

NOTICE OF DETERMINATION  
CORE PARTICIPANT APPLICATION – DETENTION ACTION

---

1. The Brook House Inquiry was announced by the Secretary of State for the Home Department on 5 November 2019. In my opening statement on 21 April 2020, I formally invited those who wished to be considered for Core Participant status to submit a written application. A deadline was set for 19 May 2020.
2. I received a written application from Detention Action for Core Participant status dated 13 May 2020. I issued a provisional determination on that application on 14 August 2020, in which I indicated that I was minded to refuse the application. Detention Action, at my invitation, submitted a renewed application on 11 September 2020 which was supplemented by an oral submission at a preliminary hearing on 25 September 2020.

**Application**

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

***“Core participants***

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

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

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

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

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

4. The application to designate Detention Action as a Core Participant can be summarised as follows. Detention Action submits that it meets the criterion provided by Rule 5(2)(b) because it has a significant interest in an important aspect of the matters to which the inquiry relates.
  
5. Regarding (b), Detention Action submits that the organisation plays a “*central role in assisting, supporting and speaking on behalf of current and former detainees, including those subjected to mistreatment and abuse in immigration detention, Detention Action has a significant interest in all of the matters identified in the Inquiry’s Terms of Reference. In particular, as an organisation committed to the well-being of those detained within IRCs and to exposing the harm that is caused to detainees by detention, Detention Action has a significant interest in ensuring (a) that the mistreatment of detainees is robustly investigated and fully identified by this Inquiry, (b) that the Inquiry identifies how and why such mistreatment occurred, and, crucially, (c) that the Inquiry helps to prevent the mistreatment of detainees in future.*

*Through its work and extensive contact with current and former detainees, Detention Action has a significant interest in ensuring that detainee accounts are placed at the heart*

*of the Inquiry. Detention Action can assist the Inquiry in ensuring that this occurs, in line with the Chair's opening statement.*

*Detention Action has extensive experience in informing reviews and reports into immigration detention and formulating constructive, forward-looking proposals and recommendations to prevent abuse and improve detainee welfare. Detention Action is therefore well-placed to assist the Inquiry in identifying key recommendations to prevent future abuse and mistreatment within the immigration detention estate and has a significant interest in doing so.'*

### **Renewed application**

6. In Detention Action's renewed application of 11 September, which they supplemented in oral submissions at the hearing on 25 September, they make the following key points:
  - i. Detention Action has a broad understanding of detainee welfare which '*...is likely to be critical to identifying why detainees were abused at Brook House and how such abuse was allowed to continue*';
  - ii. Detention Action considers that '*As a national NGO with experience of systematic issues arising in immigration detention, drawing on its engagement with detainees across the immigration estate, DA has a distinct role and interest that is not less than others who have been granted CP status...*';
  - iii. Detention Action is concerned by the fact that there are currently only five detainee Core Participants and that only one NGO "from a detainee perspective" has been designated a Core Participant. It asserts that the small number of detainees means that its "*direct interaction with detainees across the UK's IRCs and through Freed Voices is a compelling reason for*

*granting CP status to* it. It also argues that the existence of just one NGO, when considered alongside a higher number of corporate Core Participants, *'does not immediately inspire confidence in victims and the wider public'*. Detention Action suggests that designating it as a Core Participant may redress what it considers to be an imbalance.

## **Decision**

7. I have considered Detention Action's application, renewed application and related oral submissions in line with my approach as set out below. I am refusing the application for the following reasons.
8. This Inquiry's terms of reference relate to the experiences of detainees at Brook House in the relevant period. I intend to hear, as far as possible, directly from those detainees who can be identified and are willing to share their experiences with the Inquiry.
9. Where an NGO can, for example, provide first-hand insights not available from those detained, it may well be appropriate that such an organisation is designated as a core participant. There are, of course, other bases on which an NGO might appropriately be a Core Participant, but such a close connection to the subject matter of the Inquiry would be highly relevant. The approach I have taken is to determine NGO Core Participant applications on the basis of the specificity of their experience of, and involvement in, the relevant events at Brook House.
10. As Chair, I am required by rule 5(2) to consider the specific statutory tests set out above. I should emphasise, though, that an applicant who meets one or more of those tests will not necessarily be designated a Core Participant. Conversely, an applicant who does not meet any of those tests may have some other good reason for being designated a Core

Participant. The work of NGOs may mean that their applications for CP status in public inquiries do not always fit readily into the statutory tests. NGOs will tend to be neither alleged victims nor alleged perpetrators, and they will often not be at risk of criticism. Their work may not relate squarely to the matters under investigation. The statutory tests may therefore not be as easy to apply to NGO applications as they are to many other CP applications. In approaching the applications for Core Participant status from NGOs, I have applied the relevant statutory tests, and in doing so I have considered the following matters:

- i. The proximity of the organisation's role or remit to the Inquiry Terms of Reference;
- ii. The extent and nature of its insights into events at Brook House and/or relevant systemic or structural issues.

