

NOTICE OF DETERMINATION
CORE PARTICIPANT APPLICATION - INQUEST

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 INQUEST for Core Participant status dated 19 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. INQUEST, at my invitation, submitted a renewed application on 11 September which was supplemented by oral submissions 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 submitted by INQUEST on 19 May 2020 for designation as a Core Participant can be summarised as follows. INQUEST 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. INQUEST submits that it has a “*significant interest*” in matters raised by the Inquiry because ‘*We represent and support families in most inquests into deaths in custodial settings, including numerous high profile and contentious deaths involving State and corporate responsibility. INQUEST has worked with numerous families whose loved ones have suffered inhuman and degrading treatment and died in immigration detention. As well as having direct involvement in these tragic cases, we are usually aware of the facts of those who have died in immigration detention even where we are not directly involved*’.
6. INQUEST further submits that the organisation has ‘*a deep and evidence-based knowledge of how deaths in the immigration detention estate represent the culmination of the inhuman and degrading treatment of those held in those conditions; such deaths represent the end of a highly concerning spectrum of dehumanisation, lack of accountability, neglect and abuse.*’

Renewed application

7. In INQUEST’s renewed application of 11 September 2020, which they supplemented in oral submissions at the hearing on 25 September, they make the following key points:
 - i. the organisation ‘...has a wealth of experience in considering the monitoring and enforcement failures, and understanding how and why monitoring bodies fail to prevent abuse and deaths in custodial environments.’;
 - ii. INQUEST considers that it is able to provide a ‘deep well of knowledge and experience about the systemic issues that lead to the inhuman treatment and death of those who are detained...’;
 - iii. INQUEST 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 existence of just one NGO Core Participant, when considered alongside a higher number of corporate Core Participants, ‘does not inspire confidence in victims and the wider public’. INQUEST suggests that designating it as a Core Participant may redress what they consider to be an imbalance.

Decision

8. I have considered INQUEST’s application, renewed application and related oral submissions in line with the approach set out below. I am refusing the application for the following reasons.
9. 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.

10. 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.

11. 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.

12. 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

13. I have noted that INQUEST's application states that: *'Our specialist casework includes deaths in police and prison custody, immigration detention, mental health settings and deaths involving multiagency failings or where wider issues of state and corporate accountability are in question. Drawing from its experience and expertise, INQUEST will provide the Inquiry with evidence on state related deaths and in particular on deaths in immigration detention. These deaths are the end of a continuum of inhuman and degrading treatment, such as the mistreatment revealed to be occurring at Brook House between April and August 2017, and so we will speak to many of the systemic issues that the Inquiry is concerned with.'*

14. I have also noted that INQUEST's renewed application refers to their knowledge of *'monitoring and enforcement failures, and understanding how and why monitoring bodies fail to prevent abuse and deaths in custodial environments.'*

15. I consider that it is likely that INQUEST does have an interest in matters to which the Inquiry relates. I also accept that INQUEST is likely to have a specific interest in systemic issues that may cause or contribute to mistreatment.

16. The mistreatment shown on the *Panorama* footage, and other alleged mistreatment that the Inquiry will investigate, may or may not be part of a continuum of mistreatment that in other circumstances has led to death. But this Inquiry is focused clearly on the mistreatment of specific individuals, none of which (at least on my present state of knowledge) has led to death. As far as is currently known, INQUEST has had no involvement of any sort with the detainees who, between April and August 2017, are alleged to have been subjected to mistreatment, or with the management of Brook House during that time. INQUEST's interest is of a more general nature relating to systemic issues within the detention system. I accept that this is an interest relevant to the Inquiry's Terms of Reference, and the Inquiry will be grateful to receive evidence from INQUEST on these issues in due course. However, in considering INQUEST's application in its entirety, my view is that I do not consider that this interest is sufficient to justify its designation 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 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 adopt the phrase used by INQUEST, have a *“detainee perspective”*. To the extent that the alignment between INQUEST’s perspective and that of other CPs may be limited, that reflects the fact that INQUEST’s own interest in the issues arising from the ToR is itself limited. That is made clear by INQUEST’s renewal submissions, which state that INQUEST’s contribution to the Inquiry would stem from *“its experience of systemic issues arising from deaths in immigration detention, drawing on its support for the families of those who have died in IRCs”*. There are clearly other Core Participants with more direct interests in, and knowledge of, the relevant mistreatment at Brook House and systemic issues relating to it. This is only one element in my decision-making, but it is a factor that I take into account when considering whether the Inquiry would be assisted by INQUEST having the status of a Core Participant.

19. INQUEST argues that at the moment a number of State and corporate organisations have CP status, but only one NGO from a detainee perspective¹. 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 INQUEST. INQUEST also highlights the fact that there are currently only five individual detainee Core Participants.

¹ This assertion was correct at the time that INQUEST made its submissions. A further NGO has now been granted Core Participant status.

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 INQUEST 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.

The provision of evidence by the Applicant

21. I turn now to the information provided in INQUEST's application relating to the specific evidence it suggests that it might provide. INQUEST's application states the following: *'Based on our experience working on these cases, INQUEST can assist the Inquiry to identify the recurring themes that return again and again with fatal consequences. Simply put, we are able to see where matters have come up before. That might be a systems problem that has previously been identified. It might be a piece of evidence that is inconsistent with what has gone (or been said) before. It might concern something that has come up before and where the State's monitoring mechanisms – the PPO, the inspectors, or a coroner – has secured a promise to deal with it or improve it, yet the Inquiry evidence suggests that has not happened.'*
22. Point six of the Inquiry's terms of reference (ToR) include a requirement to assess 'the adequacy of the complaints and monitoring mechanisms provided by Home Office Immigration Enforcement and external bodies (including, but not limited to, the centre's independent monitoring board and statutory role of Her Majesty's Inspectorate of Prisons) in respect of any identified mistreatment'.

23. INQUEST's thematic work may indeed be informative with regard to repeat recommendation or findings of investigations, inspections and inquests. However, the Inquiry will seek to obtain evidence of such recommendations and findings from the original source where possible, and to identify where those recommendations have not resulted in the changes that they were intended to achieve. The Inquiry will request this evidence in due course.

24. 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 (or, in the case of INQUEST, their families) will be able to play a role in identifying those individuals and, if they so wish, supporting them to participate in the Inquiry. 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 individuals do not wish to speak directly to the Inquiry, I will consider alternative methods through which their experiences could be heard.

25. I intend to ask INQUEST 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 INQUEST's submission that it requires Core Participant status in order to make a meaningful contribution. INQUEST 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. INQUEST will, therefore, have access to all the material that the Inquiry believes it needs in order to provide meaningful evidence.

26. Further, INQUEST 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.
27. It is my view that INQUEST can contribute to the Inquiry by providing witness evidence and that its effective participation does not require it to have Core Participant status.

Later consideration of an application for CP status

28. INQUEST'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 INQUEST, under Rule 9 of the Inquiry Rules.
29. I do not consider at this stage that INQUEST should be designated as 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