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| <p>1 Monday, 14 December 2020<br/>2 (10.00 am)<br/>3 Opening remarks<br/>4 THE INQUIRY CHAIR: Good morning and welcome to core<br/>5 participants along with their legal representatives.<br/>6 I would also like to welcome those members of the public<br/>7 and the press who are observing this hearing via the<br/>8 Inquiry's livestream.<br/>9 This is the second preliminary hearing of the Brook<br/>10 House Inquiry. Regrettably we remain in a public health<br/>11 situation which necessitates this hearing being<br/>12 conducted virtually, as was the case with the first<br/>13 preliminary hearing.<br/>14 Again, I am very grateful to the Inquiry team and<br/>15 technicians working behind the scenes to facilitate this<br/>16 hearing and to ensure its smooth running. On that note,<br/>17 can I please briefly remind all those participating to<br/>18 keep in mind the housekeeping guidance issued by the<br/>19 Inquiry team. Please ensure that you are on mute unless<br/>20 invited to address the hearing by myself or Counsel to<br/>21 the Inquiry, Ms Cathryn McGahey QC.<br/>22 I will shortly turn to Ms McGahey to provide<br/>23 a progress update data on the Inquiry's work, after<br/>24 which I will hear submissions from core participants or<br/>25 their legal representatives. Before I hand over to</p> <p style="text-align: center;">Page 1</p>  | <p>1 As I set out in my opening statement in April and at<br/>2 the first preliminary hearing in September, it is my<br/>3 view that this Inquiry must build upon and add to the<br/>4 findings of previous inquiries and investigations into<br/>5 events at Brook House. Again, as I have previously<br/>6 outlined, this Inquiry's fundamental role is to address<br/>7 the questions of what was happening in Brook House<br/>8 between April and August 2017 and how can such events be<br/>9 prevented.<br/>10 I will also say again that it is my view that the<br/>11 principle focus of the Inquiry will be the treatment and<br/>12 mistreatment of detainees once they had arrived at Brook<br/>13 House.<br/>14 However, I do also want to reiterate my view that<br/>15 any recommendations made as a result of this Inquiry<br/>16 must be capable of bringing about change to prevent<br/>17 mistreatment in IRCs now and in the future. They<br/>18 therefore should not be recommendations that only have<br/>19 relevance to the specific time and place of the<br/>20 mistreatment shown on Panorama.<br/>21 I therefore consider that the determination I will<br/>22 reach on scope following this hearing will answer the<br/>23 question of the degree to which events or systems<br/>24 outside Brook House and before or after April to<br/>25 August 2017 are relevant to answering the central</p> <p style="text-align: center;">Page 3</p> |
| <p>1 Ms McGahey, I would like to make a few brief comments.<br/>2 Firstly, I would like to take this opportunity to<br/>3 update that the Inquiry has in place a free independent<br/>4 and confidential witness support service from crisis<br/>5 support charity Hestia to support witnesses through the<br/>6 process of giving evidence to the Inquiry. Please do<br/>7 visit the "Witness support" tab on the Inquiry's website<br/>8 for details, where information is provided in a number<br/>9 of languages about the support they offer and how you<br/>10 can contact them.<br/>11 Today's hearing was convened to allow adequate time<br/>12 to hear submissions in relation to the Inquiry's scope.<br/>13 I am grateful to core participants for the written<br/>14 submissions I have received on my interpretation of the<br/>15 Inquiry's terms of reference and scope. I have read all<br/>16 of these submissions in full, along with the note from<br/>17 Counsel to the Inquiry which was sent to<br/>18 core participants on 7 December 2020.<br/>19 Today's hearing will allow me the opportunity to<br/>20 listen to any supplementary oral submissions and I will<br/>21 do so with care. To the extent that it may be helpful<br/>22 to core participants and their legal representatives,<br/>23 I can provide an initial steer regarding the matters<br/>24 upon which I am particularly interested to hear their<br/>25 views.</p> <p style="text-align: center;">Page 2</p> | <p>1 question for this Inquiry: what happened, and how can it<br/>2 be prevented in future?<br/>3 I will, of course, listen carefully to each of the<br/>4 submissions to follow but suggest that they will be of<br/>5 particular assistance if that overall question can be<br/>6 kept clearly in mind.<br/>7 That concludes my introductory comments.<br/>8 Ms McGahey, I will now turn to you and ask that you<br/>9 please provide an update on the Inquiry's progress.<br/>10 Update on the Inquiry's Progress<br/>11 MS MCGAHEY: Certainly, madam.<br/>12 Dealing first with representation, I am Counsel to<br/>13 the Inquiry. Working with me is a team of counsel,<br/>14 Ms Saoirse Townshend, Ms Jo Moore and a recent addition<br/>15 to the team, Mr Paul Livingston. Mr Livingston has<br/>16 joined us as Ms Townshend is due to leave us shortly on<br/>17 maternity leave, and we offer her our very best wishes<br/>18 and look forward to seeing her back later next year.<br/>19 The representations of the core participants today<br/>20 is: for the MA and the Reverend Ward,<br/>21 Ms Stephanie Harrison QC with Mr Alex Goodman; for SR,<br/>22 KK and Medical Justice, Ms Harrison with Ms Shu Shin Luh<br/>23 and Ms Laura Profumo; for IA, Ms Harrison with<br/>24 Mr Zainul Jafferji; for BB and Gatwick Detainees Welfare<br/>25 Group, my learned friend Mr Odogwu and</p> <p style="text-align: center;">Page 4</p>                  |

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| <p>1 Mr Jesse Nicholls; for the Home Office, Mr Julian Blake<br/>2 and Ms Emily Wilsdon; for G4S, Mr Andrew Sharland QC and<br/>3 Mr Daniel Isenberg; for BBC, Mr Jude Bunting; for HMIP,<br/>4 Ms Clair Dobbin; and for IMB, Mr Jonathan Dixey.<br/>5 I would like to provide the core participants and<br/>6 the public with a brief update on the work of the<br/>7 Inquiry since the last preliminary hearing in September.<br/>8 Turning first to documentary evidence, the Inquiry<br/>9 has now received over 24,000 documents, not all of which<br/>10 will be relevant to the Inquiry's work. No firm view on<br/>11 the relevance of some of the material can be reached<br/>12 until the Chair has finally determined the scope of the<br/>13 Inquiry. But the team of lawyers who are assessing the<br/>14 material are applying a generous test of relevance to<br/>15 ensure that nothing potentially relevant is missed.<br/>16 A substantial tranche of material has now been<br/>17 redacted in preparation for disclosure to core<br/>18 participants. Redaction by the Inquiry involves the<br/>19 substitution of ciphers for the names of individuals<br/>20 formerly detained and the blanking out of irrelevant<br/>21 personal or identifying information, including things<br/>22 like direct dial telephone numbers or medical or family<br/>23 information that is of no potential relevance to any<br/>24 allegation of mistreatment.<br/>25 A tranche of redacted material has very recently</p> <p style="text-align: center;">Page 5</p> | <p>1 comprehensive disclosure, but it is clear that a lot of<br/>2 the material is material that it will not -- whatever<br/>3 the scope of the Inquiry -- be relevant.<br/>4 It is very important for the Inquiry to ensure that<br/>5 it has every Home Office immigration record that may<br/>6 shed light on the mistreatment of any detainee at Brook<br/>7 House between April and August 2017. But it is also<br/>8 important that the Inquiry's reviewers who are going<br/>9 through and assessing this material are not overwhelmed<br/>10 by having to deal with thousands of irrelevant<br/>11 documents. That is a work in progress, but we do have<br/>12 the complete immigration files for a number of detainees<br/>13 already.<br/>14 Turning now to witnesses. As the core participants<br/>15 know, the Inquiry's attention is for its own lawyers to<br/>16 take statements from witnesses. We had hoped it would<br/>17 be possible to meet witnesses face to face.<br/>18 Realistically, we have now had to accept that in order<br/>19 to make progress we are going to have to use video<br/>20 conferencing for a lot of these interviews. The Inquiry<br/>21 is now making arrangements to start meetings with<br/>22 witnesses in the week beginning 18 January next year.<br/>23 The tracing of formerly detained individuals is also<br/>24 continuing. The Inquiry would be very grateful for<br/>25 assistance, whether from individual core participants or</p> <p style="text-align: center;">Page 7</p> |
| <p>1 been sent to the owners of the documents of that<br/>2 material so that they have the chance to apply for any<br/>3 further redactions to be made, for example on grounds of<br/>4 legal professional privilege, or for there to be changes<br/>5 made in the redactions before onward disclosure to<br/>6 core participants.<br/>7 A disclosure platform exists and is ready for use.<br/>8 The Inquiry intends to use an Epiq Relativity platform,<br/>9 and the Inquiry expects to be able to grant access to<br/>10 core participants to that platform and supply the first<br/>11 tranche of disclosure early in the New Year. This<br/>12 tranche of material will consist of documents coming<br/>13 principally from G4S and the Home Office.<br/>14 The Inquiry has asked for additional material from<br/>15 the BBC among others. The Home Office has supplied the<br/>16 Inquiry with the personal immigration files of a number<br/>17 of detainees, and the Inquiry is in discussions with the<br/>18 Home Office about disclosure of this material.<br/>19 It is necessary for us to work with the Home Office<br/>20 to ensure that further disclosure of these immigration<br/>21 files is more manageable. Some of the files are<br/>22 enormous, some may go back years and some clearly<br/>23 contain material that's not going to be relevant. We<br/>24 intend absolutely no criticism whatsoever of the<br/>25 Home Office in this respect. We are being given very</p> <p style="text-align: center;">Page 6</p>                          | <p>1 from NGO core participants, in identifying any other<br/>2 people who were detained at Brook House between April<br/>3 and August 2017 and encouraging them to come forward.<br/>4 As core participants are aware, the Inquiry does not<br/>5 intend to use powers of compulsion to require former<br/>6 detainees to come to give evidence, but we really do<br/>7 urge their cooperation.<br/>8 Next, experts. As core participants are already<br/>9 aware, the Inquiry has appointed Professor Mary Bosworth<br/>10 and Dr James Hard to provide expert evidence.<br/>11 Professor Bosworth will focus on the culture and<br/>12 management arrangements at Brook House, including issues<br/>13 relevant to race and Dr Hard on medical issues. Their<br/>14 instructions will be finalised after today's hearing and<br/>15 once the Chair has ruled on the scope.<br/>16 Lastly, on undertakings. As again the<br/>17 core participants know, in order to avoid the risk of<br/>18 witnesses declining to answer for fear of<br/>19 self-incrimination, the Chair has requested<br/>20 undertakings from both the Attorney General and the Home<br/>21 Secretary. The Attorney has invited submissions from<br/>22 core participants before making a decision. The<br/>23 deadline for those submissions has now passed and the<br/>24 Inquiry is waiting for decisions from both the Attorney<br/>25 and the Home Secretary.</p> <p style="text-align: center;">Page 8</p>  |

