 present in the centre. That means that they may well 20 have specific evidence to give. I just want to make 21 this point in general terms in our written submissions 22 and I just want to develop it slightly. 23 They gave evidence to the Kate Lampard Inquiry, they 24 gave helpful evidence to the Kate Lampard Inquiry. But 25 they are also referred to in the evidence in the</p> <p style="text-align: center;">Page 82</p>	<p>1 thinking that things could be done differently. 2 That's an absolutely key issue for you, that's why 3 GDWG are in, but BID should be in too, because if you 4 look at, for example -- firstly, will they say the same 5 thing about G4S? Is their experience the same as G4S's 6 about whether or not this is a learning organisation? 7 That's clearly important. 8 No doubt G4S will put in their own evidence against 9 GDWG and you will want to hear from BID as to whether 10 their experience was the same. That is absolutely 11 direct evidence that you will need to hear. 12 You can see -- I am not going to pull it up, but if 13 you look at paragraph 14.25 for example of the Lampard 14 final report -- that is GDWG giving evidence about BID's 15 involvement in all of that, and the way BID are working 16 there too. Yes, the Lampard Inquiry has a slightly 17 different focus and slightly different terms of 18 reference to you, but on both of those inquiries, the 19 substance of it is the same. It is absolutely key 20 evidence, it is about what the culture was and why it 21 was the way it was. You have another organisation that 22 can give evidence about that and it goes right to the 23 heart. 24 For that specific reason, as well as the general 25 reason about previous reform efforts and what has been</p> <p style="text-align: center;">Page 84</p>

<p>1 happening ever many years, we say that BID is absolutely 2 appropriate to be in as a core participant in order to 3 assist you and properly respond to evidence as it 4 emerges. 5 Unless I can assist you further in relation to BID, 6 I will move on to Detention Action. 7 Detention Action also, you say, paragraph 13 to 14 8 of your decision, share the significant interest. Your 9 concern about Detention Action was, as I understood, 10 that they were not at Brook House, unlike BID. 11 The answer to that, I suggest, is the answer that 12 you gave in your opening statement this morning, which 13 is that the focus of this Inquiry is Brook House, but it 14 can't be a wholly local focus, because the arrangements 15 and the policies that are applied at Brook House are 16 very largely national. That is what Detention Action 17 knows about. 18 You can see from the written submission the extent 19 of the work that Detention Action have done. It is 20 proper, it is extensive, it is thorough, it has involved 21 bringing some of the most significant pieces of 22 litigation in this area, it is extensive experience of 23 dealing with detainees who are subject to it, and 24 they're going to bring a particular perspective about 25 how does ACDT work on the ground, how does rule 35 work</p> <p style="text-align: center;">Page 85</p>	<p>1 discretion in favour of them. That's all I want to say. 2 I am going to virtually turn behind me in a moment to 3 see if anybody wants me to add anything. I am in touch 4 with my team through the wonders of WhatsApp and if they 5 have anything they want me to add, then no doubt they 6 will tell me. 7 Otherwise that will take me to INQUEST. 8 My key point about INQUEST -- I know again from your 9 work at the PPO you will know INQUEST particularly 10 well -- is again it is pulling in the experience, and 11 saying, "Hang on a minute, this has been explored in 12 a different way or looked at in a different way". What 13 they will know about is deaths in custody, including 14 deaths in custody in the immigration estate. 15 We want -- INQUEST wants -- to be able to say, if 16 you are examining something about the medical 17 arrangements in a particular case, they will say hang on 18 a moment, this has come up before. This is what the 19 evidence was in that other case, this is what the 20 response to that was, this is what the PPO said about 21 this, this is what the prevention of future death report 22 was from the Coroner and this is what happened in 23 response. 24 Understanding that there was, for example, 25 a previous attempt to do something about it, and that</p> <p style="text-align: center;">Page 87</p>
<p>1 on the ground, how are the medical arrangements being 2 experienced on the ground, how is commissioning working 3 or the safeguarding systems working on the ground. 4 Detention Action have very intense, very thoughtful, 5 very insightful experience about those, on the national 6 level, and how they are being applied across the board, 7 including at Brook House. 8 That is evidence which goes right to the core of it. 9 It is evidence we think you will be interested in. They 10 are involved in the reform efforts, they may well want 11 to respond to other things that are being said. They 12 might want to say something like -- I don't know, we 13 have not gone into the exercise yet, this is at early 14 stages -- "Hang on a minute, the position that the 15 Home Office took in relation to that issue was different 16 to the position it took in a piece of litigation with 17 which we were involved". 