

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

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

2 (Pages 5 to 8)

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

<p>1 supports the Chair's list of issues which was set out in 2 her note of 14 August 2020, but submits that that list 3 should be kept under review and that issues that turn 4 out to be irrelevant should be discarded. 5 G4S, in their submissions, emphasise that the terms 6 of reference permit the Inquiry to investigate only any 7 mistreatment that reaches the high threshold of a breach 8 of article 3. G4S, like the Home Office, submit that 9 the starting point must be the consideration of 10 individual instance of alleged mistreatment. G4S agree 11 that the Inquiry should examine any changes to policies 12 and procedures made since August 2017, since such 13 examination is necessary to inform any recommendations 14 that the Chair may make. 15 G4S do contend, however, that the Inquiry should 16 consider the adequacy of those changes: 17 "... by reference to what the Inquiry considers is 18 appropriate to remedy any defects and not pursuant to an 19 additional assessment of their effectiveness in 20 practice." 21 My suggestion is that the Chair of the Inquiry might 22 be helped by further submissions on this issue from G4S 23 particularly, because it is not entirely clear to 24 Counsel to the Inquiry, to our team, how the Inquiry 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 2 gathering and the disclosure platform. We have put in 3 writing our concerns about the ongoing delay in those 4 basic steps being taken. I appreciate that the Inquiry 5 wishes to consider those matters outside of this public 6 hearing, but we do think it important to put on record 7 our ongoing concern about those matters and in 8 particular our concern about the viability of hearings 9 in June. 10 We mark that now, because obviously it may be 11 something that has to be the subject of further written 12 representations to the Inquiry, but we do have serious 13 concerns about whether that can be achieved in 14 accordance with the obligations to ensure that the 15 Inquiry is effective and we do, within that, have 16 ongoing concerns about our ability as core participants 17 to effectively participate because of (a) the way in 18 which the Inquiry is funding our work and the way in 19 which it is considering our requests to take and to 20 undertake the tasks that we think are important for 21 advancing our clients' interests and assisting the 22 Inquiry in carrying out its important functions. 23 THE INQUIRY CHAIR: Thank you for your comments. As you 24 say, we have undertaken to deal with some of these 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 2 worked in practice. 3 The Independent Monitoring Board and HM Inspectorate 4 of Prisons have made no substantive submissions on scope 5 and no submissions have been received from the BBC. 6 I will now invite core participants to make 7 submissions. My suggestion is that we should follow the 8 order, first Ms Harrison QC, then Mr Odogwu, then 9 Mr Blake, Mr Sharland QC, Mr Bunting, Ms Dobbin, 10 Mr Dixey. 11 May I invite Ms Harrison, QC to make submissions on 12 behalf of her clients? 13 THE INQUIRY CHAIR: Thank you, Ms McGahey. 14 Ms Harrison? 15 MS HARRISON: Good morning. I don't know if you can hear 16 me? 17 THE INQUIRY CHAIR: We can indeed hear you. We can't see 18 you. 19 MS HARRISON: That's because I am being told that the host 20 is preventing me from appearing. 21 THE INQUIRY CHAIR: We will see if we can remedy that. My 22 apologies, do bear with us a moment, thank you. 23 (Pause) 24 MS HARRISON: Can I just say before I start my submissions 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 2 detail. Thank you, but I think it would be helpful if 3 we could move on to the substance of the scope. 4 Thank you. 5 Submissions on behalf of MA 6 MS HARRISON: It does seem to us, as core participants, that 7 there is here a potential fundamental misunderstanding 8 about the term "mistreatment" that appears to be 9 informing the submissions, certainly of the Home Office 10 and G4S. I think is important to start from what do the 11 core participants identify as the mistreatment that 12 falls within the article 3 obligation. 13 It is absolutely apparent from the judgment of 14 Mrs Justice May, which is the context for this Inquiry 15 having been established, that mistreatment is not in any 16 way, shape or form limited to the actual infliction of 17 physical violence or assaults on individuals. 18 If you go to paragraph 24 of that document you will 19 see set out, in some detail in Mr MA's case, the extent 20 of the factors that were relied upon by him as the basis 21 for, both individually and cumulatively, the claim that 22 he was subject to inhuman and degrading treatment. 23 If you have that document in front of you -- I am 24 sure you are very familiar with it -- you will see that 25 the first two factors that were relied upon are the</p> <p style="text-align: center;">Page 16</p>