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| <p>1 The main issue to be considered today is that of the<br/>2 scope of the Inquiry. The Inquiry has received<br/>3 submissions on the issue from the majority of core<br/>4 participants. The terms of reference are obviously the<br/>5 starting point of any consideration of scope. They make<br/>6 clear that the Inquiry is to investigate mistreatment<br/>7 shown on Panorama, and more broadly to investigate any<br/>8 mistreatment that occurred at Brook House between April<br/>9 and August 2017 that amounts to mistreatment within the<br/>10 definition of Article 3 of the European Convention on<br/>11 Human Rights.</p> <p>12 There is a substantial amount of common ground in<br/>13 the submissions made by the core participants. In<br/>14 particular, there does appear to be a general agreement<br/>15 with the proposition put forward by BB and the Gatwick<br/>16 Detainees Welfare Group that an effective Inquiry needs<br/>17 to remain flexible and go where the evidence takes it.<br/>18 The core participants also recognise that the evidence<br/>19 may lead the Inquiry to a consideration of practices,<br/>20 policies and procedures applicable at national level and<br/>21 not just at Brook House. That's something that the<br/>22 Chair has recognised at an earlier stage and reiterated<br/>23 today.</p> <p>24 The key difference between the core participants<br/>25 appears to lie in the approach that they contend should</p> <p style="text-align: center;">Page 9</p> | <p>1 Brook House and they submit that, where it is relevant,<br/>2 the Inquiry should investigate national methods,<br/>3 policies and practices and, while obviously it is<br/>4 a matter for the Chair, it appears to me that that is<br/>5 not a contentious submission. That does appear to be<br/>6 accepted.</p> <p>7 Thirdly, the Inquiry should investigate not simply<br/>8 local and managerial causes for what went wrong but<br/>9 wider policy causes. Again, certainly to some extent<br/>10 that appears to be accepted.</p> <p>11 Fourthly, and this is by way of example of the third<br/>12 category, the Inquiry should investigate breaches by the<br/>13 Home Office and its contractors of rules 34 and 35 of<br/>14 the Detention Centre Rules over many years in order<br/>15 properly to understand the background, the culture, and<br/>16 therefore the underlying causes for any failings at<br/>17 Brook House.</p> <p>18 Finally, the Inquiry should investigate the<br/>19 connection between the Home Office's power to detain for<br/>20 long and indefinite periods and any mistreatment.</p> <p>21 More specifically, Medical Justice, SR and KK submit<br/>22 that the Inquiry should investigate firstly the attitude<br/>23 that the Home Office and its contractors have taken to<br/>24 external scrutiny of their conduct, both at Brook House<br/>25 and elsewhere.</p> <p style="text-align: center;">Page 11</p> |
| <p>1 be taken to issues arising outside Brook House and also<br/>2 outside the period of the terms of reference. There are<br/>3 essentially two competing contentions.</p> <p>4 Firstly, that the Inquiry should examine wider<br/>5 issues. For example, breaches by the Home Office or its<br/>6 contractors of detention policy in other immigration<br/>7 removal centres, or the correctness of the initial<br/>8 decision to detain an individual, because they form the<br/>9 background to and may be relevant to an understanding of<br/>10 the underlying causes of the mistreatment that<br/>11 subsequently occurred.</p> <p>12 The second approach is that the Inquiry's starting<br/>13 point should be the investigation of individual<br/>14 instances of mistreatment in the relevant period, and<br/>15 the Inquiry should then track back from those instances<br/>16 to find the underlying cause.</p> <p>17 The submissions of MA, the Reverend Ward, Medical<br/>18 Justice, SR, KK and BB and Gatwick Detainees Welfare<br/>19 Group are largely consistent. They submit that there is<br/>20 nothing in the terms of reference that limits the<br/>21 consideration of methods, practices and management to<br/>22 those operated locally at Brook House.</p> <p>23 Secondly, they say that an effective investigation<br/>24 contemplates the consideration of law, policy, practice<br/>25 and institutional culture that cannot be limited to</p> <p style="text-align: center;">Page 10</p>           | <p>1 Secondly, what they term the Home Office's<br/>2 persistent non-compliance over the years with its own<br/>3 detention policies and procedures and with equality<br/>4 duties.</p> <p>5 Thirdly, the repeated patterns of mistreatment,<br/>6 amounting to treatment of an article 3 threshold that<br/>7 they say has taken place at -- or had taken place for<br/>8 nearly a decade up to 2017.</p> <p>9 Both MA and BB have previously submitted lengthy and<br/>10 detailed lists of issues that they contend the Chair<br/>11 should adopt. Those lists have been shared with core<br/>12 participants.</p> <p>13 The Home Office supports the Chair's expressed<br/>14 intention to focus mainly on the treatment and<br/>15 mistreatment of detainees following their arrival at<br/>16 Brook House. The Home Office submission is firstly that<br/>17 the Inquiry should concentrate on those issues that flow<br/>18 directly from the investigation into identified<br/>19 mistreatment.</p> <p>20 Secondly, they say the mistreatment in question is<br/>21 defined in the terms of reference and includes only<br/>22 instance that occurred between April and August 2017.</p> <p>23 The Home Office agrees with the Chair's initial view<br/>24 that it is not for the current Inquiry to consider<br/>25 immigration policy more widely. The Home Office</p> <p style="text-align: center;">Page 12</p>                                  |

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| <p>1 supports the Chair's list of issues which was set out in<br/>                 2 her note of 14 August 2020, but submits that that list<br/>                 3 should be kept under review and that issues that turn<br/>                 4 out to be irrelevant should be discarded.<br/>                 5 G4S, in their submissions, emphasise that the terms<br/>                 6 of reference permit the Inquiry to investigate only any<br/>                 7 mistreatment that reaches the high threshold of a breach<br/>                 8 of article 3. G4S, like the Home Office, submit that<br/>                 9 the starting point must be the consideration of<br/>                 10 individual instance of alleged mistreatment. G4S agree<br/>                 11 that the Inquiry should examine any changes to policies<br/>                 12 and procedures made since August 2017, since such<br/>                 13 examination is necessary to inform any recommendations<br/>                 14 that the Chair may make.<br/>                 15 G4S do contend, however, that the Inquiry should<br/>                 16 consider the adequacy of those changes:<br/>                 17 "... by reference to what the Inquiry considers is<br/>                 18 appropriate to remedy any defects and not pursuant to an<br/>                 19 additional assessment of their effectiveness in<br/>                 20 practice."<br/>                 21 My suggestion is that the Chair of the Inquiry might<br/>                 22 be helped by further submissions on this issue from G4S<br/>                 23 particularly, because it is not entirely clear to<br/>                 24 Counsel to the Inquiry, to our team, how the Inquiry<br/>                 25 should assess whether a change is appropriate to remedy</p> <p style="text-align: center;">Page 13</p> | <p>1 steps that the Inquiry has taken in terms of witness<br/>                 2 gathering and the disclosure platform. We have put in<br/>                 3 writing our concerns about the ongoing delay in those<br/>                 4 basic steps being taken. I appreciate that the Inquiry<br/>                 5 wishes to consider those matters outside of this public<br/>                 6 hearing, but we do think it important to put on record<br/>                 7 our ongoing concern about those matters and in<br/>                 8 particular our concern about the viability of hearings<br/>                 9 in June.<br/>                 10 We mark that now, because obviously it may be<br/>                 11 something that has to be the subject of further written<br/>                 12 representations to the Inquiry, but we do have serious<br/>                 13 concerns about whether that can be achieved in<br/>                 14 accordance with the obligations to ensure that the<br/>                 15 Inquiry is effective and we do, within that, have<br/>                 16 ongoing concerns about our ability as core participants<br/>                 17 to effectively participate because of (a) the way in<br/>                 18 which the Inquiry is funding our work and the way in<br/>                 19 which it is considering our requests to take and to<br/>                 20 undertake the tasks that we think are important for<br/>                 21 advancing our clients' interests and assisting the<br/>                 22 Inquiry in carrying out its important functions.<br/>                 23 THE INQUIRY CHAIR: Thank you for your comments. As you<br/>                 24 say, we have undertaken to deal with some of these<br/>                 25 issues in correspondence and hopefully the update given</p> <p style="text-align: center;">Page 15</p> |
| <p>1 any defects without looking at whether it has actually<br/>                 2 worked in practice.<br/>                 3 The Independent Monitoring Board and HM Inspectorate<br/>                 4 of Prisons have made no substantive submissions on scope<br/>                 5 and no submissions have been received from the BBC.<br/>                 6 I will now invite core participants to make<br/>                 7 submissions. My suggestion is that we should follow the<br/>                 8 order, first Ms Harrison QC, then Mr Odogwu, then<br/>                 9 Mr Blake, Mr Sharland QC, Mr Bunting, Ms Dobbin,<br/>                 10 Mr Dixey.<br/>                 11 May I invite Ms Harrison, QC to make submissions on<br/>                 12 behalf of her clients?<br/>                 13 THE INQUIRY CHAIR: Thank you, Ms McGahey.<br/>                 14 Ms Harrison?<br/>                 15 MS HARRISON: Good morning. I don't know if you can hear<br/>                 16 me?<br/>                 17 THE INQUIRY CHAIR: We can indeed hear you. We can't see<br/>                 18 you.<br/>                 19 MS HARRISON: That's because I am being told that the host<br/>                 20 is preventing me from appearing.<br/>                 21 THE INQUIRY CHAIR: We will see if we can remedy that. My<br/>                 22 apologies, do bear with us a moment, thank you.<br/>                 23 (Pause)<br/>                 24 MS HARRISON: Can I just say before I start my submissions<br/>                 25 on scope that we are very grateful for the update on the</p> <p style="text-align: center;">Page 14</p>  | <p>1 by Ms McGahey this morning has also provided some more<br/>                 2 detail. Thank you, but I think it would be helpful if<br/>                 3 we could move on to the substance of the scope.<br/>                 4 Thank you.<br/>                 5 Submissions on behalf of MA<br/>                 6 MS HARRISON: It does seem to us, as core participants, that<br/>                 7 there is here a potential fundamental misunderstanding<br/>                 8 about the term "mistreatment" that appears to be<br/>                 9 informing the submissions, certainly of the Home Office<br/>                 10 and G4S. I think is important to start from what do the<br/>                 11 core participants identify as the mistreatment that<br/>                 12 falls within the article 3 obligation.<br/>                 13 It is absolutely apparent from the judgment of<br/>                 14 Mrs Justice May, which is the context for this Inquiry<br/>                 15 having been established, that mistreatment is not in any<br/>                 16 way, shape or form limited to the actual infliction of<br/>                 17 physical violence or assaults on individuals.<br/>                 18 If you go to paragraph 24 of that document you will<br/>                 19 see set out, in some detail in Mr MA's case, the extent<br/>                 20 of the factors that were relied upon by him as the basis<br/>                 21 for, both individually and cumulatively, the claim that<br/>                 22 he was subject to inhuman and degrading treatment.<br/>                 23 If you have that document in front of you -- I am<br/>                 24 sure you are very familiar with it -- you will see that<br/>                 25 the first two factors that were relied upon are the</p> <p style="text-align: center;">Page 16</p>                   |