18 If that was the case, that would be absolutely 19 critical and unless one of the lawyers involved happens 20 to know -- that would only be by chance -- you won't get 21 that very significant piece of information. But because 22 of Detention Action's extensive involvement in that kind 23 of work and that kind of litigation, they are uniquely, 24 we say, in a position to help. 25 That's why we say you should exercise your</p> <p style="text-align: center;">Page 86</p>	<p>1 was perhaps not followed, or perhaps it was followed but 2 not in a particular way, or perhaps somebody decided 3 that they were going to do something slightly different, 4 that would be worthwhile you picking up and 5 understanding so that you can see that these things have 6 been tried before and what was said about them before. 7 I mentioned in some of my earlier remarks the case 8 of Prince Fosu. That is in our written submissions, it 9 happens to be a recent inquest of particular 10 significance, but INQUEST happen to know about it. That 11 is an example of what they could do, because there will 12 be lots of other examples, which are not as recent or 13 perhaps not as high profile, which say, "There is work 14 here, there is thinking here, you could benefit from 15 that". 16 One of the issues that came out of Fosu, for 17 example, was about the use and the recruitment and the 18 problems that arose from the use of locum GPs. Firstly, 19 the fact that they were locum GPs and, secondly, the way 20 they were inducted. 21 We would like to know. You might get into 22 a position in this Inquiry where understanding the 23 frequency with which locum GPs are using and what the 24 implications of that are for the way a detention centre 25 is operated is going to be useful for you to know and to</p> <p style="text-align: center;">Page 88</p>

<p>1 say, "Hang on, what seemed to be happening there, is 2 something like that happening here". 3 As it happens, Fosu follows on from an earlier 4 inquest, which was the inquest into a man called 5 Brian Dalrymple, where very similar problems arose but 6 which was not fully explored because they didn't realise 7 the extent of the problem. I know that Ms McGahey knows 8 about that case, because both she and I were in it, and 9 Fosu is the subsequent case to that which shows in fact 10 the problems are much more widespread than I think 11 anybody in the Dalrymple case four or five years earlier 12 ever realised. That is what we need to give the 13 opportunity to happen in this Inquiry. 14 Is this in fact something that has been happening 15 a while? Is the problem deeper than anybody realised at 16 the time? This is the opportunity for us to get to the 17 bottom of it. What was the learning, what was the 18 thinking, what was the insight on that earlier occasion? 19 The difficulty with it really is if INQUEST are not 20 in and able to see things coming through as they are 21 coming through, it is not easy to see, except by chance 22 because somebody involved in the Inquiry happens to have 23 been involved in one of those cases ... it is not easy 24 to see how else you are going to get that material. It 25 is potentially very valuable. It is potentially</p> <p style="text-align: center;">Page 89</p>	<p>1 anything else they would like him to say? We could 2 always switch our microphones and videos off, if that 3 would be helpful. 4 THE INQUIRY CHAIR: I am very happy to do so. 5 MR ARMSTRONG: Thank you. 6 I am hoping someone would have shouted at me, if 7 that was the case. I can see someone is typing, if 8 I can just take a moment. 9 THE INQUIRY CHAIR: We will give you a moment. 10 MR ARMSTRONG: I am being told that is fine. If I suddenly 11 get something I might put my hand up. But I think I am 12 okay. 13 Thank you, Chair. 14 Thank you, Ms McGahey. 15 MS MCGAHEY: In that case, may I invite Ms Harrison to 16 address you on the core participant application of 17 Medical Justice. 18 Application for Core Participation Status on behalf of 19 Medical Justice 20 MS HARRISON: Before I begin, I need to apologise for having 21 a chorus of dogs in the background. I wasn't aware 22 myself but I have had text messages saying you need to 23 do something about them. If they do it again, I am 24 afraid they is very little that I can actually do, 25 because they are outside and it is when people come.</p> <p style="text-align: center;">Page 91</p>
<p>1 extremely valuable. 2 For the reasons I have said about the way it is 3 being managed and about the way it can be managed by 4 your Inquiry but also managed by the commonality of 5 representation, it is difficult to see what the downside 6 is. 7 They have valuable things to say, they are within 8 rule 5 in principle, there is no real downside to having 9 it done in this way and there is that considerable 10 upside. For all of those reasons, we say the core 11 participant status ought to be extended to at all three. 12 I would also note that Deborah Coles of INQUEST is 13 on the independent advisory panel in relation to deaths 14 in custody, and therefore has that sort of overarching 15 interest and awareness of what is happening at a very 16 high level which also is something you may well benefit 17 from. 18 Those are my submissions in relation to all three. 19 Unless you have any questions about any of that, then 20 that's all I have to say. 21 THE INQUIRY CHAIR: Thank you very much. That is very 22 helpful, Mr Armstrong. 