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

<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.</p> <p style="text-align: center;">Page 21</p>	<p>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</p> <p style="text-align: center;">Page 23</p>
<p>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</p> <p style="text-align: center;">Page 22</p>	<p>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</p> <p style="text-align: center;">Page 24</p>

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

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

<p>1 up and running, that the casualty of that would be the 2 scope and effectiveness of the investigation itself. It 3 cannot be -- and this Inquiry should not go down the 4 route of narrowing or seeking to narrow its scope and 5 exclude these matters because it is concerned now that 6 it will prolong further the time that it takes to 7 properly investigate these matters. 8 We would urge you not to take those factors into 9 account, but to proceed as we have submitted on the 10 basis that it is clear when you properly analyse the 11 individual core participants' cases that the 12 mistreatment, not limited to physical mistreatment, 13 although of course that is very important, but is not 14 limited to physical mistreatment, and directly engages 15 the conditions of detention and the impact upon the 16 individuals in a long-established line of authorities 17 that recognises that that does give rise to arguable 18 article 3 claims. 19 Those are the submissions that we would want to make 20 in support of why we say that the matters we have relied 21 upon are plainly and squarely within both the terms of 22 reference and derive from the individual facts of the 23 core participants' cases. Certainly as they present 24 themselves clearly to us at this stage. 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 2 any of the changes that have been made or are proposed 3 to be made would in fact result in addressing the 4 underlying problems and ensuring that these dangerous 5 practices and abuses exposed by the Panorama footage are 6 not repeated. 7 If I could just take one moment to see if there is 8 anything else to add, and then I will conclude there. 9 THE INQUIRY CHAIR: Of course, yes. Please do. Thank you. 10 Ms Harrison, would you like a couple of moments to 11 talk to your juniors who are representing all your 12 clients and your instructing solicitors? 13 MS HARRISON: If I could, that would be helpful. That would 14 probably be easier, yes. 15 MS McGAHEY: Madam, would it be possible for us take a break 16 for five minutes? 17 THE INQUIRY CHAIR: Absolutely, yes. 18 MS McGAHEY: Will that be enough time? 19 MS HARRISON: That will be adequate, thank you. 20 THE INQUIRY CHAIR: Okay. We will reconvene at 11.00. 21 Thank you very much. 22 (10.56 am) 23 (A short break) 24 (11.03 am) 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 2 of any changes that have been made or are proposed to be 3 made as a result of the Panorama programme. 4 We have submitted in writing, and we reiterate that 5 to the Inquiry, that it would fundamentally reduce any 6 usefulness and effectiveness of the Inquiry if it didn't 7 consider whether or not such changes that have been 8 made, how they are operating in practice. And it would 9 seriously undermine the usefulness of the Inquiry if 10 that task was not undertaken. 11 We would also submit that it is an important part of 12 this Inquiry's remit to consider how the Home Office 13 have responded, and other state participants have 14 responded to these kinds of abuse scandals, critically 15 because of the identified failure to result in any 16 enduring change and to learn lessons from previous 17 investigations. That was a matter, as I have indicated, 18 that was of critical concern to Mr Shaw. It was 19 identified by Mrs Justice May as a reason with why this 20 Inquiry, unlike previous PPO inquiries, needed to be 21 a full statutory public inquiry, with greater powers to 22 carry out a robust forensic examination of what happened 23 and why. 24 We would respectfully submit that this Inquiry would 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 2 clients and junior counsel? 3 MS HARRISON: Yes, I did. 4 There is just one additional point I would like to 5 emphasise, which relates to the list of issues that we 6 sent to the Inquiry some time ago. There is suggestion 7 by the Home Office and G4S that those lists are too 8 prescriptive. I should indicate that the purpose of 9 providing those potential question and lines of enquiry, 10 certainly at the point at which it was done on behalf of 11 MA, it was in order to inform what was, as we saw it, 12 the scope of the Inquiry based on the terms of 13 reference. It wasn't to straitjacket in any way or 14 shape the Inquiry, but it was to give an indication of 15 what we considered to be, on his behalf, the key matters 16 that needed to be addressed. 