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| <p>1 decision to detain him in circumstances where we say<br/>                 2 that was clearly in breach of the Secretary of State's<br/>                 3 policy, because he fell fairly and squarely within the<br/>                 4 definition of an adult at risk, a person at particular<br/>                 5 risk of harm in detention, and he relied upon the<br/>                 6 wholesale failures of the safeguards to identify him as<br/>                 7 a vulnerable person in particular rules 34 and 35 of the<br/>                 8 Detention Centre Rules.<br/>                 9 Those failures, ie of policy and of safeguards, are<br/>                 10 not isolated to his case, nor isolated to Brook House.<br/>                 11 The evidence is clear, and insofar as this Inquiry is<br/>                 12 going to build upon the pre-existing investigations, for<br/>                 13 example from Mr Shaw, you see that those are in fact<br/>                 14 systemic issues and cannot be in any way seen as<br/>                 15 an aberration relating to this individual.<br/>                 16 That therefore means it is fairly and squarely<br/>                 17 within the Inquiry's terms to need to look at both the<br/>                 18 terms of and operation of the policy, which is<br/>                 19 a national policy and not, obviously, peculiar to Brook<br/>                 20 House.<br/>                 21 Likewise with regard to the important safeguards in<br/>                 22 rule 34 and 35.<br/>                 23 The consequences that were identified in MA's case<br/>                 24 of these systemic failures are at paragraphs 5 and 6 of<br/>                 25 the judgment of Mrs Justice May.</p> <p style="text-align: center;">Page 17</p>  | <p>1 article 3.<br/>                 2 So starting from the premise, as we do, from MA's<br/>                 3 facts -- and there is no dispute between ourselves and<br/>                 4 the Home Office that you need to ground this Inquiry in<br/>                 5 the individual experience of those who were subject to<br/>                 6 detention, in this context I am starting with Mr MA. It<br/>                 7 is absolutely apparent that if you start from that<br/>                 8 premise it is inevitable and intrinsic to his claim for<br/>                 9 an article 3 breach that the decision to detain and to<br/>                 10 continue to detain and the conditions of detention, are<br/>                 11 part and parcel of the grounds upon which he alleges<br/>                 12 an article 3 breach in his case. Because the<br/>                 13 consequences were such that he suffered a significant<br/>                 14 deterioration in his mental health, he experienced<br/>                 15 extreme suicidal ideation, and that treatment<br/>                 16 constitutes treatment falling over the threshold for<br/>                 17 a breach of article 3.<br/>                 18 It is for this reason that when one looks at<br/>                 19 Mrs Justice May's actual reasoning for concluding that<br/>                 20 a full public inquiry was necessary, she identified at<br/>                 21 paragraph 61, as we say is correct, you are going to<br/>                 22 start from the alleged substantive breaches of the<br/>                 23 article -- that's what we do when we have identified<br/>                 24 those factors -- in addition to the physical<br/>                 25 ill-treatment that MA was subject to that constitute the</p> <p style="text-align: center;">Page 19</p>           |
| <p>1 Firstly, that there was a systemic and operational<br/>                 2 failure to identify, protect and monitor MA as<br/>                 3 a vulnerable detainee in breach of the positive duties<br/>                 4 arising from article 3. There was reference there to<br/>                 5 the case of HA Nigeria, which is one of the six cases in<br/>                 6 which the domestic courts have identified a breach of<br/>                 7 article 3, not because of actual physical mistreatment<br/>                 8 but because of the unlawful decision to detain, and the<br/>                 9 detention having severe impacts on the person's mental<br/>                 10 health, causing anguish and suffering sufficient to<br/>                 11 cross the article 3 threshold. That's mistreatment<br/>                 12 under article 3 of the Convention.<br/>                 13 Likewise at paragraph 6 of MA, he relies upon the<br/>                 14 fact that his mental health condition was not properly<br/>                 15 assessed, that the measures that were in place did not<br/>                 16 effectively diagnose or provide treatment or management<br/>                 17 of his condition. Again, reference there is to a case<br/>                 18 of MD v Secretary of State for the Home Department,<br/>                 19 another case in which article 3 was found to be breached<br/>                 20 as a result of the decision to detain and the impact of<br/>                 21 the detention and the conditions of detention.<br/>                 22 That was said in the context of MA's case to<br/>                 23 constitute a failure to recognise MA's vulnerability and<br/>                 24 to treat him accordingly, and this amounted to a breach<br/>                 25 of both the negative and positive requirements of</p> <p style="text-align: center;">Page 18</p> | <p>1 breach of article 3 in this case.<br/>                 2 You will see at paragraph 62 her reasons for<br/>                 3 concluding that a full public inquiry was necessary,<br/>                 4 fully identified from the outset that it was (a)<br/>                 5 a condition of impunity that is the context in which the<br/>                 6 abuse occurred, impunity is an important aspect when one<br/>                 7 is considering breaches of fundamental rights because<br/>                 8 that necessarily requires any investigation not simply<br/>                 9 to look at the actual symptoms of the failure, ie the<br/>                 10 abuse and mistreatment, but its causes and where it is<br/>                 11 concerned with impunity, that requires consideration of<br/>                 12 the wider law and policy and regulations in which that<br/>                 13 abuse occurred.<br/>                 14 Mrs Justice May recognised at paragraph 62.4 that<br/>                 15 the context of immigration detention itself was<br/>                 16 an important factor in understanding why article 3<br/>                 17 ill-treatment occurred in this context. She says:<br/>                 18 "Detention under these conditions is diminishing and<br/>                 19 depersonalising enough but it is unacceptably degrading<br/>                 20 and dehumanising where there is repeated and apparent<br/>                 21 causal abuse on the part of staff employed by the state<br/>                 22 to supervise and look after such detainees."<br/>                 23 In making that observation, she recognised that<br/>                 24 immigration detention itself has peculiarities that<br/>                 25 render it more likely to expose individuals to</p> <p style="text-align: center;">Page 20</p> |

1 ill-treatment than other forms of detention where the  
 2 regulation and control of its exercise is much more  
 3 constrained. That's also been an observation made, for  
 4 example, by Professor Bosworth in her examination of the  
 5 medical evidence.

6 So looking at immigration detention, its nature and  
 7 the constraints upon it, is an integral part of  
 8 understanding why inhuman and degrading treatment may  
 9 well have occurred not just in the context of physical  
 10 abuse but of wider mistreatment as a result of a failure  
 11 to properly identify and manage severe mental illness.

12 When one starts from the premise that you are  
 13 extrapolating from the experiences of individuals, we  
 14 respectfully submit if that is your starting point, as  
 15 it should be, then there is no dispute between the core  
 16 participants and the Home Office, for example, in that  
 17 regard, then it is absolutely clear that a central  
 18 element of the article 3 issues in this Inquiry are  
 19 intrinsically linked and related to detention, the wider  
 20 detention policy and its application, yes, at Brook  
 21 House but there is no circumstances in which what was  
 22 happening at Brook House is unique to Brook House, and  
 23 it reflects the wider systemic issues that have been  
 24 identified on a number of occasions by previous  
 25 investigations, some recently preceding this Inquiry.

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1 Similarly, when one looks at the other individual  
 2 cases -- Mr IA for example -- whilst he also was subject  
 3 to physical violence and assault, his article 3 claim is  
 4 not limited to that form of mistreatment. He also bases  
 5 his article 3 claim on the fact that he was unlawfully  
 6 detained -- to that extent the Secretary of State has  
 7 already conceded that his detention was unlawful -- and  
 8 that that detention and the conditions of detention not  
 9 just exacerbated a pre-existing mental illness, which is  
 10 Mr MA's case, but in fact caused serious mental illness.  
 11 On that basis he alleges that he was subject to  
 12 article 3 mistreatment. It is both the detention itself  
 13 and the conditions of detention that are at the core of  
 14 his credible article 3 claim that this Inquiry is going  
 15 to investigate.

16 Similarly, Mr KK, as an individual with severe  
 17 mental illness who challenged his detention on the basis  
 18 that it was unlawful and in breach of the Adults at Risk  
 19 policy caused serious deterioration in his mental health  
 20 and exacerbated to a high degree suicide risk. It is  
 21 those factors, not any form of specific violent  
 22 mistreatment which occurred elsewhere that are the basis  
 23 of his credible article 3 claim.

24 In both KK and SR, the Secretary of State has  
 25 settled their civil claims, but in each civil claim they

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1 alleged not just a breach of article 3, but intrinsic to  
 2 that breach that it was conducted in the context of  
 3 unlawful detention.

4 If one is going to start from the basic facts of  
 5 these cases, and your Inquiry is going to be within the  
 6 parameters of the article 3 mistreatment that is alleged  
 7 in this context, then it is inevitable we respectfully  
 8 submit that you are going to have to look at immigration  
 9 detention, its context, the law governing it, the limits  
 10 that there are in terms of regulation and policy,  
 11 because that is intrinsic to the article 3 claim that  
 12 they make.

13 In that respect -- certainly from the perspective of  
 14 Medical Justice -- they have identified as part of the  
 15 reason for seeking to participate in this Inquiry their  
 16 extensive experience and evidence that they wish the  
 17 Inquiry to hear that these individual examples reflect  
 18 systemic failure at a national macro level, both in law,  
 19 policy and practice. That critically -- I think this is  
 20 important to emphasise -- when Ms McGahey says what the  
 21 task of the Inquiry is, to identify what happened and  
 22 learn lessons, that's missing out one critical key stage  
 23 in this process, and that's the question: why did this  
 24 happen?

25 In order to answer the question why did these events

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1 occur? Why was Mr MA, Mr IA and Mr KK subject to  
 2 treatment in the form of detention which exacerbated and  
 3 caused suffering because of the impact on their mental  
 4 health and the inadequacy of the medical treatment and  
 5 care that they received? That will inevitably require  
 6 this Inquiry to ask whether or not the immigration  
 7 detention law and policy played a role in understanding  
 8 why that happened.

9 If we don't understand why, we are not going to be  
 10 in a position to properly learn the lessons and to end  
 11 the recalcitrant practices of both the Home Office and  
 12 its contractors that sequential inquiries have  
 13 identified but failed to remedy to date. It is notable  
 14 that in each and every PPO investigation that has been  
 15 undertaken in respect of abuse scandals over the  
 16 decades, identified by Mr Shaw in particular in his  
 17 evidence to the Home Affairs Select Committee, why has  
 18 that not resulted in any change? His investigations  
 19 have not considered these precise questions. They have  
 20 looked primarily at operational matters on the ground.

21 You cannot begin at this stage to exclude systemic  
 22 issues. When one is concerned with matters that go  
 23 beyond the temporal limits of the Brook House  
 24 investigation and outside of Brook House, that's what  
 25 you are concerned with. It's the system, as opposed to

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| <p>1 simply the operational implementation of the system and<br/>                 2 it is that that has been missing, at least in part, from<br/>                 3 the previous investigations that we know full well have<br/>                 4 not resulted in the sort of institutional changes that<br/>                 5 are necessary to remedy serious mistreatment and abuse.<br/>                 6 We say in order to address the why question,<br/>                 7 certainly from the perspective of systems, it is<br/>                 8 inevitable that you will have to look at the practices<br/>                 9 in the way that we have submitted. It is important to<br/>                 10 recognise that when you are considering whether there<br/>                 11 has been breaches of article 3, the obligations under<br/>                 12 article 3 are threefold.<br/>                 13 They are, first and foremost, to ascertain whether<br/>                 14 or not there was in place an adequate and effective<br/>                 15 system. That system must include law, regulation,<br/>                 16 policy and practice, as well as an operational duty<br/>                 17 which is what happened on the ground, what happened in<br/>                 18 the individual case, was there a failure of systems and<br/>                 19 then, of course, there is the investigative duty.<br/>                 20 One has to start from the premise that the first<br/>                 21 question for this Inquiry when it comes to decide<br/>                 22 whether any of these credible article 3 claims are in<br/>                 23 fact made out and established, it will be to ask the<br/>                 24 question: has there been here a systems failure? Is<br/>                 25 there inadequacy in the overall system?</p> <p style="text-align: center;">Page 25</p> | <p>1 participants' intention -- that this Inquiry is about<br/>                 2 time limits. It absolutely is not. But one cannot<br/>                 3 exclude, if one is seeking to identify why this abuse<br/>                 4 occurred, and learn lessons from it, disregard and not<br/>                 5 start from the premise that the legal regime with its<br/>                 6 inadequate statutory restrictions, contrasting with all<br/>                 7 other forms of detention, and its open-ended nature, do<br/>                 8 not impact upon the operational implementation of<br/>                 9 decisions and the treatment of detainees in that, what<br/>                 10 we would respectfully submit, often is a legal vacuum.<br/>                 11 The Home Affairs Select Committee came to the very<br/>                 12 same conclusion, that the legal regime was inadequate,<br/>                 13 was not sufficiently robust to regulate this important<br/>                 14 power and to limit abuse within it. They, too,<br/>                 15 recommended more detailed prescription in the statutory<br/>                 16 scheme and a time limit.<br/>                 17 Obviously when Mr Shaw looked at these matters, it<br/>                 18 was not part of his remit to look at the legal framework<br/>                 19 overall, but of course he did focus on policy. He<br/>                 20 identified substantial inadequacy and weakness in the<br/>                 21 existing policy relating to, in particular, those<br/>                 22 suffering from serious mental illness, and identified<br/>                 23 important deficits and changes that were implemented as<br/>                 24 a result of the adult at risk policy.<br/>                 25 He did that on a generic basis, not of course</p> <p style="text-align: center;">Page 27</p>      |
| <p>1 Because if you don't do that, then you are not<br/>                 2 properly addressing the key obligations that Strasbourg<br/>                 3 has identified in effective implementation of article 3.<br/>                 4 It is also to be noted that of those most recent<br/>                 5 investigations that didn't look at the situation at<br/>                 6 Brook House but looked at some of the consequence, each<br/>                 7 one of them has identified the legal regime as<br/>                 8 an important aspect of understanding the failures and<br/>                 9 the problems that have occurred and recurred within<br/>                 10 immigration detention.<br/>                 11 For example, the Joint Committee on Human Rights,<br/>                 12 when it considered immigration detention last year, it<br/>                 13 identified inadequacies in the legal system, in the<br/>                 14 legal framework, as contributing to the situation as we<br/>                 15 describe it of impunity and of repeated unlawful conduct<br/>                 16 and abuse by the Home Office and in the context of<br/>                 17 detention by contractors.<br/>                 18 So that's what the JCHR identified. They said --<br/>                 19 and made a recommendation -- that it was necessary to<br/>                 20 have greater restriction on the actual power to detain,<br/>                 21 that the open-ended nature of immigration detention<br/>                 22 needed to be addressed, and concluded that it needed<br/>                 23 very much more statutory provisions to regulate the<br/>                 24 power and to put a time limit on it.<br/>                 25 That's not to say -- it's not a part of any core</p> <p style="text-align: center;">Page 26</p>                                       | <p>1 limited to any particular IRC, because that is<br/>                 2 a national policy that governs all decisions to detain,<br/>                 3 irrespective of the location of the detention. So<br/>                 4 again, if one is going to build upon the investigations<br/>                 5 or the reviews that have taken place so far, one should<br/>                 6 take into account the two parliamentary committees that<br/>                 7 have considered this and Mr Shaw both in 2016 and 2018<br/>                 8 have focused on the legal framework, the wider<br/>                 9 immigration detention policy and have based their<br/>                 10 concerns and their recommendations on the compelling<br/>                 11 evidence not just of isolated failures over a very short<br/>                 12 period of time, but systemic failure, as being relevant<br/>                 13 to both understanding what is going wrong and as a key<br/>                 14 basis upon which to determine how things should be<br/>                 15 improved in the future.<br/>                 16 The other practical reason as to why it will be<br/>                 17 important to look at these wider issues is to understand<br/>                 18 that if you do have a detention centre which is<br/>                 19 accommodating significant numbers of highly vulnerable<br/>                 20 individuals, who in accordance with the law and policy<br/>                 21 should not in fact be in detention, and present<br/>                 22 challenges, demands and needs that simply cannot be met<br/>                 23 in that environment, that may well assist you to<br/>                 24 understand how individuals faced with dealing with<br/>                 25 people whose in particular mental health or suicidal</p> <p style="text-align: center;">Page 28</p> |