23 MR ARMSTRONG: Thank you. 24 MS MCGAHEY: Madam, I don't know whether Mr Armstrong would 25 like a moment or two to see whether his clients have</p> <p style="text-align: center;">Page 90</p>	<p>1 I apologise for that. 2 THE INQUIRY CHAIR: No problem. 3 MS HARRISON: That is one of the consequences of being at 4 home doing the day job. 5 Can I just say, before I begin my submissions, 6 because we have made some additional material available 7 to the Inquiry recently, I just want to make sure that 8 it is before you and you have considered it. 9 Because it was in part in response to both the 10 Counsel to the Inquiry's note and other information that 11 had been provided from the Inquiry that we provided 12 a witness statement with a table of information held by 13 Medical Justice on its databases of a cohort of 14 individuals who were detained during the relevant 15 period, so I hope you have had an opportunity to 16 consider that. 17 THE INQUIRY CHAIR: I have it to hand. Thank you, yes. 18 MS HARRISON: In addition, because we were concerned about 19 constraints on time, we have also provided you with some 20 other additional submissions that I will refer you, to 21 but only briefly, which again I hope you will have 22 an opportunity to read at your leisure. 23 THE INQUIRY CHAIR: Thank you, yes. I have those too. 24 MS HARRISON: I am grateful. 25 Turning to the basis upon which the application for</p> <p style="text-align: center;">Page 92</p>

<p>1 Medical Justice to be granted core participant status 2 was indicated was going to be refused, like the 3 situation with the other three NGOs, the Inquiry accepts 4 that Medical Justice does have a role and an interest in 5 the subject matter of the Inquiry, but that it is not 6 a sufficiently direct or significant interest falling 7 within rule 5.1A or, again, under 5.1B, that whilst 8 there is an interest, it is not sufficient. 9 As we have set out in our submissions, we 10 respectfully submit that the Inquiry has fundamentally 11 failed to recognise and to proceed upon the basis that 12 in fact Medical Justice in the many ways in which it has 13 been engaged directly through its casework, through its 14 policy and lobbying work, and through its research and 15 monitoring of practices and participation in a variety 16 of other forums, both statutory and informal, does in 17 fact have a direct and substantial interest in the 18 subject matter of the Inquiry. 19 That error, which, we respectfully submit, clearly 20 underpins the indication of how discretion will be 21 exercised is wrong and needs to be reviewed. We say 22 that because we have identified -- I don't think this is 23 disputed -- that when one looks at the terms of 24 reference of the Inquiry, it is quite plain that Medical 25 Justice has direct material from a number of sources</p> <p style="text-align: center;">Page 93</p>	<p>1 When one looks at the material that was provided to 2 the Inquiry, each and every one of those key factors 3 Medical Justice has direct knowledge, both in terms of 4 what happens on the ground, as well as knowledge of the 5 institutional practice and culture of individuals at the 6 IRC, including directly at Brook House IRC, and also 7 Home Office officials at a high level who have been 8 responsible for some time in overseeing and implementing 9 policy. 10 When it then comes to the second aspect that you 11 identified in your opening statement, the adequacy of 12 safeguards, again that is a key matter that Medical 13 Justice has direct information and evidence that it can 14 provide, on the recording and the monitoring of use of 15 force, the oversight mechanisms, it having direct 16 discussion and liaison with Her Majesty's Chief 17 Inspector, as well as with other key bodies like the 18 IMB. 19 In terms of 3 and 4, which as you have indicated in 20 this hearing are of particular importance and are going 21 to be of especial importance when it comes to going 22 forward, and in light of the delay that there has been, 23 looking at what changes have been made and are those 24 changes adequate, I want to develop that a little bit 25 further because it is not something that we have</p> <p style="text-align: center;">Page 95</p>
<p>1 relevant to each of the six key areas that have been 2 identified, in particular numbers 2, 3, 4 and 5, which 3 concern the question of methods, policies and practices 4 and how they may have caused or contributed to the 5 identified mistreatment. 6 The issues of clinical care and how they have 7 contributed to identified mistreatment, and what could 8 be done to assist in recurrence. 9 Their experience goes directly to core terms of the 10 Inquiry. When one then looks at the opening statement 11 that you gave, and identified in more detail the sorts 12 of factors that were going to be at the heart of the 13 Inquiry -- I take that from page 29 of the bundle that 14 was put together by DPG. It is from your opening 15 statement, a list of matters which we say Medical 16 Justice clearly have first-hand direct knowledge of. 17 That includes the staff management and culture at 18 Brook House. It clearly includes the assessment of 19 vulnerability, the relevance of rule 35 and rule 34 and 20 the Adults at Risk policy. It is clearly relevant to 21 the extent and suitability of the specialist mental 22 health provision, control and restraint techniques, use 23 of measures to deal with non-compliance, use of 24 segregation, management of self harm, food refusal, 25 management of healthcare staff.