17 We do respectfully submit that when you consider 18 those questions, and the way in which they were 19 formulated, they start very much from MA's individual 20 case, his individual experiences and they break it down 21 into what are the key matters, focusing on the decision 22 to detain, whether or not it was compatible with the law 23 and policy, in particular the Adults at Risk policy, and 24 whether or not the safeguards applied in his case. 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 2 and ensure compliance in future with the substantive 3 provisions of articles 2 and 3, and of course also the 4 procedural and investigative duties. 5 A similar position was explained by 6 Lord Justice Sedley in the Court of Appeal in the case 7 of AM v Secretary of State for the Home Department 8 [2009] UKHRR 973. paragraphs 57 to 60. 9 He described the purpose of an article 3 10 investigation as being: 11 "To inform the public and the Government about what 12 may have gone wrong in relation to an important civic 13 and international obligation and about what can be done 14 to stop it happening again." 15 At 58 he held that Mr Justice Jackson's formulation 16 in Wright was correct. 17 At 59 he held: 18 "It is significant in the light of the foregoing 19 discussion that that formulation as to the scope of the 20 duty include ensuring, so far as possible, that the full 21 facts are brought to light and that lessons will be 22 learned and implemented." 23 Both of these objectives go markedly beyond the 24 identification and punishment of those responsible. 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 2 fact the preponderance cases on article 3 have focused 3 on failures in system and regulation primarily, as 4 opposed to the mere facts of the incident. 5 The question is: does the Inquiry need to identify 6 dangerous practices and procedures? On the basis of 7 Amin and all the case law, the answer can only be yes. 8 It follows, therefore, dangerous practices and 9 procedures must be identified and flaws in them must be 10 rectified. 11 The Inquiry's principal function indeed is to make 12 recommendations to ensure that they are rectified and 13 that the abuse at issue here does not occur again. 14 Just as the investigation in the case of Mr Amin was 15 expressly required by Mr Justice Hooper to determine the 16 system failures that meant Mr Amin ended up in a shared 17 cell when he shouldn't have been, so this case, this 18 version will have to trace through, for example, why 19 Mr MA was put into Brook House and why he was not 20 released upon a medic examining him. 21 To do that it will need to trace through how it was 22 that he was never identified properly as being 23 vulnerable and released as a result. It will need to 24 look at why there was seemingly no assessment of the 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 2 which may attend a systemic failure to set right and in 3 Mr Justice Hooper's reasons in the Amin case, endorsed 4 by the House of Lords, for directing the holding of 5 an inquiry. He quotes: 6 "It is accepted that the victim was put in the same 7 cell as his killer, in the Amin case, because of 8 systemic failures. Established procedures were not 9 followed and there is an appalling history at Feltham of 10 a failure to comply with earlier recommendations." 11 Lord Justice Sedley went on to hold: 12 "Our domestic jurisprudence, including the binding 13 decision of the House of Lords in Amin, makes it clear 14 that the investigative obligation of the state may 15 depending on the facts at issue go well beyond the 16 ascertainment of individual fault and reach questions of 17 system, management and institutional culture." 18 The last case which the Chair, I hope, will find 19 helpful is D v The Commissioner of the Metropolis, 20 a case about the investigation of the John Worboys's 21 crimes, the reference is [2018] 2 WLR 859. This really 22 puts the matter beyond doubt. There is a lengthy 23 engagement there with the case law and I refer in 24 particular to the speech of the late Lord Kerr SCJ, in 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. 2 The Inquiry cannot hope to know the answers to all 3 of that prior to examining the evidence and 4 investigating the facts and the system in which these 5 tragedies occurred. 6 It is inappropriate to be making anticipatory 7 determinations on the scope that may exclude or limit 8 the ability of the Inquiry to ascertain the full facts 9 to ascertain what went wrong. 10 Just to take a particular example, the Inquiry will 11 have to look at the issue of isolation and segregation 12 that Ms Harrison referred to, particularly in the case 13 of MA given his mental illness and that he was subjected 14 to those procedures. To undertake that exercise, of 15 course the Inquiry will need to look at the individual 16 decision by officers responsible in Brook House. That 17 is not in dispute. 18 Of course it will need to look at the management 19 oversight of those decisions. 20 And of course it will need to ascertain whether 21 proper processes were undertaken when authorising that 22 decision to put him in isolation. 23 Where it is apparent that the proper processes were 24 not followed in the individual decision, is the Inquiry 25 really going to, in anticipation, inhibit itself from</p> <p style="text-align: center;">Page 44</p>