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| <p>1 ideation is not being properly managed, how that can,<br/>2 itself lead to inappropriate treatment.<br/>3 One very obvious and simple example is that it is<br/>4 a recurring theme of many of the article 3 cases that<br/>5 the courts have identified that individuals are<br/>6 segregated. And segregation is used as a primary means<br/>7 of managing significant mental health problems and<br/>8 behaviour and symptoms.<br/>9 One only has to recognise that if you have no other<br/>10 effective means of managing mental health problems --<br/>11 because this system is not there and not designed to<br/>12 manage those with serious mental health problems who are<br/>13 at risk of particular harm. They shouldn't be in<br/>14 detention at all. Why it is that wholly inappropriate<br/>15 and we would submit unlawful action is taken to<br/>16 segregate, sometimes for prolonged periods, individuals<br/>17 whose mental health actually requires them to be<br/>18 released, rather than to remain within detention.<br/>19 We submit that in order to understand how some forms<br/>20 of practice have developed, you cannot separate that<br/>21 from the fact that these are individuals who should not<br/>22 be in detention at all.<br/>23 In addition to that, if you are considering, as we<br/>24 all acknowledge is critically important, staff culture<br/>25 and institutional behaviour, then it is essential that</p> <p style="text-align: center;">Page 29</p>   | <p>1 It is important to recognise in that context that<br/>2 the significance of systemic failure in rule 34 and 35<br/>3 is because it results in a failure to properly apply<br/>4 detention, law and policy. Rule 34 and 35 are the key<br/>5 reporting mechanism, the key interrelationship between<br/>6 the detention centre contractors and the Home Office, in<br/>7 ensuring that those who are detained are lawfully<br/>8 detained in accordance with general national policy.<br/>9 They don't exist in a vacuum. They bite because it is<br/>10 the Secretary of State's general policy not to detain<br/>11 those who are particularly vulnerable to harm in<br/>12 detention. One cannot separate out what on one view<br/>13 might look like an operational matter -- safeguard, rule<br/>14 34 and 35 -- from the overriding policy considerations.<br/>15 Again, the interrelationship between the failure of rule<br/>16 34 and 35 and detention in breach of policy, is not<br/>17 an isolated incident, it is systemic.<br/>18 It will therefore require the Inquiry if it is going<br/>19 to proper look at those matters -- as everybody has<br/>20 agreed it must -- to have to look at the wider detention<br/>21 context and the wider evidence of systemic failure in<br/>22 respect of those two critical matters.<br/>23 We would finally say in respect of any decision that<br/>24 is taken at this point that as Ms McGahey makes clear,<br/>25 all are agreed that one has to operate flexibly and go</p> <p style="text-align: center;">Page 31</p> |
| <p>1 you look at that conduct in the context of the legal<br/>2 policy and regulatory framework, as at least a starting<br/>3 point for understanding how staff culture, institutional<br/>4 practices are develop and are allowed to continue, even<br/>5 though clearly inappropriate and abusive.<br/>6 It is from Ms McGahey's observations at the outset<br/>7 fully recognised that the Inquiry will need to look at,<br/>8 for example, safeguards and failure of safeguards, rule<br/>9 34 and 35 being critical safeguards in the system they<br/>10 are part of each of the individual CPs that I represent,<br/>11 a key part of the failure of identification and the<br/>12 continuing detention of them, because those processes<br/>13 did not identify them as vulnerable and therefore<br/>14 unsuitable for detention.<br/>15 If, as is in agreement, that's going to be<br/>16 an important part of the Inquiry's investigation, then<br/>17 again we cannot see how that's going to be separated<br/>18 from the well-established evidence that there is<br/>19 systemic failure in respect of those key safeguards. It<br/>20 is not in any way limited either temporally or<br/>21 locationally to Brook House. That is well established<br/>22 and again it would not be building on previous<br/>23 investigations, in particular Mr Shaw, if one were going<br/>24 to ignore the fact that this is a systemic problem that<br/>25 goes beyond the time and place at Brook House.</p> <p style="text-align: center;">Page 30</p> | <p>1 where the evidence takes you.<br/>2 We say it is clear already where the evidence takes<br/>3 you and does require you to consider the matters that we<br/>4 have identified. We would certainly say at this stage<br/>5 it is far too early to take an approach that excludes<br/>6 these lines of enquiry. We do not yet have disclosure<br/>7 made to the core participants, we do not yet have any<br/>8 form of extensive witness gathering. Our clients have<br/>9 not -- the core participants have not yet provided their<br/>10 evidence, and it is not intended that that will be done<br/>11 before the New Year.<br/>12 We do raise a concern -- it is another matter we<br/>13 will follow up in writing -- about the method in which<br/>14 their evidence is proposed to be obtained, but for these<br/>15 purposes it has not yet been obtained and so to embark<br/>16 upon a strategy of excluding from consideration these<br/>17 matters, we say would be a fundamental error and<br/>18 a mistake.<br/>19 We would also observe, and submit, that in the<br/>20 submissions of the Home Office and G4S, there is<br/>21 reliance upon the delay in the pursuit of this<br/>22 investigation as a reason for limiting and narrowing the<br/>23 scope of the Inquiry. We say that's fundamentally<br/>24 wrong. It has been our concern from the outset that as<br/>25 a result of the prolonged delay in this Inquiry getting</p> <p style="text-align: center;">Page 32</p>   |



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| <p>1 up and running, that the casualty of that would be the<br/>2 scope and effectiveness of the investigation itself. It<br/>3 cannot be -- and this Inquiry should not go down the<br/>4 route of narrowing or seeking to narrow its scope and<br/>5 exclude these matters because it is concerned now that<br/>6 it will prolong further the time that it takes to<br/>7 properly investigate these matters.<br/>8 We would urge you not to take those factors into<br/>9 account, but to proceed as we have submitted on the<br/>10 basis that it is clear when you properly analyse the<br/>11 individual core participants' cases that the<br/>12 mistreatment, not limited to physical mistreatment,<br/>13 although of course that is very important, but is not<br/>14 limited to physical mistreatment, and directly engages<br/>15 the conditions of detention and the impact upon the<br/>16 individuals in a long-established line of authorities<br/>17 that recognises that that does give rise to arguable<br/>18 article 3 claims.<br/>19 Those are the submissions that we would want to make<br/>20 in support of why we say that the matters we have relied<br/>21 upon are plainly and squarely within both the terms of<br/>22 reference and derive from the individual facts of the<br/>23 core participants' cases. Certainly as they present<br/>24 themselves clearly to us at this stage.<br/>25 The only other matter that was raised by G4S was</p> <p style="text-align: center;">Page 33</p>           | <p>1 closely scrutinising and subjecting to analysis whether<br/>2 any of the changes that have been made or are proposed<br/>3 to be made would in fact result in addressing the<br/>4 underlying problems and ensuring that these dangerous<br/>5 practices and abuses exposed by the Panorama footage are<br/>6 not repeated.<br/>7 If I could just take one moment to see if there is<br/>8 anything else to add, and then I will conclude there.<br/>9 THE INQUIRY CHAIR: Of course, yes. Please do. Thank you.<br/>10 Ms Harrison, would you like a couple of moments to<br/>11 talk to your juniors who are representing all your<br/>12 clients and your instructing solicitors?<br/>13 MS HARRISON: If I could, that would be helpful. That would<br/>14 probably be easier, yes.<br/>15 MS McGAHEY: Madam, would it be possible for us take a break<br/>16 for five minutes?<br/>17 THE INQUIRY CHAIR: Absolutely, yes.<br/>18 MS McGAHEY: Will that be enough time?<br/>19 MS HARRISON: That will be adequate, thank you.<br/>20 THE INQUIRY CHAIR: Okay. We will reconvene at 11.00.<br/>21 Thank you very much.<br/>22 (10.56 am)<br/>23 (A short break)<br/>24 (11.03 am)<br/>25 THE INQUIRY CHAIR: Thank you, welcome back, everybody.</p> <p style="text-align: center;">Page 35</p>  |
| <p>1 whether or not the Inquiry should consider the efficacy<br/>2 of any changes that have been made or are proposed to be<br/>3 made as a result of the Panorama programme.<br/>4 We have submitted in writing, and we reiterate that<br/>5 to the Inquiry, that it would fundamentally reduce any<br/>6 usefulness and effectiveness of the Inquiry if it didn't<br/>7 consider whether or not such changes that have been<br/>8 made, how they are operating in practice. And it would<br/>9 seriously undermine the usefulness of the Inquiry if<br/>10 that task was not undertaken.<br/>11 We would also submit that it is an important part of<br/>12 this Inquiry's remit to consider how the Home Office<br/>13 have responded, and other state participants have<br/>14 responded to these kinds of abuse scandals, critically<br/>15 because of the identified failure to result in any<br/>16 enduring change and to learn lessons from previous<br/>17 investigations. That was a matter, as I have indicated,<br/>18 that was of critical concern to Mr Shaw. It was<br/>19 identified by Mrs Justice May as a reason with why this<br/>20 Inquiry, unlike previous PPO inquiries, needed to be<br/>21 a full statutory public inquiry, with greater powers to<br/>22 carry out a robust forensic examination of what happened<br/>23 and why.<br/>24 We would respectfully submit that this Inquiry would<br/>25 miss a very important part of its task if it were not</p> <p style="text-align: center;">Page 34</p> | <p>1 Ms Harrison, did you have chance to speak to your<br/>2 clients and junior counsel?<br/>3 MS HARRISON: Yes, I did.<br/>4 There is just one additional point I would like to<br/>5 emphasise, which relates to the list of issues that we<br/>6 sent to the Inquiry some time ago. There is suggestion<br/>7 by the Home Office and G4S that those lists are too<br/>8 prescriptive. I should indicate that the purpose of<br/>9 providing those potential question and lines of enquiry,<br/>10 certainly at the point at which it was done on behalf of<br/>11 MA, it was in order to inform what was, as we saw it,<br/>12 the scope of the Inquiry based on the terms of<br/>13 reference. It wasn't to straitjacket in any way or<br/>14 shape the Inquiry, but it was to give an indication of<br/>15 what we considered to be, on his behalf, the key matters<br/>16 that needed to be addressed.<br/>17 We do respectfully submit that when you consider<br/>18 those questions, and the way in which they were<br/>19 formulated, they start very much from MA's individual<br/>20 case, his individual experiences and they break it down<br/>21 into what are the key matters, focusing on the decision<br/>22 to detain, whether or not it was compatible with the law<br/>23 and policy, in particular the Adults at Risk policy, and<br/>24 whether or not the safeguards applied in his case.<br/>25 It is from that we respectfully submit, that you</p> <p style="text-align: center;">Page 36</p> |