</p> <p style="text-align: center;">Page 94</p>	<p>1 specifically focused on, but there is material that's 2 clear where we can provide vital input on those issues. 3 Can I then deal with why we say, contrary to what 4 appears to be the assumption of the Inquiry that we have 5 no direct first-hand experience of Brook House -- I hope 6 that in addition to the submissions that we made, the 7 witness statement with the table of information that 8 Medical Justice have been able to extract from its 9 database, confirms what we have said in principle as 10 part of our submissions that Medical Justice through its 11 casework facility, which is a central part of the 12 service that it's been providing over a significant 13 number of years through its casework staff and also 14 through its volunteer doctors, as you will have seen 15 from the table, has direct communication with all 16 detainees who were referred to them. 17 It includes not simply referral, but also emotional 18 support and arrangement of medicolegal reports, but 19 critically through direct communication with detainees 20 present during the period. 21 As well as follow up through engagement with Brook 22 House, as you will see in a number of the boxes. It is 23 not simply concerned with the information that is 24 obtained, results in engagement with Brook House IRC, 25 and also with IRC medical staff. You will see that</p> <p style="text-align: center;">Page 96</p>

<p>1 referred to in a number of the boxes. 2 In terms of being present and communicating directly 3 with relevant officials and staff at Brook House, 4 Medical Justice will be able to provide you with 5 a first-hand account of that information. 6 As you can see, when it comes to even a very summary 7 preliminary analysis of the information that they 8 currently hold, it is evident that Medical Justice will 9 be able to provide detailed granular information about 10 many of those key aspects of the detainee experience. 11 Whether that is the incidence of serious mental illness 12 which is not properly identified and/or treated, the 13 management of the risk of self harm and suicide, the use 14 of force, the response of healthcare departments, the 15 response of the Home Office caseworkers, the 16 effectiveness of the safeguards, all of those matters 17 which you have set out clearly on a number of occasions 18 now and repeated that are going to be key to your 19 ability to (a) find facts as to what the detainee 20 experience was, as well as to understand why the 21 mechanisms for both safeguarding and protecting the 22 interests of vulnerable detainees did not work, you have 23 to start from the premise that contrary to what appears 24 to be the understanding in the "minded to refuse" 25 letter, Medical Justice will be a body who has first</p> <p style="text-align: center;">Page 97</p>	<p>1 Inquiry finds itself in, in part because of the timing 2 in which you are now seeking to obtain detainee 3 experience, that having not been secured at an earlier 4 stage. 5 It is a matter that is of grave concern, it is 6 something that on behalf of Mr MA we have been raising 7 for some time with the Inquiry. That there is a real 8 danger that key material from detainees themselves will 9 not be captured by the Inquiry and will not be 10 available. There is obviously going to be a cohort of 11 relevant people who have been removed. There will be 12 others who can't be contacted, and there will be 13 a number of others who, for reasons that Ms McGahey has 14 set out, will be very reluctant and concerned to be 15 approached by the Inquiry to participate. 16 Some of those critical obstacles that the Inquiry 17 faces, in terms of obtaining what it accepts and quite 18 properly treats as material that should be at the heart 19 of the investigation, can be provided by Medical Justice 20 from its existing casework and from its ability to be 21 able to approach potential detainees from this cohort of 22 people that they have already identified, and can do so 23 from a position -- unlike, as the Inquiry accepts -- the 24 position of existing trust, but also with the ability to 25 provide support to individuals if they were to consider</p> <p style="text-align: center;">Page 99</p>
<p>1 hand material to provide to the Inquiry. 2 That will be both its caseworkers and its staff, as 3 well as the number of doctors who have physically 4 attended the detention centre and prepared detailed 5 medicolegal reports. 6 We would suggest that it would not be appropriate 7 simply for each one of those doctors to be the source of 8 information. Certainly they will have information, but 9 the doctor themselves will not be in a position to 10 assist the Inquiry with understanding the context, both 11 in terms of the Home Office casework context, the 12 decision making, the failures of the safeguards. They 13 will be able to identify the diagnosis that's been made, 14 and also they would be able to identify the impact of 15 detention, but in terms of understanding the systemic 16 failures that explain the reasons why vulnerable people 17 remain in detention when they shouldn't be and aren't 18 released, that will require critically the involvement 19 of Medical Justice to analyse the significance of that 20 material. 