

23 NOVEMBER 2020

**Rt Hon Priti Patel MP**

Secretary of State for the Home Department  
2 Marsham Street  
London, SW1P 4DF

Dear Home Secretary,

**Brook House Inquiry – Request for Home Secretary’s Undertaking**

I was appointed Chair of the Brook House Inquiry by you on 5 November 2019, when the Inquiry was established by the conversion of the Prisons and Probation Ombudsman (PPO) investigation of Brook House Immigration Removal Centre to a statutory inquiry, in accordance with the Inquiries Act 2005.

As you are aware, the purpose of the Inquiry is to investigate the mistreatment of detainees at Brook House Immigration Removal Centre, examples of which were broadcast in the BBC Panorama programme ‘*Undercover: Britain’s Immigration Secrets*’ on 4 September 2017. It has a particular purpose to identify credible evidence of mistreatment contrary to Article 3 of the European Convention on Human Rights. Consequently, this Inquiry fulfils obligations on the UK Government under the Optional Protocol to the Convention against Torture and the National Preventative Mechanism.

The Inquiry’s full Terms of Reference are attached as **Appendix A**.

The Inquiry is already in possession of a substantial amount of documentation relevant to its terms of reference. However, it will be necessary for the Inquiry to continue to amass documents and written statements in order to fulfil its terms of reference. It will also be necessary for the Inquiry

to supplement that evidence with the oral evidence of many of those involved in Brook House at the relevant time, including current and former employees of G4S and a range of other relevant organisations and individuals. An extremely important source of relevant information will be the detainee population at the relevant time. As you are aware, five former Brook House detainees, including “MA” and “BB”, have already been granted Core Participant status. The testimony of others detained at Brook House at the relevant time, whether or not they are granted CP status, will be extremely important in allowing the Inquiry to undertake a full investigation in accordance with its terms of reference. The Inquiry will therefore rely heavily on the cooperation of former detainees.

### Undertakings in Public Inquiries

A number of public inquiries have received undertakings in respect of future use of the evidence given to the inquiry. Such undertakings frequently relate to future criminal prosecutions, but may also arise in a disciplinary context.

In accordance with section 21 of the Inquiries Act 2005, the Chair of a public inquiry has the power to compel witnesses to provide evidence in a number of forms. A person who fails, without reasonable excuse, to comply with such a requirement is guilty of an offence. This requirement is however restricted by the privilege against self-incrimination, maintained in the Inquiry context by way of section 22(1) of the Inquiries Act 2005. As a result of these legislative provisions (and common law protections), while the Inquiry has the power to compel evidence, relevant witness evidence may engage the privilege against self-incrimination. The result is a potential conflict between the need for the Inquiry to obtain important evidence, and the possibility that witnesses will be entitled to refuse to provide certain evidence or to answer certain questions on the basis that that evidence may be used against them in future criminal proceedings.

Public inquiries sometimes resolve this potential tension by offering undertakings in respect of witnesses' evidence, with the effect that (1) their evidence to the inquiry cannot be used against them in future prosecutions (with limited exceptions), and therefore (2) they are no longer entitled to rely on the privilege against self-incrimination to avoid giving relevant evidence to the inquiry.

I have accordingly sought an Undertaking from the Attorney General in respect of evidence given to the Brook House Inquiry. My letter requesting that Undertaking, dated 23 November 2020, is attached. I have not sought any undertakings in respect of the use of witness evidence in future disciplinary action.

### The Undertaking requested in respect of Immigration decisions

For the reasons set out above and illustrated by the Terms of Reference, the Inquiry will be heavily reliant on the cooperation of former (and potentially current) immigration detainees. The functioning of the Inquiry will be considerably hampered if potential witnesses with relevant information do not come forward at all, or do not give a full and frank account of their experiences at Brook House during the relevant time.

The Inquiry is attempting to make contact with those former detainees who are thought most likely, on the basis of currently available evidence, to have valuable evidence to give. So far, approximately a quarter of those contacted have responded.

For obvious reasons, many former detainees may not trust those perceived to be in authority, and may be reluctant to engage in a process that they believe may have detrimental consequences for them. The majority of potential witnesses from the detainee population are likely to remain within the United Kingdom. Some may fear that engaging with the Inquiry and providing evidence will increase their chances of removal, and that their evidence or parts of it may be used against them in future immigration decision making. Conduct which does not amount to a criminal offence may nevertheless be taken into account in reaching a number of immigration decisions (as set out, for example, in the Home Office's policy guidance Nationality: Good character requirement, pg. 26). Accordingly, the undertaking I have sought from the Attorney General in respect of the use of Inquiry evidence in the course of criminal prosecutions would not provide an adequate reassurance to those with potentially relevant evidence.