1 then can ask yourself, as we sought to do in the second  
 2 part of that list, and annex 2, the thematic questions,  
 3 the systemic issues which derive from that. They do  
 4 inevitably, we respectfully submit, need to consider  
 5 wider detention policy and practices in order to  
 6 identify if this was a systemic issue.  
 7 Then that leads, we sought to suggest, into who  
 8 might be the potential witnesses that could properly  
 9 address those questions.  
 10 So rather than being some kind of straitjacket that  
 11 you should ignore, we respectfully submit that the lines  
 12 of enquiry that we proposed at a very early stage are  
 13 a practical and effective way of (a) identifying the  
 14 aspects of the article 3 mistreatment in MA's case, what  
 15 does it show about any thematic or systemic issues, in  
 16 the context of the article 3 obligation to have in place  
 17 effective systems and operational methods and practices  
 18 to avoid unlawful mistreatment, and therefore who is  
 19 going to need to be asked questions to answer not just  
 20 what happened but critically why, as the basis for them  
 21 making your recommendations in terms of learning  
 22 lessons.  
 23 We would ask you to continue to take into account  
 24 that suggested lines of enquiry, and certainly not shut  
 25 it out, narrow it or exclude aspects of that enquiry

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1 that we identified as being important and necessary for  
 2 effective investigation.  
 3 Those are all my submissions.  
 4 Can I just say that Mr Goodman is now going to make  
 5 a short submission on behalf of Reverend Ward?  
 6 THE INQUIRY CHAIR: Thank you, Ms Harrison.  
 7 Mr Goodman?  
 8 Mr Goodman, can you hear us?  
 9 MS HARRISON: I think it may be the same issue about being  
 10 muted. I think you have to do something on your end.  
 11 THE INQUIRY CHAIR: We can't actually see him on our screen.  
 12 My apologies. Give us two minutes and we will try and  
 13 solve that.  
 14 MR KETT: Apologies, it is Mr Kett, I have just been told by  
 15 Mr Goodman he has lost the Zoom link and been locked  
 16 out.  
 17 THE INQUIRY CHAIR: Is he attempting to rejoin us?  
 18 MR KETT: I think he may have been locked out. I don't know  
 19 whether the engineer needs to let him back in.  
 20 THE INQUIRY CHAIR: My apologies to everybody online. If  
 21 you will just give us two moments we will try to resolve  
 22 that and allow him back in. (Pause)  
 23 If you could try again, Mr Goodman. My apologies  
 24 for that.  
 25 Mr Kett, if you could pass on that message to him,

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1 the room should now be unlocked and he should be able to  
 2 get in.  
 3 We can't see you. Would you like your camera to be  
 4 switched on? Thank you very much.  
 5 MR GOODMAN: I think in future there needs to be a mechanism  
 6 to readmit.  
 7 I just wanted to, if I may, adumbrate --  
 8 (Audio interference)  
 9 THE INQUIRY CHAIR: If you are connected to the YouTube  
 10 stream at the same time, it might be why we can hear two  
 11 versions of it.  
 12 MR GOODMAN: Sorry, I had to follow while I was locked out.  
 13 Submissions on behalf of the REVEREND WARD  
 14 MR GOODMAN: On behalf of Mr Ward, I just want to add  
 15 a couple of points.  
 16 The summary submission for Mr Ward is that  
 17 purporting to exclude matters from consideration in  
 18 participation of the evidence is inappropriate and will  
 19 be unhelpful for the participants.  
 20 The preliminary descriptions that have been given by  
 21 Counsel to the Inquiry of the kinds of matters that it  
 22 is contemplated will be excluded are difficult to  
 23 interpret, and to hold for example that wider issues of  
 24 immigration policy are excluded will simply lead to  
 25 unnecessary and unhelpful debate as to what that

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1 actually means further down the line.  
 2 Mr Ward's submission is the proper approach is  
 3 simply to determine if and when an issue arises that  
 4 a matter is unhelpful or irrelevant and make that clear  
 5 when it does.  
 6 As to the scope itself, it may be helpful to just  
 7 remind the Inquiry of some of the principal learning  
 8 upon this.  
 9 The first passage I would like to refer to is in the  
 10 decision of Mr Justice Jackson in the case of  
 11 Margaret Wright v the Secretary of State for the Home  
 12 Department [2001] EWHC Admin 520.  
 13 Mr Justice Jackson held there at paragraph 43 as to  
 14 the investigative duty articles 2 and, as has been  
 15 subsequently held, under article 3, the investigation is  
 16 required in order to maximise future compliance with  
 17 those articles.  
 18 Lord Bingham, in the case of Amin v Home Secretary  
 19 [2004] 1 AC 653, approved Mr Justice Jackson's  
 20 description at paragraph 31 of his speech. He described  
 21 the purposes of the investigation, the article 3  
 22 investigation, as:  
 23 "... including that dangerous practice and  
 24 procedures are rectified."  
 25 So the Inquiry is concerned with identifying

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| <p>1 dangerous practices and procedures so as to rectify them<br/>                 2 and ensure compliance in future with the substantive<br/>                 3 provisions of articles 2 and 3, and of course also the<br/>                 4 procedural and investigative duties.<br/>                 5 A similar position was explained by<br/>                 6 Lord Justice Sedley in the Court of Appeal in the case<br/>                 7 of AM v Secretary of State for the Home Department<br/>                 8 [2009] UKHRR 973. paragraphs 57 to 60.<br/>                 9 He described the purpose of an article 3<br/>                 10 investigation as being:<br/>                 11 "To inform the public and the Government about what<br/>                 12 may have gone wrong in relation to an important civic<br/>                 13 and international obligation and about what can be done<br/>                 14 to stop it happening again."<br/>                 15 At 58 he held that Mr Justice Jackson's formulation<br/>                 16 in Wright was correct.<br/>                 17 At 59 he held:<br/>                 18 "It is significant in the light of the foregoing<br/>                 19 discussion that that formulation as to the scope of the<br/>                 20 duty include ensuring, so far as possible, that the full<br/>                 21 facts are brought to light and that lessons will be<br/>                 22 learned and implemented."<br/>                 23 Both of these objectives go markedly beyond the<br/>                 24 identification and punishment of those responsible.<br/>                 25 They are reflected both in Lord Bingham's explicit</p> <p style="text-align: center;">Page 41</p>   | <p>1 review of the cases there makes abundantly clear that in<br/>                 2 fact the preponderance cases on article 3 have focused<br/>                 3 on failures in system and regulation primarily, as<br/>                 4 opposed to the mere facts of the incident.<br/>                 5 The question is: does the Inquiry need to identify<br/>                 6 dangerous practices and procedures? On the basis of<br/>                 7 Amin and all the case law, the answer can only be yes.<br/>                 8 It follows, therefore, dangerous practices and<br/>                 9 procedures must be identified and flaws in them must be<br/>                 10 rectified.<br/>                 11 The Inquiry's principal function indeed is to make<br/>                 12 recommendations to ensure that they are rectified and<br/>                 13 that the abuse at issue here does not occur again.<br/>                 14 Just as the investigation in the case of Mr Amin was<br/>                 15 expressly required by Mr Justice Hooper to determine the<br/>                 16 system failures that meant Mr Amin ended up in a shared<br/>                 17 cell when he shouldn't have been, so this case, this<br/>                 18 version will have to trace through, for example, why<br/>                 19 Mr MA was put into Brook House and why he was not<br/>                 20 released upon a medic examining him.<br/>                 21 To do that it will need to trace through how it was<br/>                 22 that he was never identified properly as being<br/>                 23 vulnerable and released as a result. It will need to<br/>                 24 look at why there was seemingly no assessment of the<br/>                 25 appropriateness of putting him in isolation or</p> <p style="text-align: center;">Page 43</p> |
| <p>1 reference in paragraph 61 to the particular anxiety<br/>                 2 which may attend a systemic failure to set right and in<br/>                 3 Mr Justice Hooper's reasons in the Amin case, endorsed<br/>                 4 by the House of Lords, for directing the holding of<br/>                 5 an inquiry. He quotes:<br/>                 6 "It is accepted that the victim was put in the same<br/>                 7 cell as his killer, in the Amin case, because of<br/>                 8 systemic failures. Established procedures were not<br/>                 9 followed and there is an appalling history at Feltham of<br/>                 10 a failure to comply with earlier recommendations."<br/>                 11 Lord Justice Sedley went on to hold:<br/>                 12 "Our domestic jurisprudence, including the binding<br/>                 13 decision of the House of Lords in Amin, makes it clear<br/>                 14 that the investigative obligation of the state may<br/>                 15 depending on the facts at issue go well beyond the<br/>                 16 ascertainment of individual fault and reach questions of<br/>                 17 system, management and institutional culture."<br/>                 18 The last case which the Chair, I hope, will find<br/>                 19 helpful is D v The Commissioner of the Metropolis,<br/>                 20 a case about the investigation of the John Worboys's<br/>                 21 crimes, the reference is [2018] 2 WLR 859. This really<br/>                 22 puts the matter beyond doubt. There is a lengthy<br/>                 23 engagement there with the case law and I refer in<br/>                 24 particular to the speech of the late Lord Kerr SCJ, in<br/>                 25 which he cites in particular the Beganovic case. The</p> <p style="text-align: center;">Page 42</p> | <p>1 segregation -- to pick up Ms Harrison's example.<br/>                 2 The Inquiry cannot hope to know the answers to all<br/>                 3 of that prior to examining the evidence and<br/>                 4 investigating the facts and the system in which these<br/>                 5 tragedies occurred.<br/>                 6 It is inappropriate to be making anticipatory<br/>                 7 determinations on the scope that may exclude or limit<br/>                 8 the ability of the Inquiry to ascertain the full facts<br/>                 9 to ascertain what went wrong.<br/>                 10 Just to take a particular example, the Inquiry will<br/>                 11 have to look at the issue of isolation and segregation<br/>                 12 that Ms Harrison referred to, particularly in the case<br/>                 13 of MA given his mental illness and that he was subjected<br/>                 14 to those procedures. To undertake that exercise, of<br/>                 15 course the Inquiry will need to look at the individual<br/>                 16 decision by officers responsible in Brook House. That<br/>                 17 is not in dispute.<br/>                 18 Of course it will need to look at the management<br/>                 19 oversight of those decisions.<br/>                 20 And of course it will need to ascertain whether<br/>                 21 proper processes were undertaken when authorising that<br/>                 22 decision to put him in isolation.<br/>                 23 Where it is apparent that the proper processes were<br/>                 24 not followed in the individual decision, is the Inquiry<br/>                 25 really going to, in anticipation, inhibit itself from</p> <p style="text-align: center;">Page 44</p>  |