21 We say that Medical Justice did have a direct role. 22 It is going to be, we respectfully submit, a critical 23 direct role, because it is evident from the information 24 that's been provided by the Counsel to the Inquiry that 25 there is a fundamental potential difficulty that the</p> <p style="text-align: center;">Page 98</p>	<p>1 that they wanted to provide their evidence. 2 Of course we can't give guarantees about what we can 3 do. We have taken the preliminary steps in terms of 4 identifying what is in our database to illustrate to the 5 Inquiry how critically important this material can be. 6 But we say without the ability to be participating in 7 the Inquiry as a core participant rather than a more 8 passive witness, we simply will not be able to have the 9 effective role in securing for the Inquiry this key 10 material of detainee experience. 11 In any event, even if there are detainees who are 12 going to be captured through the Inquiry's approach, 13 Medical Justice itself has a first-hand experience that 14 would not just give you the raw account of what it was 15 like to be at Brook House, they will be able to do so 16 informed from a uniquely experienced organisation that 17 has an ability to provide the Inquiry with the full 18 picture of how the detainee experience does fit within 19 the context of the practices of officials within the 20 detention centre, within the practice of healthcare 21 staff, who Medical Justice has direct communications 22 with, as well as an understanding -- a deep 23 understanding -- of Home Office casework practices and 24 their role in terms of decision making, in enforcing and 25 the safeguards.</p> <p style="text-align: center;">Page 100</p>

<p>1 It will be an ability to both present and to 2 understand the detainee experience from the context of 3 its systemic position, and what we are confident will be 4 able to be demonstrated, systemic failure. 5 That's our first-hand knowledge of detainee 6 experience that we can bring to bear. We think it is 7 also important for the Inquiry when it comes to 8 considering systemic issues to also have first-hand 9 information from those who have, as Medical Justice have 10 done, been participating for over 15 years in extensive 11 meetings and communication as part of regular 12 stakeholder meetings or consultations with Home Office 13 officials. 14 It is going to be important to understand there the 15 institutional culture and practices that arise in the 16 Home Office itself, as the body ultimately responsible 17 for the way in which these detention centres are run. 18 Medical Justice, through having worked directly with key 19 civil servants -- who you will see have in fact been in 20 place over very many numbers of years -- the same key 21 civil servants overseeing this process have been in 22 regular contact with Medical Justice, and Medical 23 Justice will be able to provide to the Inquiry 24 a detailed first-hand account of how these officials 25 respond both to their evidence which they have provided</p> <p style="text-align: center;">Page 101</p>	<p>1 aspect of the Home Office's response to the Shaw review 2 and the widespread evidence of failure in respect of 3 vulnerable adults in detention. 4 If you look at paragraph 18 of our application, 5 which is on page 6 of our bundle, under the heading 6 "Policy, advocacy and legal reform". 7 As we say, Medical Justice is a key stakeholder in 8 Home Office discussion and meetings. 9 In recent times, following 2017, it has played 10 a proactive role in meetings with the Home Office and in 11 discussions over changes that need to be made to the 12 Adults at Risk policy. That has meant that in that 13 period Medical Justice has brought both important 14 strategic litigation, demonstrating that the adults at 15 risk policy is was fundamentally flawed in seeking to 16 limit the definition of torture, and also conducted two 17 investigations into the treatment of vulnerable adults 18 producing two reports setting out the failures in the 19 adults at risk policy and the impact of those failures. 20 Those two reports are dated 2018 and 2019. They are 21 referred to at paragraph 16, "Putting Adults at Risk" is 22 the 2018 one, and "Failure to Protect from Harm of 23 Immigration Detention" is 2019. 24 So Medical Justice has already begun the task of 25 identifying why the response of the Home Office has not</p> <p style="text-align: center;">Page 103</p>
<p>1 over a number of years through detailed casework 2 research of abuse covering, and failure covering, many 3 of the topics that the Inquiry is going to investigate, 4 as well as critical legal cases, both on individual and 5 systemic bases. 6 How the Home Office responds to the many pressures 7 that they have faced to remedy the clear deficits in the 8 law and practice at these facilities is going to be 9 a critically important part of (a) identifying any 10 systemic causes for the abuse, but also obviously key 11 for identifying lessons to be learned and whether 12 changes that are proposed are going to be adequate. 13 If I can just refer you in respect of those two 14 important parts of the Inquiry that you have identified, 15 both in the context of what the situation was in 2017, 16 but also crucially how there has been a response. 