

BROOK HOUSE INQUIRY

PRELIMINARY HEARING 14 DECEMBER 2020

NOTE FROM COUNSEL TO THE INQUIRY

Update

1. An update will be provided at the hearing on the Inquiry's evidence gathering and other procedural issues.

The scope of the Inquiry

2. This is the principal issue to be addressed at the hearing on 14 December 2020. The Inquiry has received submissions on the issue from the majority of Core Participants.
3. The Terms of Reference are, obviously, the starting point for any consideration of scope. The ToR make clear that the Inquiry is to investigate mistreatment shown on *Panorama* and, more broadly, to identify any mistreatment that occurred at Brook House between April and August 2017.
4. There is common ground in the submissions made by the Core Participants. In particular, there appears to be general agreement with the proposition put forward by BB and GDWG that "*an effective inquiry needs to remain flexible, and go where the evidence takes it*"¹. The Core Participants recognise that the evidence may lead the Inquiry to a consideration of practices, policies and procedures applicable at national level, and not just at Brook House.
5. The key difference between the Core Participants appears to lie in the approach that they contend should be taken to issues arising outside Brook House and/or outside the period of the ToR [1 April to 31 August 2017]. There are essentially two views:

¹ Para. 24, submissions of 11 September 2020

- (i) The Inquiry should examine wider issues (such as, for example, breaches by the Home Office or its contractors of detention policy in other IRCs, or the correctness of the initial decision to detain an individual) because they form the background to, and may be relevant to an understanding of, the underlying causes for mistreatment at Brook House in the relevant period; or
 - (ii) The Inquiry’s starting point should be the investigation of individual instances of mistreatment in the relevant period, and the Inquiry should then “track back” from those instances to find the underlying causes.
6. The submissions of MA, the Reverend Ward, Medical Justice, SR, KK, BB and GDWG² are largely consistent. They submit that:
- (a) There is nothing in the ToR that limits the consideration of “*methods, practices and management*” to those operated locally at Brook House;
 - (b) An effective investigation contemplates the consideration of law, policy, practice and institutional culture that cannot be limited to Brook House; “*where it is relevant*”, the Inquiry should investigate national methods, policies and practices;
 - (c) The Inquiry should investigate not simply local or managerial causes for what went wrong, but wider policy causes; and
 - (d) By way of example, the Inquiry should investigate breaches by the Home Office and its contractors of Rules 34 and 35 of the Detention Centre Rules 2001 “*over many years*” in order properly to understand any failings in this respect at Brook House;
 - (e) The Inquiry should investigate the connection between the Home Office’s power to detain for long and indefinite periods and any mistreatment.
7. More specifically, Medical Justice, SR and KK submit that the Inquiry should investigate:
- (i) the attitude that the Home Office and its contractors have taken to external scrutiny of their conduct (at Brook House and elsewhere);
 - (ii) The Home Office’s “*persistent non-compliance*” over the years with its own detention policies and procedures, and with equality duties; and

² The principal submissions of BB and GDWG on scope are found in their submissions dated 11 September 2020

- (iii) *“the repeated patterns of mistreatment amounting to treatment of an Article 3 threshold that [had] taken place at Brook House for nearly a decade”* up to 2017.
8. Both MA and BB have previously submitted lengthy and detailed Lists of Issues that they contend the Chair should adopt. It will be a matter for the Chair to determine whether she wishes at this stage to specify the scope of the Inquiry at such a level of detail.
9. The Home Office supports the Chair’s expressed intention to focus principally on the treatment and mistreatment of detainees following their arrival at Brook House. The Home Office submits that:
- (i) the Inquiry should concentrate on those issues that flow directly from the investigation into identified mistreatment;
 - (ii) the mistreatment in question is defined in the ToR and includes only incidents that occurred between 1 April and 31 August 2017.
10. The Home Office agrees with the Chair’s initial view that it is not for the current Inquiry to consider immigration policy more widely. The Home Office supports the List of Issues set out in the Note from the Chair of 14 August 2020, but submits that the list should be kept under review, and that issues that turn out to be irrelevant should be discarded.
11. G4S in their submissions emphasise that the ToR permit the Inquiry to investigate only any mistreatment that reaches the high threshold of a breach of Article 3. G4S, like the Home Office, submit that the starting point must be the consideration of individual instances of alleged mistreatment.
12. G4S agree that the Inquiry should examine any changes to policies and procedures made since August 2017, since such an examination is necessary to inform any recommendations that the Chair might make. G4S contend, however, that the Inquiry should consider the adequacy of those changes *“by reference to what the Inquiry considers is appropriate to remedy any defects, and not pursuant to an additional assessment of their effectiveness in practice.”*

13. Counsel to the Inquiry respectfully submits that the Chair might be assisted by further oral submission from G4S on this issue. It is not clear to CtI how the Inquiry should assess whether a change is “*is appropriate to remedy any defects*” without considering whether that change has actually worked in practice.
14. The IMB and HMIP have made no substantive submissions on scope. No submissions on any issue have been received from the BBC.
15. The Chair is invited to rule on the scope of the Inquiry. In addition or in the alternative, she may wish to set out in general terms the approach that she will take to her investigation and, in particular, which (if either) of the two approaches summarised at paragraph 5 above she intends to adopt.

Timetable

16. Counsel to the Inquiry can confirm that the Inquiry’s current intention is to commence its oral hearings on 14 June 2021.

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7 December 2020