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| <p>1 looking at whether the Detention Centre Rules which<br/>                 2 govern isolation and segregation operate effectively?<br/>                 3 Is it intending to inhibit itself from looking at the<br/>                 4 policies around use of segregation and isolation in<br/>                 5 immigration detention? Is it intending to inhibit<br/>                 6 itself from looking at how a mentally ill detainee came<br/>                 7 to be in that detention centre. Will it say in<br/>                 8 anticipation that it is not going to look at why Mr MA<br/>                 9 was not realised from detention before even being put in<br/>                 10 isolation? Is it going to inhibit itself from looking<br/>                 11 at the previous investigations for example by<br/>                 12 Mr Stephen Shaw of the House of Commons of the failures<br/>                 13 to operate and protect mentally ill and suicidal<br/>                 14 detainees, of the failures of those systems in other<br/>                 15 investigations. Is it intending not to look at<br/>                 16 High Court judgments that have highlighted failures over<br/>                 17 many years? Respectfully, if the intention is in any of<br/>                 18 those cases not to look at those wider questions, then<br/>                 19 the Inquiry is obviously approaching this matter in the<br/>                 20 wrong way and in an artificial and constrained way.<br/>                 21 Mr Ward's submission is that an anticipatory<br/>                 22 determination on scope is really artificial and<br/>                 23 unhelpful. The scope of the Inquiry is self-evident and<br/>                 24 apparent. There is no intention to bring in matters<br/>                 25 outside Brook House. The intention is that the matters</p> <p style="text-align: center;">Page 45</p> | <p>1 MR ODOGWU: Thank you. Can you see and hear me?<br/>                 2 THE INQUIRY CHAIR: We can, yes.<br/>                 3 Submissions on behalf of BB and the GATWICK DETAINEES<br/>                 4 WELFARE GROUP<br/>                 5 MR ODOGWU: Before turning to scope, it is important to<br/>                 6 place on record that we endorse and adopt the written<br/>                 7 submissions on behalf of Medical Justice, SR and KK<br/>                 8 dated 10 December on those additional matters of<br/>                 9 timetabling, witness evidence gathering, the<br/>                 10 identification of potential detainees, resources,<br/>                 11 disclosure and the experts issue.<br/>                 12 Madam, I note your earlier acknowledgement of those<br/>                 13 submissions, so I don't propose to develop those further<br/>                 14 at this time, except to place those upon the court.<br/>                 15 I also do not propose to rehearse the submissions on<br/>                 16 scope that are already before you. They have been<br/>                 17 detailed and extensive. We adopt the submissions on<br/>                 18 behalf of MA, Medical Justice, SR, KK and Mr Ward, and<br/>                 19 indeed ourselves from our previous submissions. So it<br/>                 20 follows I don't propose to address you, madam, at<br/>                 21 length. I have five brief supplementary submissions on<br/>                 22 scope.<br/>                 23 First, madam, the position adopted by the Chair in<br/>                 24 the opening statement and the note recognises that the<br/>                 25 Inquiry's scope should include the changes that have</p> <p style="text-align: center;">Page 47</p> |
| <p>1 within Brook House are understood within the proper and<br/>                 2 full context of the procedure, systems and laws that<br/>                 3 have relevance to the abuse that took place there.<br/>                 4 Immigration policy more widely is the phrase that's<br/>                 5 been used in counsel's note. It is unhelpful, Mr Ward<br/>                 6 submits, for the Chair to purport to determine one way<br/>                 7 or another whether immigration policy more widely is to<br/>                 8 be excluded at this stage. It is too vague a phrase.<br/>                 9 Of course the Inquiry is not interested in some<br/>                 10 aspects of immigration policy. But what happens in<br/>                 11 an immigration detention centre is a manifest of the<br/>                 12 immigration policy. There is a continuous spectrum of<br/>                 13 relevance, it is impossible to attempt to draw a line in<br/>                 14 anticipation as to what is or is not relevant. That<br/>                 15 will have to be left to the examination of the evidence<br/>                 16 and case-by-case determination. If parties misuse the<br/>                 17 process or stray from what is helpful to the core<br/>                 18 purpose of the Inquiry, then control that but don't<br/>                 19 purport to close the Inquiry's mind before hearing the<br/>                 20 evidence.<br/>                 21 Thank you.<br/>                 22 THE INQUIRY CHAIR: Thank you, Mr Goodman.<br/>                 23 MS MCGAHEY: Madam, may I invite Mr Odogwu to make<br/>                 24 submissions to you on behalf of BB and Gatwick Detainees<br/>                 25 Welfare Group.</p> <p style="text-align: center;">Page 46</p>  | <p>1 been made in response to the Panorama documentary and<br/>                 2 an investigation into whether those changes are<br/>                 3 adequate.<br/>                 4 Indeed, the adequacy of those changes were described<br/>                 5 as "crucial" in the notice of determination of BB's core<br/>                 6 participant application.<br/>                 7 We, of course, adopt that view. Submissions<br/>                 8 advanced on behalf of G4S, however, suggest that<br/>                 9 adequacy can be assessed by reference to what the<br/>                 10 Inquiry considers appropriate to remedy any defects<br/>                 11 without an assessment of their effectiveness in<br/>                 12 practice. It is unclear from G4S's submission how the<br/>                 13 Inquiry is to go about this theoretical exercise. We<br/>                 14 note Ms McGahey has already invited further clarity from<br/>                 15 G4S on this point, but in any event, we say respectfully<br/>                 16 that approach is flawed.<br/>                 17 In measuring the adequacy of any change, that<br/>                 18 doesn't mean holding an inquiry into exactly how<br/>                 19 something is not working. But there does need to be<br/>                 20 some examination of the effectiveness of those changes<br/>                 21 in practice. Adequacy of systems cannot simply be<br/>                 22 resolved in the abstract or in theory as G4S invite you<br/>                 23 to do. It will require assessing evidence as to its<br/>                 24 effectiveness, particularly if this is controversial<br/>                 25 between the core participants.</p> <p style="text-align: center;">Page 48</p>   |

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| <p>1 Ultimately, it does depend on what changes have been<br/>2 made. So essentially the Inquiry is going to have to<br/>3 wait and see and not to make a determination at this<br/>4 stage.<br/>5 The second submission, madam, addresses the slight<br/>6 difference in drafting of the Inquiry's terms of<br/>7 reference from that of the original terms of reference<br/>8 as drafted by the Probation Ombudsman. This was<br/>9 referenced in the submissions, I believe, from G4S,<br/>10 namely that the phrase "in particular" occurs in the<br/>11 previous sentence in the original terms of reference.<br/>12 We say that essentially makes no difference to the<br/>13 intention of the terms of reference. It was clear then,<br/>14 and it is even clearer now in the construction of the<br/>15 terms of reference as drafted for the purposes of the<br/>16 Inquiry, that the areas of focus identified at those<br/>17 subparagraphs 1 to 6 were not intended to be exhaustive.<br/>18 At the very least, the drafting suggests that terms<br/>19 of reference should not be interpreted strictly or<br/>20 narrowly. That is clear, we say, from both versions of<br/>21 the terms of reference. So any submission that there is<br/>22 some subtle change because the word "particular" occurs<br/>23 in the next sentence, we say is misplaced.<br/>24 This leads, madam, to my third submission. Perhaps<br/>25 it is my most important submission. As identified by</p> <p style="text-align: center;">Page 49</p> | <p>1 other investigations have failed to address the root<br/>2 causes. This Inquiry is the first of its kind and it is<br/>3 prompted by abuse at the highest and most systemic<br/>4 level. This makes the Inquiry take on even greater<br/>5 importance to the public and requires a particularly<br/>6 intensive and extensive examination of the wider issues.<br/>7 The second reason why it makes logical sense to<br/>8 adopt this funnelling analogy in this Inquiry is because<br/>9 to narrow the approach of the terms of reference at this<br/>10 early stage serves only to limit the lessons that can be<br/>11 learnt before the evidence has even emerged. In that<br/>12 sense we adopt the submissions already made by<br/>13 Ms Harrison and on behalf of Mr Ward.<br/>14 My fourth submission, madam, relates to paragraph 2<br/>15 of the terms of reference, which appreciates that the<br/>16 Inquiry requires an examination of where the methods,<br/>17 policies, practices and management arrangements caused<br/>18 or contributed to any identified mistreatment. The<br/>19 point to make is a simple one on this aspect. We submit<br/>20 a possible causal connection is sufficient to trigger<br/>21 the investigative duty into those system issues. This<br/>22 approach is consistent with article 2, as described in<br/>23 the case of Speck in 2016, a High Court case, which<br/>24 confirmed:<br/>25 "A Coroner conducting an article 2 inquest has</p> <p style="text-align: center;">Page 51</p> |
| <p>1 Counsel to the Inquiry in paragraph 4 of the note, all<br/>2 core participants agree with earlier submissions on<br/>3 scope that effectively the Inquiry needs to remain<br/>4 flexible and go where the evidence takes it.<br/>5 But, madam, what does that actually mean in<br/>6 practice? The Chair and Ms McGahey will perhaps be<br/>7 familiar with the funnelling exercise that underpins all<br/>8 article 2 compliance inquests. That analogy was coined<br/>9 in the Court of Appeal case of Lewis, at paragraph 29,<br/>10 which stated:<br/>11 "The inquest process can be visualised as a funnel,<br/>12 wide at its opening but narrowing as the evidence passes<br/>13 down it so as to exclude non-causative factors from the<br/>14 eventual verdict."<br/>15 This principle, madam, neatly embodies our<br/>16 overarching submissions essentially on scope in this<br/>17 Inquiry. We do not disagree that what happened to the<br/>18 individuals who were detained at Brook House during the<br/>19 relevant period will be the focus of the Inquiry. There<br/>20 is no dispute between the core participants on that<br/>21 issue. However, we submit that not only is the<br/>22 funnelling approach to wider issues required by the<br/>23 legal obligations that are imposed by article 3, it also<br/>24 makes logical sense for two reasons.<br/>25 The first is we are having this Inquiry because</p> <p style="text-align: center;">Page 50</p>   | <p>1 a duty to investigate those matters which caused or at<br/>2 least arguably appeared to have caused or contributed to<br/>3 death."<br/>4 That is taken from paragraph 47 of that judgment,<br/>5 the case of Speck.<br/>6 In this context, madam, arguable is one that is more<br/>7 than merely fanciful, and therefore we submit it is<br/>8 a low threshold and this should be met where there is<br/>9 an issue which requires further investigation or whether<br/>10 enquiries may reveal a breach, but it is not limited to<br/>11 where there is a prima facie case at the outset before<br/>12 evidence has been heard.<br/>13 It is also relevant, madam, that the case I referred<br/>14 to earlier, the case of Lewis, made it clear that there<br/>15 is a power in article 2 proceedings to leave possible<br/>16 causative issues as shortcomings.<br/>17 Madam, my fifth and final submission is that you<br/>18 perhaps will have noticed from our written submissions<br/>19 and our draft list of issues that we have approached the<br/>20 terms of reference with particular emphasis on the<br/>21 characteristics of the detained person. That is because<br/>22 whether there has been mistreatment as defined by the<br/>23 terms of reference as treatment contrary to article 3,<br/>24 depends on all the circumstances, including the nature<br/>25 and context of the treatment, its duration, its physical</p> <p style="text-align: center;">Page 52</p>   |