17 In that regard, Medical Justice, we would 18 respectfully submit, is in the best position to be able 19 to assist the Inquiry. 20 If you consider the application that we made, 21 a number of paragraphs are relevant for considering the 22 information and insight that Medical Justice will be 23 able to provide. 24 Clearly it is apparent that the adults at risk 25 policy, its formulation and implementation is a key</p> <p style="text-align: center;">Page 102</p>	<p>1 been adequate, either to the previous Shaw reports and 2 following the exposure of the abusive practices by 3 Panorama. 4 That is ongoing work that they do on a regular 5 basis, so they also have more material, updated 6 material, that will be directly relevant to the question 7 of what changes have been made and whether they are 8 adequate in respect of a key policy, which is the Adults 9 at Risk policy; but underlying that will also be 10 material about the effectiveness of rule 35 and other 11 safeguards. 12 So in that respect, there will be key information 13 and insight that Medical Justice can provide. 14 We have set out in some greater detail for your 15 information, at 24 and 25, about their role in response 16 to the failures of the Adults at Risk policy. Then if 17 I could ask you then to look at paragraphs 36 and 37. 18 you will see that it has had -- and continues to have -- 19 ongoing roles in relation to issues concerned with the 20 management of mental health risk and clinical care in 21 detention as a member of the Refugee and Asylum forum 22 and the Adults At Risk forum. 23 In particular, it is providing bespoke training for 24 the Care Quality Commission, which is the independent 25 regulator of health and social care, in 2009, concerning</p> <p style="text-align: center;">Page 104</p>

<p>1 rule 35. It is not clear to me whether the NHS or other 2 relevant health bodies have been approached to 3 participate, or certainly there is no indication that 4 they have core participant status, but clearly the role 5 of the NHS is important in healthcare issues, and it is 6 Medical Justice that are providing bespoke training to 7 the regulatory body, the Care Quality Commission. 8 In addition to that, if you go to paragraph 52 of 9 the document, you will see that it is also having 10 regular ad hoc meetings, and has done so since 2017, 11 with the Deputy Head of Health and Justice at 12 NHS England to provide information concerning their 13 clinical casework on behalf of detainees. It is the 14 body registered to engage in consultation concerning the 15 NHS's health needs assessment at the Heathrow IRCs, and 16 it is attending workshops and advising both Public 17 Health England and the Home Office on draft standards 18 and feedback on clinical practice for their casework, 19 and to provide policy analysis of the draft standards 20 document. 21 So that is clear, direct, institutional information, 22 directly relevant to the questions relating to clinical 23 care, and we say puts Medical Justice clearly in the 24 situation of an organisation that has significant 25 interest in the outcome, and ability to provide this</p> <p style="text-align: center;">Page 105</p>	<p>1 We also would wish to emphasise, because it seemed 2 to be the focus of the "minded to refuse" letter, that 3 it is clearly not limited to clinical matters. It 4 covers, clearly, very extensive experience in relation 5 to clinical matters, but as you will have seen from the 6 submissions, and also in particular when one considers 7 the information that we have provided in the table, 8 Medical Justice's information and ability to provide 9 analysis covers not just clinical treatment but the 10 methods of use of force, constraint, segregation, 11 management of self harm and suicide, as key aspects that 12 are obviously going to be critically important to 13 understanding the ill-treatment of MA and why it 14 happened, as well as clearly detailed knowledge of the 15 systemic failures with regard to safeguards. 16 It would also be right to say that Medical Justice 17 does have, through its direct communication and liaison, 18 information about the complaints system. It has done 19 reports in the past about the inadequacy of the 20 complaints system, it has regular communications with 21 Her Majesty's Chief Inspector, it is in communication 22 with the IMB -- so those oversight bodies -- which again 23 is an important aspect of understanding why this abuse 24 occurred and wasn't identified except through undercover 25 reporting. Medical Justice will be able to provide</p> <p style="text-align: center;">Page 107</p>