11. I have also considered the following:

- i. Whether the applicant's proposed contribution as a CP could *as effectively or more effectively* be made by another organisation or individual/s;
- ii. Whether the applicant needs CP status in order to participate properly in the Inquiry, or whether the applicant could contribute effectively through the provision of written and/or oral evidence;
- iii. Whether it might be appropriate to reconsider the application at a later stage of the Inquiry, if it is not appropriate to grant CP status now.

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

12. I have noted that the application references that Detention Action "*...works to support people in immigration detention and to campaign for reform of immigration detention*

*policy in the UK. Detention Action has been supporting people detained since 1993 and therefore has a wealth of direct and highly relevant experience within IRCs before, during and since the relevant period for this Inquiry. The charity supports detainees held at Harmondsworth, Colnbrook and Morton Hall Immigration Removal Centres (IRCs), the Sahara Unit for women at Colnbrook IRC and those held under immigration powers in London prisons.*

*As a consequence of supporting detainees in all these different detention settings, Detention Action can provide evidence of aspects of the detention experience which are common to all IRCs, regardless of location.”*

13. The application submitted on Detention Action’s behalf also states that the organisation’s focus is upon *“working constructively towards reform of detention, to achieve change that is substantial but also realistic and... finding and... supporting practical alternatives to detention”*.
14. I accept that this means that Detention Action has an interest in the experience of immigration detention insofar as it informs the organisation’s advocacy and policy work. However, its interest is a broad one relating to policy and detainee welfare. Its interest is not specific to Brook House or, even more importantly, to the mistreatment of detainees at Brook House. The focus of this Inquiry is specifically the mistreatment experienced by Brook House detainees during the period of 1 April 2017 and 31 August 2017 (the *“relevant period”*).
15. Detention Action did not have a presence in Brook House during this time. This factor is not, of course, determinative of its application, but it is relevant when I come to consider the extent of Detention Action’s interest in the subject matter of the Inquiry. Detention Action has a broad interest in, and knowledge of, detainee welfare and the systemic

issues arising from detention in IRCs. These wider issues will be relevant to the Inquiry, insofar as they inform the Inquiry's investigation into mistreatment of individuals between April and August 2017. Detention Action does not assert that it was aware of any such mistreatment at Brook House at the relevant time. In my view, Detention Action's underlying interest in preventing mistreatment across the detained estate, and in supporting victims of abuse, does not amount to a sufficient interest in the specific mistreatment that I am required to investigate to satisfy the statutory test.

16. The test under rule 5(2)(b) is, of course, only one factor that I take into account. I consider that it is likely that Detention Action does have an interest in matters to which the Inquiry relates. I also accept that it is likely that the organisation does have a specific interest in systemic issues that impact the immigration detention estate more broadly, some of which may be relevant to the events at Brook House in 2017. However, in considering Detention Action's application in its entirety, it is my view that its interest is not sufficient to justify its status as a Core Participant at this stage.

### **Other factors**

#### **The role of others as Core Participants**

17. I have concluded that there are other Core Participants who have a more direct and greater role and interest in the Inquiry's ToR. Of most relevance in this context, is that there are detainee Core Participants who can speak directly of mistreatment at Brook House in the relevant period, and there are two NGOs with more direct knowledge of the matters that the Inquiry is investigating. As indicated below, the Inquiry is endeavouring to contact former detainees and those efforts will continue.