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| <p>1 and mental effect, whether the victim is detained and<br/>2 the sex, age and state of health of the victim.<br/>3 Motivation of the alleged abuser of article 3<br/>4 treatment is relevant to whether there has been<br/>5 a breach. So the Inquiry is required to take all<br/>6 reasonable steps to unmask any discriminatory or indeed<br/>7 racist motive in either any incident that has been<br/>8 complained of, and also policies, practices, and<br/>9 management arrangements to establish whether or not<br/>10 there has been any prejudice which may have played<br/>11 a part.<br/>12 That's why the broad culture of issues and system<br/>13 issues need to be examined and understood as part of<br/>14 this Inquiry.<br/>15 Madam, you posed the opening question of how events<br/>16 outside Brook House or the relevant period will assist<br/>17 with answering the questions of what happened and what<br/>18 lessons can be learned in the future will effectively<br/>19 dictate the question on scope. It follows from my<br/>20 submissions that this Inquiry must consider the wider<br/>21 system issues that govern policy, practice, and<br/>22 institutional culture at a high level, and not limiting<br/>23 it to Brook House when considering those questions that<br/>24 you posed which go to the issue of mistreatment in<br/>25 individual cases, because the wider systemic issues and</p> <p style="text-align: center;">Page 53</p> | <p>1 written submission and because the approach that has<br/>2 already been proposed by the Inquiry is frankly very<br/>3 sensible, appropriate and realistic.<br/>4 It is important to keep in sight what the Inquiry<br/>5 was set up to achieve. We have become very used to vast<br/>6 public inquiries, often over many years and costing<br/>7 millions of pounds. The Brook House Inquiry however was<br/>8 set up as an investigation, a targeted investigation,<br/>9 into mistreatment that occurred at Brook House between<br/>10 April and August 2017.<br/>11 It is by no means a small investigation -- we have<br/>12 heard already today about the vast disclosure exercise<br/>13 that has already been involved -- but it is a targeted<br/>14 investigation.<br/>15 It is by looking at that snapshot at Brook House at<br/>16 the relevant period that wider lessons can be learnt<br/>17 that can apply to the immigration detention estate as<br/>18 a whole or in the future. But at the heart of this<br/>19 investigation are not broad political questions but<br/>20 individuals. It is an investigation into what happened<br/>21 to those individuals at Brook House at the relevant<br/>22 period. It is going to be establishing whether any<br/>23 individuals were subject to mistreatment contrary to<br/>24 article 3.<br/>25 I have heard the submissions of Ms Harrison QC this</p> <p style="text-align: center;">Page 55</p>  |
| <p>1 the individual cases are inextricably linked. You can't<br/>2 divorce the two: to do so will be artificial and it<br/>3 won't assist this Inquiry.<br/>4 Madam, those are my submissions. I said I will be<br/>5 brief. Unless I can assist, further.<br/>6 Perhaps, in fact, I will take one moment just to<br/>7 check with my instructing solicitors.<br/>8 THE INQUIRY CHAIR: Thank you, absolutely.<br/>9 (Pause)<br/>10 MR ODOGWU: I am very grateful, madam. No further<br/>11 submissions at this stage.<br/>12 Madam, can I just ask -- I am waiting to hear back<br/>13 from my colleague Mr Jesse Nicholls, and so perhaps if<br/>14 there is anything arising, I may have the opportunity to<br/>15 address a discrete issue.<br/>16 THE INQUIRY CHAIR: Absolutely. No problem. Thank you very<br/>17 much.<br/>18 MR ODOGWU: Thank you.<br/>19 MS McGAHEY: May I invite Mr Blake on behalf of the<br/>20 Home Office to address you next?<br/>21 THE INQUIRY CHAIR: Thank you.<br/>22 Submissions on behalf of THE HOME OFFICE<br/>23 MR BLAKE: Thank you very much.<br/>24 I don't want to take up too much time with oral<br/>25 submission today because we have already filed detailed</p> <p style="text-align: center;">Page 54</p>   | <p>1 morning. The decision to detain itself can't, of<br/>2 course, be a breach of article 3. That's not what<br/>3 Mrs Justice May said and I don't actually think that<br/>4 that is what Ms Harrison is saying. We have set out in<br/>5 our submissions the legal threshold and that is<br/>6 a decision to be taken in each case.<br/>7 The Inquiry will be establishing whether in<br/>8 a particular case, whether there was treatment which<br/>9 take it is beyond that threshold, and that includes<br/>10 testing the accounts of individuals as to what is said<br/>11 to have amounted to mistreatment in their case.<br/>12 Mrs Justice May did not, in fact, make any findings<br/>13 whatsoever insofar as their treatment was concerned.<br/>14 Mr Goodman, and to some extent Mr Odogwu, cited<br/>15 quite a few cases to us this morning. It is not<br/>16 possible, of course, without pre-exchange of authorities<br/>17 in advance to make any detailed submissions on those<br/>18 authorities. But what I do say is that in cases where<br/>19 there has been a death it is very clear that a death has<br/>20 happened. In an article 3 case, the first step must be<br/>21 to establish whether there has in fact been<br/>22 mistreatment. That is the starting point.<br/>23 In those cases where mistreatment has been found to<br/>24 have occurred, then finding out what happened and what<br/>25 can be learned from that.</p> <p style="text-align: center;">Page 56</p> |

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| <p>1 We have set out our submissions in terms of the<br/>2 terms of reference at paragraphs 4 to 13 of our written<br/>3 submissions. In short, every paragraph in the terms of<br/>4 reference tracks back to paragraph 1, which is the<br/>5 investigation of mistreatment.</p> <p>6 The Home Office wholly supports the approach that<br/>7 has been indicated by the Inquiry, whereby the starting<br/>8 point is the mistreatment of those who are detained and<br/>9 looking into their reported experiences. All further<br/>10 investigation must concern those cases where<br/>11 mistreatment has been identified.</p> <p>12 Using the language that was used in fact in those<br/>13 High Court proceedings by MA and BB themselves, the<br/>14 investigative obligation is inextricably linked to the<br/>15 specific nature of those breaches.</p> <p>16 G4S in their written submissions today have<br/>17 described the investigation into mistreatment of those<br/>18 who were detained as the touchstone of the Inquiry's<br/>19 purpose, and we would absolutely agree with that.</p> <p>20 As far as issues other than establishing what<br/>21 happened to those individuals are concerned, you, Madam<br/>22 Chair, are an experienced investigator and we don't<br/>23 propose or seek to impose a detailed list of lines of<br/>24 enquiry of witnesses. All the core participants have<br/>25 submitted that the Inquiry needs to be flexible and be</p> <p style="text-align: center;">Page 57</p> | <p>1 to be meaningful and they need to prevent recurrence as<br/>2 soon as possible.</p> <p>3 We know that the Inquiry has already conducted a lot<br/>4 of work behind the scenes, and we are certainly not<br/>5 relying on some alleged delay to limit the scope of the<br/>6 Inquiry. But, practically speaking, looking at decades<br/>7 of practice, or wide political themes as suggested by<br/>8 some of the core participants would inevitably undermine<br/>9 that key aspect of the Inquiry, which is to make<br/>10 a timely diagnosis.</p> <p>11 That would be the case, frankly, whenever the<br/>12 Inquiry began. Certainly the time that it has taken to<br/>13 set up the Inquiry and to conduct all the work that you<br/>14 have already conducted, certainly isn't being used by<br/>15 the Home Office as some reason to cut out or narrow the<br/>16 scope. We are simply saying that those very broad<br/>17 political themes and looking at decades of practice<br/>18 certainly is not achievable.</p> <p>19 I don't have any further submissions to make. I can<br/>20 just double-check.</p> <p>21 No, nobody has corrected me. I am happy to leave it<br/>22 at that.</p> <p>23 Thank you very much.</p> <p>24 MS McGAHEY: Madam, may I invite Mr Sharland QC to address<br/>25 you on behalf of G4S?</p> <p style="text-align: center;">Page 59</p> |
| <p>1 led where the evidence takes it.</p> <p>2 It is, of course, sensible to draw up a list of<br/>3 issues and we have addressed that at paragraphs 14 to 26<br/>4 of the Home Office's submissions. We endorse the<br/>5 Inquiry's provisional list, subject to the possibility<br/>6 that the evidence might render some of the issues<br/>7 unnecessary. We can't yet know whether or not that will<br/>8 happen, and that is the funnel that we have just heard<br/>9 about.</p> <p>10 In respect to wider policy issues and lessons<br/>11 learnt. As I began my submissions by saying, and the<br/>12 constant theme of the Home Office's submissions, is that<br/>13 the Inquiry must always keep its eye on the individuals<br/>14 found to have been mistreated and the policies,<br/>15 procedures and practices that applied to them.</p> <p>16 If and to extent that national policies, practices<br/>17 and procedures played a direct role in that<br/>18 mistreatment, then so be it, they can and should be<br/>19 investigated. They are certainly not being ruled out.<br/>20 But the Inquiry is not the correct forum for broad<br/>21 political questions and it must focus on the issues<br/>22 which are central to that mistreatment.</p> <p>23 Finally, and related to that point, as various core<br/>24 participants have made clear at the last hearing, in<br/>25 order to be effective the lessons that are learned need</p> <p style="text-align: center;">Page 58</p>                        | <p>1 MR SHARLAND: Good morning, Madam Chair, can you hear and<br/>2 see me?</p> <p>3 THE INQUIRY CHAIR: I can hear you, I can't see you.</p> <p>4 It may be at our end. If you will just give us one<br/>5 moment, we will try and correct that for you, apologies.</p> <p>6 (Pause)</p> <p>7 There, you are. Please go ahead.</p> <p>8 Submissions on behalf of G4S</p> <p>9 MR SHARLAND: Thank you very much.</p> <p>10 I am going to make brief oral submissions, taking<br/>11 into account your opening comments. I am not planning<br/>12 to repeat my written submission serious that you have<br/>13 indicated you have already read. I will, of course,<br/>14 address the point made at paragraphs 12 to 13 of Counsel<br/>15 to the Inquiry's note that we have been asked to comment<br/>16 on.</p> <p>17 Madam Chair, the purpose of this Inquiry is, of<br/>18 course, to discharge the State's investigative<br/>19 obligation under article 3. As Mrs Justice May<br/>20 explained in BB and MA's judicial review, at paragraph<br/>21 61, in the context of considering whether a power to<br/>22 compel witnesses was necessary, she said:</p> <p>23 "I have borne in mind also that the article 3<br/>24 investigation can only be parasitic on alleged<br/>25 substantive breaches of the article and that its</p> <p style="text-align: center;">Page 60</p>  |

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| <p>1 efficacy must therefore be assessed by reference to such<br/>2 breaches alone."<br/>3 My learned friend Ms Harrison took you to various<br/>4 extracts from Mrs Justice May's judgment, including<br/>5 paragraph 24 where the various allegations of breach of<br/>6 article 3 were set out. However, there is nowhere in<br/>7 the judgment that Mrs Justice May accepts that all those<br/>8 matters raised do amount or potentially amount to<br/>9 article 3 mistreatment. Indeed, if you look at<br/>10 Mrs Justice May's conclusion, particularly paragraphs 61<br/>11 and 62, the focus is very much on alleged physical<br/>12 abuse. It is not looking at wider issues about whether<br/>13 a particular individual should or should not be<br/>14 detained.<br/>15 Of course, Mrs Justice May's judgment must inform<br/>16 this Inquiry's approach to the terms of reference, which<br/>17 are there to discharge the state's article 3<br/>18 investigatory obligation.<br/>19 I would agree with my learned friend Mr Blake, the<br/>20 focus of the Inquiry must be on the alleged<br/>21 mistreatment, contrary to article 3, of persons<br/>22 detained. That has to be the starting point. The<br/>23 Inquiry must consider whether there is credible evidence<br/>24 of mistreatment contrary to article 3 in relation to<br/>25 a particular detained person.</p> <p style="text-align: center;">Page 61</p>   | <p>1 produce a final report to the Home Secretary, setting<br/>2 out findings of fact and recommendations within<br/>3 12 months, ie by November 2020. It is clear that this<br/>4 timetable envisaged a focused and narrow inquiry into<br/>5 alleged mistreatment contrary to article 3 of detained<br/>6 persons at Brook House only over the five-month period.<br/>7 The very broad scope of the Inquiry suggested by BB,<br/>8 MA and certain other core participants goes beyond what<br/>9 is necessary for the state to discharge its<br/>10 investigative obligation under article 3. Indeed, if<br/>11 the suggested approach was adopted, it is likely to give<br/>12 rise to a significant risk that the Inquiry will fail to<br/>13 discharge such an investigative obligation, because --<br/>14 as the Chair is well aware -- there is a requirement<br/>15 that such investigations must be completed promptly and<br/>16 the more broad the Inquiry goes, the longer it will<br/>17 take.<br/>18 Madam Chair, I now want to respond to paragraphs 12<br/>19 and 13 to Counsel to the Inquiry's helpful note, where<br/>20 she picks up and quotes a submission from our written<br/>21 submissions, where it says:<br/>22 "G4S contend, however, that the Inquiry should<br/>23 consider the adequacy of those changes 'by reference to<br/>24 what the Inquiry considers is appropriate' to remedy any<br/>25 defects, and not pursuant to any additional assessment</p> <p style="text-align: center;">Page 63</p> |
| <p>1 If there is such credible evidence, the Inquiry must<br/>2 go on to consider whether there actually was<br/>3 mistreatment of the detained person contrary to<br/>4 article 3, and if there was, what were the causes of<br/>5 such mistreatment and what steps must be taken to ensure<br/>6 that such mistreatment does not happen again?<br/>7 If, however, there is no credible evidence of<br/>8 mistreatment of sufficient severity to breach article 3,<br/>9 that is the end of the Inquiry in relation to the<br/>10 detained individual.<br/>11 I would echo my learned friend Mr Blake's comments<br/>12 in response to the reliance by various parties of<br/>13 article 2 jurisprudence. You cannot just merely apply<br/>14 the article 2 jurisprudence to article 3 cases, because<br/>15 different considerations arise.<br/>16 The temporal scope of the Inquiry is clearly laid<br/>17 down in the terms of reference: 1 April 2017 to<br/>18 31 August 2017. It is not the role of the Inquiry to<br/>19 investigate the distance of credible evidence before<br/>20 1 April 2017 or after 31 August 2017, as some of the<br/>21 core participants appear to be suggesting.<br/>22 It is important to note that part of the terms of<br/>23 reference address the issue of your report. The terms<br/>24 of reference state that it is expected that the Inquiry<br/>25 will make its best endeavours to complete work and</p> <p style="text-align: center;">Page 62</p> | <p>1 of their effectiveness in practice."<br/>2 It appears that this has been somewhat<br/>3 misunderstood. The point we are making here is<br/>4 ultimately one of focus. We accept that the Inquiry<br/>5 shouldn't, of course, be blind to whether a particular<br/>6 reform is effective or not. Our point is that when the<br/>7 Inquiry considers changes that have been made, it can<br/>8 only do so as a means of addressing the question of what<br/>9 recommendations should be made to remedy defects arising<br/>10 from the Inquiry's findings. Any assessment of<br/>11 subsequent changes can only be instrumental to those<br/>12 ends and must be confined to that purpose.<br/>13 It is about ensuring that there is not<br/>14 a wide-ranging inquiry into the effectiveness of<br/>15 reform X, which may have multiple purposes, when, for<br/>16 example, only one of them is relevant to a defect<br/>17 relevant to this Inquiry's terms of reference.<br/>18 Any assessment that goes wider than the reforms<br/>19 relevant to a finding made by the Inquiry lies outside<br/>20 the terms of reference.<br/>21 The terms of reference have a specific temporal<br/>22 period and the Inquiry should avoid the risk that any<br/>23 examination of the effectiveness of reforms unlawfully<br/>24 widens the temporal scope of the Inquiry by the back<br/>25 door.</p> <p style="text-align: center;">Page 64</p>  |