<p>1 Inquiry with key insights and information. 2 That role with the NHS and the Care Quality 3 Commission also reflects the fact that Medical Justice 4 is heavily involved with the professional organisations, 5 the Royal College of Psychiatrists, and the BMA, and the 6 Faculty of Forensic and Legal medicine at the Royal 7 College of Physicians. Those roles allow it to bring to 8 bear extensive evidence and information across the whole 9 gamut of expertise relevant to the Inquiry. 10 We accept that the Inquiry is going to obtain its 11 own clinical expertise from Dr Cohen, if she's approved, 12 and we would suggest from a psychiatrist. However, that 13 will not be a substitute for an organisation like 14 Medical Justice that has detailed first-hand knowledge, 15 is an active participant in seeking to expose failure in 16 practice across a number of areas, and seeking actively 17 and proactively to remedy it and provide solutions. 18 It would simply be a gross omission, we would 19 respectfully submit, for them not to be a core 20 participant in this Inquiry, and would substantially 21 undermine the Inquiry's ability to find full facts in 22 terms of detainee experience, the systemic issues and in 23 making findings which are key for lesson learning. 24 That's why we say that Medical Justice has a direct and 25 substantial interest.</p> <p style="text-align: center;">Page 106</p>	<p>1 insight about the operation of those organisations and 2 the limits that they have in terms of their ability -- 3 or have had -- to scrutinise and hold to account and 4 expose what was happening in the detention centres. 5 That comes, I think, to the other major reason why 6 the Inquiry concluded that it would be minded not to 7 grant CP status to Medical Justice, and that was the 8 suggestion that being a witness would be adequate and 9 would be sufficient. 10 We have sought to explain in our written submissions 11 why being a passive witness is not going to be effective 12 and is not going to be sufficient to ensure that all of 13 the information and insight that Medical Justice has can 14 be utilised by the Inquiry. 15 Mr Armstrong sought to illustrate how having a role 16 as a CP for the other NGOs would be of assistance to the 17 Inquiry. That plainly applies in the context of Medical 18 Justice, both because it would be able to provide 19 rebuttal evidence from accounts and evidence that is 20 given by the public authorities, by the Home Office and 21 G4S, which would assist the Inquiry in ensuring that it 22 conducts what Mrs Justice May indicated needed to be 23 a rigorous and forensic examination, and that would be 24 first-hand material in response to evidence that the 25 Home Office and/or G4S provides to the Inquiry.</p> <p style="text-align: center;">Page 108</p>

<p>1 It would also permit them to assist with identifying 2 and providing detainee material. It simply can't be 3 expected to do that if our role is as a witness. We 4 would have to have a proactive role and engagement with 5 the Inquiry if we were going to provide the further 6 detail that is clearly going to be available from what 7 is evident in the table; and we would be in a position 8 to suggest lines of inquiry and further documents to the 9 Inquiry.</p> <p>10 One point that I think it is important to make from 11 the Counsel to the Inquiry's written submissions is that 12 it is intended to obtain the documentary evidence from 13 the Home Office of those detainees who were held during 14 that period and who are identified on the video. But 15 what is absolutely apparent and clear -- and I hope it 16 is at least indicated in the table -- is that without 17 knowledge of how this system operates in practice and 18 with the kind of experience that Medical Justice has, 19 then simply obtaining the documents will not begin to 20 provide the Inquiry with useful information and 21 insightful information.</p> <p>22 What is evident from working in this field -- and 23 certainly Medical Justice will be able to provide you 24 with evidence of that -- is often what is missing from 25 the documents is as important as what is in the</p> <p style="text-align: center;">Page 109</p>	<p>1 given by the Home Office or other public authorities.</p> <p>2 We say it will be a major missed opportunity if this 3 Inquiry does not permit a mechanism whereby those who 4 are most informed about how this system operates and how 5 abuse occurs do not have an active role, and that is the 6 NGOs.</p> <p>7 We say from the position of expertise across the 8 spectrum, in particular with medical expertise, then 9 Medical Justice is the obvious organisation to have that 10 role. We would say that that also does apply to the 11 others in the way that Mr Armstrong has submitted, but 12 ultimately the inability and the exclusion of an 13 organisation like Medical Justice from having 14 a proactive role in this Inquiry, we respectfully 15 submit, risks similar failures in the previous 16 investigations being replicated.</p> <p>17 Finally, then, the other observation that was made 18 was that there is an NGO already given core participant 19 status. You have obviously stated in writing that that 20 can't be a basis for saying that other NGOs -- and 21 obviously in particular Medical Justice -- should not 22 also be awarded core participant status.</p> <p>23 We respectfully submit that the reasons that it was 24 granted for the Gatwick Detainee Support Group equally 25 applies to Medical Justice, when you now have the much</p> <p style="text-align: center;">Page 111</p>