18. I accept entirely that the number of Core Participants is not finite, and that it would be open to me to grant Core Participant status to any number of applicants. However, it seems appropriate for me to bear in mind the interests and perspectives of existing Core Participants as part of my consideration of this application. I recognise that the perspectives of each Core Participant and applicant are unlikely to align fully, but it is possible to identify common threads. There are others who, to use Detention Action’s phrase in its renewal submissions, have a “*detainee perspective*”. In my view, Detention Action has less direct involvement in the matters covered by the ToR than do existing Core Participants. These are factors that I take into account when considering whether the Inquiry would be assisted by Detention Action having the status of a Core Participant.
19. Detention Action argues that at the moment a number of State and corporate organisations have CP status, but only one NGO from a detainee perspective<sup>1</sup>. It argues that this “*does not immediately inspire confidence in victims and the wider public*” and that, to the extent that CP numbers are relevant, they favour the grant of CP status to Detention Action. The applicant also highlights the fact that there are currently only five individual detainee Core Participants.
20. It seems to me that this focus on numbers is misplaced. The number of Core Participants and their specific interests will vary according to the nature of the particular public inquiry. As Detention Action has pointed out, other inquiries have hundreds of CPs. By way of example, the Grenfell Tower Inquiry website indicates that it has 568 individual Core Participants and 70 institutional ones. What is important in any inquiry is that those with the closest and most significant links to the subject matter, and who wish to participate, are able to do so as Core Participants.

---

<sup>1</sup> This assertion was correct at the time that Detention Action made its submissions. A further NGO has now been granted Core Participant status.



### The provision of evidence by the Applicant

21. I have considered the description of Detention Action's role in relation to the organisation's direct interactions with detainees, as articulated in the application submitted on their behalf:

*“Support for detainees is holistic, covering a large range of issues that arise, and is provided for periods ranging from a few days to several years. Often casework concerns several complex issues and can be intensive, involving speaking with a detainee several times in the course of the day. Advice and assistance is provided on issues such as access to medical and mental health provision, rule 35 medical reports, support for disabled detainees, access to lawyers, segregation, the use of control and restraint, assault on removal, racism and abusive behaviour by IRC staff, bail accommodation and post release support.”*

22. Detention Action may well have relevant evidence to give to the Inquiry, particularly on issues relating to my recommendations. But it does not need to be a Core Participant in order to give that evidence.
23. I have considered how best to hear about events at Brook House from those who experienced them directly, and therefore to ensure that there are meaningful opportunities for those individuals to be heard. It appears likely that NGOs with existing relationships with former or current detainees will be able to play a role in identifying those individuals and, if the NGOs and individuals so wish, supporting those individuals to participate in the Inquiry. However, Detention Action does not need to be a Core Participant in order to provide support to detainee witnesses. The Inquiry has begun the process of locating former detainees who were detained at Brook House during the relevant period. If it becomes evident that specific detainees do not wish to speak

directly to the Inquiry, I will consider alternative methods through which their experiences could be heard.

24. I intend to ask Detention Action to provide written evidence and may well in due course seek oral evidence from one or more of its staff. However, I cannot agree with Detention Action's submission that it requires Core Participant status in order to make a meaningful contribution. Detention Action asserts that it needs, among other things, to be able to respond to the submissions and evidence of other Core Participants, and that in order to make an informed and constructive contribution it requires the level of disclosure to which only Core Participants are entitled. In my view, this submission reflects a lack of understanding of the role of a witness in this Inquiry. As I have stated, it is my intention that witness statements will, insofar as is practical, be taken by Inquiry staff. The Inquiry will itself identify the issues on which it will seek evidence. When seeking that evidence, the Inquiry will provide to the potential witness the evidence in the Inquiry's possession that the Inquiry considers relevant to the questions being asked of the witness. Detention Action will, therefore, have access to all the material that the Inquiry believes it needs in order to provide meaningful evidence.
25. Further, Detention Action will of course be entitled to attend live hearings or follow live-streamed hearings. It will be able to view submissions and evidence made public on the Inquiry's website. But this is not litigation, and the Inquiry does not have an adversarial process. Neither Core Participants nor witnesses will be invited or required to respond as they choose to all material disclosed to them or made publicly available. It is very important that the Inquiry's focus is maintained on its Terms of Reference.

26. It is my view that Detention Action can contribute to the Inquiry by providing witness evidence and, if appropriate, support to detainees, and that its effective participation does not require it to have Core Participant status.

Later consideration of an application for Core Participant status

27. Detention Action's role in providing evidence to the Inquiry is an important one, and I welcome its input into the Inquiry. The Inquiry will be sending a written request for evidence from Detention Action, under Rule 9 of the Inquiry Rules.
28. I do not consider at this stage that Detention Action should be designated a Core Participant. This is, however, a matter that I would be willing to revisit if appropriate.

**Kate Eves**  
**Chair to the Brook House Inquiry**  
**9 October 2020**