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

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

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

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

<p>1 efficacy must therefore be assessed by reference to such 2 breaches alone." 3 My learned friend Ms Harrison took you to various 4 extracts from Mrs Justice May's judgment, including 5 paragraph 24 where the various allegations of breach of 6 article 3 were set out. However, there is nowhere in 7 the judgment that Mrs Justice May accepts that all those 8 matters raised do amount or potentially amount to 9 article 3 mistreatment. Indeed, if you look at 10 Mrs Justice May's conclusion, particularly paragraphs 61 11 and 62, the focus is very much on alleged physical 12 abuse. It is not looking at wider issues about whether 13 a particular individual should or should not be 14 detained. 15 Of course, Mrs Justice May's judgment must inform 16 this Inquiry's approach to the terms of reference, which 17 are there to discharge the state's article 3 18 investigatory obligation. 19 I would agree with my learned friend Mr Blake, the 20 focus of the Inquiry must be on the alleged 21 mistreatment, contrary to article 3, of persons 22 detained. That has to be the starting point. The 23 Inquiry must consider whether there is credible evidence 24 of mistreatment contrary to article 3 in relation to 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 2 out findings of fact and recommendations within 3 12 months, ie by November 2020. It is clear that this 4 timetable envisaged a focused and narrow inquiry into 5 alleged mistreatment contrary to article 3 of detained 6 persons at Brook House only over the five-month period. 7 The very broad scope of the Inquiry suggested by BB, 8 MA and certain other core participants goes beyond what 9 is necessary for the state to discharge its 10 investigative obligation under article 3. Indeed, if 11 the suggested approach was adopted, it is likely to give 12 rise to a significant risk that the Inquiry will fail to 13 discharge such an investigative obligation, because -- 14 as the Chair is well aware -- there is a requirement 15 that such investigations must be completed promptly and 16 the more broad the Inquiry goes, the longer it will 17 take. 18 Madam Chair, I now want to respond to paragraphs 12 19 and 13 to Counsel to the Inquiry's helpful note, where 20 she picks up and quotes a submission from our written 21 submissions, where it says: 22 "G4S contend, however, that the Inquiry should 23 consider the adequacy of those changes 'by reference to 24 what the Inquiry considers is appropriate' to remedy any 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 2 go on to consider whether there actually was 3 mistreatment of the detained person contrary to 4 article 3, and if there was, what were the causes of 5 such mistreatment and what steps must be taken to ensure 6 that such mistreatment does not happen again? 7 If, however, there is no credible evidence of 8 mistreatment of sufficient severity to breach article 3, 9 that is the end of the Inquiry in relation to the 10 detained individual. 11 I would echo my learned friend Mr Blake's comments 12 in response to the reliance by various parties of 13 article 2 jurisprudence. You cannot just merely apply 14 the article 2 jurisprudence to article 3 cases, because 15 different considerations arise. 16 The temporal scope of the Inquiry is clearly laid 17 down in the terms of reference: 1 April 2017 to 18 31 August 2017. It is not the role of the Inquiry to 19 investigate the distance of credible evidence before 20 1 April 2017 or after 31 August 2017, as some of the 21 core participants appear to be suggesting. 22 It is important to note that part of the terms of 23 reference address the issue of your report. The terms 24 of reference state that it is expected that the Inquiry 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." 2 It appears that this has been somewhat 3 misunderstood. The point we are making here is 4 ultimately one of focus. We accept that the Inquiry 5 shouldn't, of course, be blind to whether a particular 6 reform is effective or not. Our point is that when the 7 Inquiry considers changes that have been made, it can 8 only do so as a means of addressing the question of what 9 recommendations should be made to remedy defects arising 10 from the Inquiry's findings. Any assessment of 11 subsequent changes can only be instrumental to those 12 ends and must be confined to that purpose. 