<p>1 documents. One has to be alive to the fact that there 2 is a clear pattern where healthcare records and other 3 records are inadequate, don't reveal the key material, 4 where that material may be found through other documents 5 that it is known through experience that the Home Office 6 holds, all of those detailed insights will be lost to 7 the Inquiry if Medical Justice's role is simply that of 8 a witness. We say that it will be a deficit in the 9 Inquiry's ability to provide the sort of rigorous 10 scrutiny and forensic examination that has been absent 11 from the previous inquiries, which has been accepted by 12 Mr Shaw both in his role as the PPO and in the two Shaw 13 reviews.</p> <p>14 One has to ask the question why it is that those 15 investigations -- as is now readily accepted -- into 16 abuse of a similar kind did not result in lessons being 17 learnt, getting to the bottom of why this abuse was 18 occurring and lessons being learnt.</p> <p>19 In our respectful submission -- certainly it is the 20 experience of Medical Justice -- a critical failure is 21 the fact that there is, in truth, a parallel process 22 that takes place where the Home Office gives their 23 account and the NGOs, who assist detainees and 24 experience the process from a different perspective, are 25 never in a position to challenge the account that is</p> <p style="text-align: center;">Page 110</p>	<p>1 more informed information from its casework files as to 2 the fact that it was, through its staff and through its 3 doctors, an active participant on the ground in the 4 detention centre in respect of a significant number of 5 individuals who are in the category of key detainees who 6 the Inquiry wishes to obtain information about.</p> <p>7 Clearly, its expertise and knowledge goes much wider 8 than the detainee group for the reasons that I have 9 sought to develop, and which go directly to the heart of 10 a number of key matters that the Inquiry is going to 11 cover.</p> <p>12 So for all those reasons, we submit that you should 13 review your decision and remake it, and conclude that 14 Medical Justice is not only an appropriate core 15 participant, but in fact will have a vital role to play 16 in ensuring that the Inquiry's tasks in obtaining the 17 detainee experience, in understanding the systemic 18 failures, identifying if change has taken place and its 19 adequacy, in all those key respects Medical Justice is 20 the organisation that can provide effective assistance 21 to the Inquiry from an independent perspective based on 22 many years of detailed work and experience.</p> <p>23 I may just need to double-check whether there is 24 anything that I have missed.</p> <p>25 THE INQUIRY CHAIR: Absolutely.</p> <p style="text-align: center;">Page 112</p>

<p>1 Do take a moment to do so. 2 (Pause) 3 MS HARRISON: I think the only point that I would want to 4 emphasise from the additional submissions that we made, 5 is that if it is of assistance to the Inquiry, we 6 provided details of other investigations where there 7 were multiple NGOs who were considered to be able to 8 provide direct material, even in circumstances where 9 there were individual core participants. 10 The two examples we gave at paragraph 15 of the 11 judgment was the Infected Blood Inquiry, where nine 12 charities have been granted core participant status, and 13 in particular in terms of the context, if you look at 14 the Independent Inquiry into Child Sex Abuse, that has 15 two NGOs, 1, Child Redress International, and, 2, Every 16 Child Protected Against Trafficking. Those are 17 organisations similar to Medical Justice that have 18 a role in providing information, and have contributed to 19 policy work. 20 So there clearly is precedent for multiple NGOs to 21 be able to contribute to inquiries such as this. 22 THE INQUIRY CHAIR: Thank you, Ms Harrison. 23 Did you want to take a moment to check whether you 24 have any further instructions from your client? 25 MS McGAHEY: I can do that.</p> <p style="text-align: center;">Page 113</p>	<p>1 just remains for me to say thank you to all of you for 2 your attendance and contributions this afternoon, 3 particularly as so many people have managed to remain on 4 the call and we have gone on late into a Friday 5 afternoon. 6 Thank you all very much. 7 (5.24 pm) 8 (The hearing concluded) 9 I N D E X 10 Opening remarks1 11 Update on the Inquiry's Progress9 12 Application for Core Participant75 Status on behalf of Bail for 13 Immigration Detainees, Detention Action and Inquest. 14 Application for Core Participation91 15 Status on behalf of Medical Justice 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">Page 115</p>
<p>1 THE INQUIRY CHAIR: Okay. We will pause for a moment for 2 that. 3 (Pause) 4 MS HARRISON: No, those are all the submissions that I have. 5 Thank you very much. 6 THE INQUIRY CHAIR: Thank you. 7 MS McGAHEY: Madam, that concludes all the agenda items for 8 this afternoon's hearing. I am very conscious of the 9 time, and also the fact that some people have left the 10 call. I don't think it will be possible or fair to 11 invite submissions on any other business or anything not 12 raised on the agenda. 13 We have a hearing now either on 30 November or 14 a date close to that. It may be that any other matters 15 that cannot be resolved between now and then in 16 correspondence can be raised there. 17 THE INQUIRY CHAIR: Thank you, Ms McGahey. 18 I am very grateful to each counsel for the 19 submissions on behalf of their clients. I would like to 20 reassure you that I have listened very carefully to 21 everything that has been said this afternoon. I will 22 take a great deal of time and careful consideration to 23 make sure that I reflect on those points. Thank you, 24 all. 25 As Ms McGahey says, that concludes our agenda. It</p> <p style="text-align: center;">Page 114</p>	

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