1 What the Inquiry should not be doing is carrying out  
 2 an investigation of what took place in a specified  
 3 period in 2017, per the terms of reference, and then  
 4 effectively doing the same extensive exercise in respect  
 5 of, for example, 2018, so as to assess fully the  
 6 effectiveness of remedial steps subsequently taken. The  
 7 crucial point is that consideration of the remedial  
 8 measures is relevant to the adequacy of those changes to  
 9 remedy defects identified by the Inquiry and not  
 10 an additional assessment of effectiveness. It they must  
 11 be done properly within of terms of reference and not  
 12 something additional to them.  
 13 Madam Chair, those are my submissions. I have just  
 14 checked my email and I don't think there is anything  
 15 further I need to add or clarify.  
 16 I am very grateful, thank you.  
 17 THE INQUIRY CHAIR: Thank you, Mr Sharland.  
 18 MS McGAHEY: Madam, before I go on to other core  
 19 participants, I am sorry, I should have come back to  
 20 Mr Odogwu and asked whether there was anything else he  
 21 wanted to add, having conferred with Mr Nicholls.  
 22 MR ODOGWU: Nothing to add, I am grateful.  
 23 THE INQUIRY CHAIR: Thank you very much.  
 24 MS McGAHEY: Thank you.  
 25 Madam, could I invite then Mr Bunting on behalf of

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1 the BBC to address you?  
 2 THE INQUIRY CHAIR: Thank you.  
 3 MR BUNTING: Madam, the BBC have no substantive submissions  
 4 to make in respect of scope. I am very sorry for not  
 5 confirming that in writing by the agreed date.  
 6 THE INQUIRY CHAIR: No problem, thank you very much.  
 7 MS McGAHEY: Ms Dobbin, on behalf of Her Majesty's  
 8 Inspectorate.  
 9 MS DOBBIN: Madam, I don't know if you can see me or hear  
 10 me?  
 11 THE INQUIRY CHAIR: We can see and hear you, yes, thank you.  
 12 Ms Dobbin.  
 13 MS DOBBIN: I am grateful.  
 14 Madam, we don't have any further submissions to  
 15 make, thank you.  
 16 THE INQUIRY CHAIR: Thank you very much.  
 17 MS McGAHEY: Lastly, Mr Dixey on behalf of the IMB.  
 18 MR DIXEY: Good morning, likewise we make no substantive  
 19 submissions on scope.  
 20 THE INQUIRY CHAIR: Thank you, Mr Dixey.  
 21 MS HARRISON: I wondered if it was possible just to make  
 22 some short submissions in response to the G4S  
 23 submissions on the significance of the findings in MA.  
 24 THE INQUIRY CHAIR: Yes. Please go ahead.  
 25 Reply submissions on behalf of MA

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1 MS HARRISON: Just in terms of principle, it was clear and  
 2 it was common ground between the Secretary of State and  
 3 the individual claimants that there was no substantive  
 4 difference between the investigative obligations under  
 5 article 2 and 3. You will see that from the judgment,  
 6 that there about the approach.  
 7 Secondly, it is clear that Mrs Justice May was well  
 8 aware that the allegations that form of basis of MA's  
 9 article 3 claim are in no way limited to the physical  
 10 abuse. You will see that from paragraph 24 which  
 11 I showed you. She described that the events revealed by  
 12 the Panorama programme were merely the tip of the  
 13 iceberg so far as he is concerned. Then she sets out  
 14 the matters that were relied upon in paragraph 24. When  
 15 she comes to her conclusions, she makes clear at  
 16 paragraph 63, having set out key factors that I showed  
 17 you in 1 to 4, that the allegations made by MA and BB go  
 18 much wider than events shown in the Panorama programme.  
 19 The full extent of article 3 abuse said to have been  
 20 experienced by both claimants needs to be investigated.  
 21 There is no circumstances in which Mrs Justice May  
 22 was limiting the need for an article 3 investigation to  
 23 the specific incidents of mistreatment in the form of  
 24 physical abuse. As I have sought to emphasise and to  
 25 show you, his case very much focuses in addition on the

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1 detention, the conditions of detention and the impact of  
 2 those conditions on his mental health.  
 3 Insofar as Mr Sharland seeks to suggest that the  
 4 descriptions that were the key factors that led  
 5 Mrs Justice May to conclude that a full inquiry was  
 6 required at 62, one only has to read what those were  
 7 when she emphasised in paragraph 62(i) the egregious  
 8 nature of the breaches, the multiplicity and regularity  
 9 of the abusive events and the openness of the activity  
 10 within the units, as well as the fact that individuals  
 11 were able to act regularly without complaint or  
 12 criticism from other staff or detainees, or without  
 13 other supervising staff and/or monitoring bodies picking  
 14 it up.  
 15 Whilst, of course, that focused on the events that  
 16 took place within Brook House itself, the gravity of the  
 17 breaches, the nature of them and, as I indicated at the  
 18 outset of my submissions, the fact that they occur  
 19 within a climate of impunity, is the critical reason why  
 20 it is going to be necessary in answering not just what  
 21 happened but why it happened, to look at the systemic  
 22 context in which this serious abuse occurred.  
 23 For all the reasons that we submitted, it was  
 24 absolutely clear that Mrs Justice May recognised, and it  
 25 is a foundations of her judgment, that it was going to

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| <p>1 require consideration of systemic problems not simple<br/>2 operational matters on the ground.<br/>3 For those reasons we say that Mr Sharland was wrong<br/>4 and incorrect to suggest that anything that is found in<br/>5 the judgment would justify in any way narrowing or<br/>6 limiting the scope. Of course, that would have to have<br/>7 been apparent from the terms of reference and contrary<br/>8 to his submissions those terms of reference amply cover,<br/>9 and must cover, the systemic issues and context in which<br/>10 this abuse occurred.<br/>11 Those are my only additional submissions on that<br/>12 judgment.<br/>13 THE INQUIRY CHAIR: Thank you, Ms Harrison.<br/>14 MR BLAKE: Could I very briefly just address one matter?<br/>15 That is the scope of agreement from the MA and BB<br/>16 High Court proceedings.<br/>17 THE INQUIRY CHAIR: Please go ahead.<br/>18 Reply submissions on behalf of THE HOME OFFICE<br/>19 MR BLAKE: The agreement was as to the very broad principles<br/>20 that the investigative duty incorporates, such as<br/>21 an effective investigation, a prompt investigation,<br/>22 learning lessons. But the particular submissions that<br/>23 were put at today's hearing in respect of the<br/>24 similarities between article 2 and article 3 were not<br/>25 matters that were considered by the High Court, and were</p> <p style="text-align: center;">Page 69</p> | <p>1 hearings in September. I hope that that is some<br/>2 assistance for those who have to plan their diaries in<br/>3 advance.<br/>4 THE INQUIRY CHAIR: Thank you.<br/>5 I believe that brings us to the end of this<br/>6 morning's agenda. It just remains for me to say thank<br/>7 you very much for all of the submissions this morning,<br/>8 all of which I have listened to carefully and I will now<br/>9 consider further.<br/>10 I will then be issuing my ruling on scope in due<br/>11 course.<br/>12 Thank you all very much.<br/>13 (12.00 pm)<br/>14 (The preliminary hearing concluded)<br/>15<br/>16 I N D E X<br/>17 Opening remarks .....1<br/>18 Update on the Inquiry's Progress .....4<br/>19 Submissions on behalf of MA .....16<br/>20 Submissions on behalf of the REVEREND WARD ...39<br/>21 Submissions on behalf of BB and the .....47<br/>22 GATWICK DETAINEES WELFARE GROUP<br/>23<br/>24 Submissions on behalf of THE HOME OFFICE .....54<br/>25<br/>26 Submissions on behalf of G4S .....60<br/>27<br/>28 Reply submissions on behalf of MA .....66</p> <p style="text-align: center;">Page 71</p> |
| <p>1 not matters that were agreed then.<br/>2 Thank you.<br/>3 THE INQUIRY CHAIR: Thank you, Mr Blake.<br/>4 I believe the next item on our agenda is just --<br/>5 Ms McGahey, can I ask you if you have anything else you<br/>6 wanted to add about the timetable for the Inquiry?<br/>7 Update re timetable<br/>8 MS McGAHEY: One final matter. The intention, is as<br/>9 I mentioned at the outset, for the Inquiry to start take<br/>10 witness statements in January. That will be a process<br/>11 that continues over the coming months. The current<br/>12 intention is that this Inquiry should start its oral<br/>13 hearings on or around 14 June 2021.<br/>14 It is very difficult at the moment to say how long<br/>15 those hearings may take. It will be dependent on<br/>16 a number of factors.<br/>17 Firstly, the number of witnesses that you decide to<br/>18 call.<br/>19 Secondly, the COVID situation and whether you take<br/>20 the view that certain witnesses really must be called<br/>21 face to face if at all possible, or whether it is<br/>22 possible to call them by video.<br/>23 At the moment, the intention is that we will sit<br/>24 from mid-June into July. Whatever happens, the Inquiry<br/>25 will not sit in August. It may continue with its</p> <p style="text-align: center;">Page 70</p>   | <p>1 OFFICE<br/>2 Update re timetable .....70<br/>3<br/>4<br/>5<br/>6<br/>7<br/>8<br/>9<br/>10<br/>11<br/>12<br/>13<br/>14<br/>15<br/>16<br/>17<br/>18<br/>19<br/>20<br/>21<br/>22<br/>23<br/>24<br/>25</p> <p style="text-align: center;">Page 72</p>  |

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