It is therefore important that the Inquiry can offer these individuals as much reassurance as possible that they can contribute to the Inquiry without fear of any repercussions. I wholly recognise that it is not for the Inquiry to seek to influence the Home Office in respect of any decisions made in general terms on removal of former detainees, or other immigration decisions. I

do, however, ask that you provide a limited undertaking to the effect that any evidence given by a former detainee to this Inquiry will not be used by the Secretary of State for the Home Department to support certain adverse immigration decisions. I reiterate that this would not amount to any form of general immunity from adverse decision-making, or deportation amnesty, but would be limited to restricting the future use of evidence given by detainees to the Inquiry, to encourage their full co-operation in this unusual situation.

### The Terms and Scope of the Undertaking

I ask you to provide an undertaking in the following suggested terms:

*An undertaking in respect of any current or former immigration detainee who provides evidence to the Inquiry relating to a matter within its terms of reference, including oral evidence, any written statement made for the purposes of the Inquiry, and any document, information or thing made preparatory to giving evidence or otherwise created for the purposes of the Inquiry.*

*1. No evidence provided to the Inquiry by such a person may be used against that person by the Secretary of State for the Home Department:*

*(a) in the course of any immigration proceedings within the jurisdiction,*

*(b) in any immigration decision made by the Secretary of State for the Home Department,*

*(c) in any decision to detain or to seek to impose conditions in respect of immigration bail;*

*(d) for the purpose of investigating any immigration matter or deciding whether to bring immigration proceedings*

*Save that:*

*(i) the Secretary of State may use such evidence where that person has themselves chosen to rely on such evidence and it is necessary for the Secretary of State to correct a false impression or assertion thereby made; and*

*(ii) the Secretary of State may use in immigration proceedings evidence of a similar nature to that provided to the Inquiry by a current or former detainee, where the evidence on which the Secretary of State relies was obtained from a different source.*

In light of the Brook House Inquiry's particular dependence on the cooperation of immigration detainees, I have reached the conclusion that an undertaking in the above terms is necessary to allow the Inquiry to fulfil its statutory purpose, for the reasons set out above.

The Inquiry Team and I would be pleased to assist you with anything further you may require.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Kate Eves', written in a cursive style.

**Kate Eves**  
**Chair**  
**Brook House Inquiry**

## Appendix A - Terms of reference

### PURPOSE

To investigate into and report on the decisions, actions and circumstances surrounding the mistreatment of detainees broadcast in the BBC Panorama programme 'Undercover: Britain's Immigration Secrets' on 4 September 2017.

To reach conclusions with regard to the treatment of detainees where there is credible evidence of mistreatment contrary to Article 3 ECHR, namely torture, inhuman or degrading treatment, or punishment; and then make any such recommendations as may seem appropriate. In particular the inquiry will investigate:

1. The treatment of complainants, including identifying whether there has been mistreatment and identifying responsibility for any mistreatment.
2. Whether methods, policies, practices and management arrangements (both of the Home Office and its contractors) caused or contributed to any identified mistreatment.
3. Whether any changes to these methods, policies, practices and management arrangements would help to prevent a recurrence of any identified mistreatment.
4. Whether any clinical care issues caused or contributed to any identified mistreatment.
5. Whether any changes to clinical care would help to prevent a recurrence of any identified mistreatment.
6. The adequacy of the complaints and monitoring mechanisms provided by Home Office Immigration Enforcement and external bodies (including, but not limited to, the centre's independent monitoring board and statutory role of Her Majesty's Inspectorate of Prisons) in respect of any identified mistreatment.

### SCOPE

For the purpose of the Inquiry, the term "complainants" is used to refer to any individual who was detained at Brook House Immigration Removal Centre during the period 1 April 2017 to 31 August 2017 where there is credible evidence of mistreatment of that individual.

"Mistreatment" is used to refer to treatment that is contrary to Article 3 ECHR, namely to torture or to inhuman or degrading treatment or punishment.

The Inquiry should in particular include investigation in to the mistreatment of complainants known (in the recent Brook House litigation) as MA and BB.

The Inquiry may wish to draw upon the evidence and findings of the previous special investigation in to the events at Brook House, conducted by the PPO, before it was converted to a statutory inquiry.

## **METHOD**

As a statutory inquiry, the Inquiry will operate within the legal framework provided by the Inquiries Act 2005. As such, the procedure and conduct of the Inquiry are to be directed by the chairman.

## **REPORT**

The Inquiry should be undertaken with sufficient pace to enable resulting recommendations to be implemented as quickly and effectively as possible. It is expected, on the basis of current information, that the Inquiry will make its best endeavours to complete work and produce a final report to the Home Secretary, setting out their findings of fact and recommendations, within 12 months.

## **PRINCIPLES**

The Inquiry will have full access to all the material it seeks.

The Inquiry will bear the legal expenses for any individuals designated as core participant status by the Inquiry chairperson.

It is not part of the Inquiry's function to determine civil or criminal liability of named individuals or organisations. This should not, however, inhibit the Inquiry from reaching findings of fact relevant to its terms of reference.