13 It is about ensuring that there is not 14 a wide-ranging inquiry into the effectiveness of 15 reform X, which may have multiple purposes, when, for 16 example, only one of them is relevant to a defect 17 relevant to this Inquiry's terms of reference. 18 Any assessment that goes wider than the reforms 19 relevant to a finding made by the Inquiry lies outside 20 the terms of reference. 21 The terms of reference have a specific temporal 22 period and the Inquiry should avoid the risk that any 23 examination of the effectiveness of reforms unlawfully 24 widens the temporal scope of the Inquiry by the back 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 2 operational matters on the ground. 3 For those reasons we say that Mr Sharland was wrong 4 and incorrect to suggest that anything that is found in 5 the judgment would justify in any way narrowing or 6 limiting the scope. Of course, that would have to have 7 been apparent from the terms of reference and contrary 8 to his submissions those terms of reference amply cover, 9 and must cover, the systemic issues and context in which 10 this abuse occurred. 11 Those are my only additional submissions on that 12 judgment. 13 THE INQUIRY CHAIR: Thank you, Ms Harrison. 14 MR BLAKE: Could I very briefly just address one matter? 15 That is the scope of agreement from the MA and BB 16 High Court proceedings. 17 THE INQUIRY CHAIR: Please go ahead. 18 Reply submissions on behalf of THE HOME OFFICE 19 MR BLAKE: The agreement was as to the very broad principles 20 that the investigative duty incorporates, such as 21 an effective investigation, a prompt investigation, 22 learning lessons. But the particular submissions that 23 were put at today's hearing in respect of the 24 similarities between article 2 and article 3 were not 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 2 assistance for those who have to plan their diaries in 3 advance. 4 THE INQUIRY CHAIR: Thank you. 5 I believe that brings us to the end of this 6 morning's agenda. It just remains for me to say thank 7 you very much for all of the submissions this morning, 8 all of which I have listened to carefully and I will now 9 consider further. 10 I will then be issuing my ruling on scope in due 11 course. 12 Thank you all very much. 13 (12.00 pm) 14 (The preliminary hearing concluded) 15 16 I N D E X 17 Opening remarks1 18 Update on the Inquiry's Progress4 19 Submissions on behalf of MA16 20 Submissions on behalf of the REVEREND WARD ...39 21 Submissions on behalf of BB and the47 22 GATWICK DETAINEES WELFARE GROUP 23 24 Submissions on behalf of THE HOME OFFICE54 25 26 Submissions on behalf of G4S60 27 28 Reply submissions on behalf of MA66</p> <p style="text-align: center;">Page 71</p>
<p>1 not matters that were agreed then. 2 Thank you. 3 THE INQUIRY CHAIR: Thank you, Mr Blake. 4 I believe the next item on our agenda is just -- 5 Ms McGahey, can I ask you if you have anything else you 6 wanted to add about the timetable for the Inquiry? 7 Update re timetable 8 MS MCGAHEY: One final matter. The intention, is as 9 I mentioned at the outset, for the Inquiry to start take 10 witness statements in January. That will be a process 11 that continues over the coming months. The current 12 intention is that this Inquiry should start its oral 13 hearings on or around 14 June 2021. 14 It is very difficult at the moment to say how long 15 those hearings may take. It will be dependent on 16 a number of factors. 17 Firstly, the number of witnesses that you decide to 18 call. 19 Secondly, the COVID situation and whether you take 20 the view that certain witnesses really must be called 21 face to face if at all possible, or whether it is 22 possible to call them by video. 23 At the moment, the intention is that we will sit 24 from mid-June into July. Whatever happens, the Inquiry 25 will not sit in August. It may continue with its</p> <p style="text-align: center;">Page 70</p>	<p>1 OFFICE 2 Update re timetable70 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p> <p style="text-align: center;">Page 72</p>

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