

NOTICE OF DETERMINATION
CORE PARTICIPANT APPLICATION – BAIL FOR IMMIGRATION DETAINEES

1. The Brook House Inquiry was announced by the Secretary of State for the Home Department on 5 November 2019. In my opening statement on 21 April 2020, I formally invited those who wished to be considered for Core Participant status to submit a written application. A deadline was set for 19 May 2020.
2. I received a written application from Bail for Immigration Detainees ('BID') for Core Participant status dated 17 February 2020 and further submissions dated 15 May 2020. I issued a provisional determination on that application on 14 August 2020, in which I indicated that I was minded to refuse the application. BID, at my invitation, submitted a renewed application on 11 September 2020 which was supplemented by an oral submission at a preliminary hearing on 25 September 2020.

Application

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

"Core participants

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

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

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

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

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

4. The application to designate BID as a Core Participant can be summarised as follows. BID submits that it meets the criteria provided by Rule 5(2)(a) and (b) because it played a direct and significant role in relation to the matters to which the inquiry relates; and it has a significant interest in an important aspect of the matters to which the inquiry relates.
5. In respect of Rule 5(2)(a), BID submits that it has played a *“direct and significant role in the advocacy and representation of immigration detainees including those detained at Brook House and has provided detailed representations to reviews and investigations into the immigration detention system”* (§3.3). BID has met detainees at Brook House and taken details of their history, advising and representing them on applications for bail and for judicial review (§3.4). BID has provided submissions to various inquiries and reviews, including regarding safeguarding for vulnerable adults (§3.5) and access to justice, particularly in prisons (§3.6). BID has campaigned for additional safeguards on detention *“to ensure detainees are treated humanely and with dignity and are subject to detention for the very shortest period possible”* (§3.7).
6. Regarding Rule 5(2)(b), BID submits that it has a *“significant interest”* in matters raised by the Inquiry because 1) BID has experience interviewing detainees held at Brook House since it did so in relation to the Verita report commissioned by G4S into the incidents at

Brook House (§3.9). BID was also able to access its case-files for detainees who were held for part of the relevant period (*ibid.*); 2) BID provided evidence to the Home Affairs Select Committee about the context of immigration detention (§3.10-3.11); and 3) BID will be able to contribute to ToRs 3 and 4, (whether methods, policies, practices and management arrangements caused or contributed to any identified mistreatment) by “drawing on its long history and expertise of commenting on system failures within immigration detention” (§3.12).

Renewed application

7. In BID’s renewed application of 11 September, which they supplemented in oral submissions at the hearing on 25 September, they emphasise the following key points:
 - i. BID states that its staff ‘...took accounts from Brook House detainees who complained about their conditions of detention and reported serious harm and wrongdoing by Home office appointed contractors’;
 - ii. BID asserts that it requires Core Participant status ‘in order to understand and be able to respond to evidence and/or questions that may be raised about its role at Brook House. There is a real possibility that CPs such as G4S and the Home Office may raise issues concerning BID’s presence at Brook House, what it did and did not do, suggest that BID were or should have been aware of what was going on...’;
 - iii. BID is concerned by the fact that there are currently only five detainee Core Participants and that only one NGO “from a detainee perspective” has been designated a Core Participant. It asserts that the small number of detainees means that “other sources are all the more important” and that the existence of just one NGO, considered alongside a higher number of corporate Core Participants, ‘does not immediately inspire confidence in

victims and the wider public'. BID suggests that designating it as a Core Participant may redress what it considers to be an imbalance.

8. While BID's renewed application does not expressly submit that it meets the criteria provided by Rule 5(2) (c) of the Inquiry Rules 2006, that rule provides that, as Chair, I must specifically consider whether to designate a person as a Core Participant if that person "*may be subject to explicit or significant criticism during the inquiry proceedings or in the report, or in any interim report.*" I have therefore considered points (i) and (ii) above in this context.

Decision

9. I have considered BID's application, renewed application and related oral submissions in line with my approach as set out below. I am refusing the application for the following reasons.
10. This Inquiry's terms of reference relate to the experiences of detainees at Brook House in the relevant period. I intend to hear, as far as possible, directly from those detainees who can be identified and are willing to share their experiences with the Inquiry.
11. Where an NGO has played a direct and significant role in relation to the issues being considered by the Inquiry and can, for example, provide first-hand insights not available from those detained, it may well be appropriate that such an organisation is designated as a core participant. There are other bases on which an NGO might appropriately be a Core Participant, but the element of "direct" involvement in the matters being investigated is a key part of the test. The approach I have taken is to determine NGO Core Participant applications on the basis of the specificity of their experience of, and involvement in, the relevant events at Brook House.

12. As Chair, I am required by rule 5(2) to consider the specific statutory tests set out above. I should emphasise, though, that an applicant who meets one or more of those tests will not necessarily be designated a Core Participant. Conversely, an applicant who does not meet any of those tests may have some other good reason for being designated a Core Participant. The work of NGOs may mean that their applications for CP status in public inquiries do not always fit readily into the statutory tests. NGOs will tend to be neither alleged victims nor alleged perpetrators, and they will often not be at risk of criticism. Their work may not relate squarely to the matters under investigation. The statutory tests may therefore not be as easy to apply to NGO applications as they are to many other CP applications. In approaching the applications for Core Participant status from NGOs, I have applied the relevant statutory tests, and in doing so I have considered the following matters:

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

13. I have also considered the following:

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

The test under rule 5(2)(a): a direct and significant role

14. In the application submitted on its behalf, BID describes itself as an independent charity established to *“assist those in immigration detention in the UK through the provision of legal advice and representation on bail to those held in immigration detention”*. Reference is also made to the organisation’s *“research, policy advocacy and strategic litigation to secure change in detention policy and practice”*. I am aware that, whilst not specifically included in its application, BID states on its website that the organisation is an *“Independent charity that exists to challenge immigration detention in the UK”*.
15. In submitting that it met the rule 5(2)(a) test of having a “direct and significant role”, BID states that it has conducted *“casework ‘at the coalface’ by meeting detainees in Brook House, taking details about their history, advising and preparing bail applications, instructing counsel to represent detainees at bail hearings, and referring detainees to solicitors where judicial review proceedings are needed”*.
16. BID also relies on its campaigning work, which focuses on the harm that, in its view, detention causes. My consideration of this element of the application has included a careful review of the general information provided by BID about the primary focus of its work and the context in which its staff and volunteers engaged with detainees at Brook House.
17. BID argues that its knowledge of systemic issues within immigration detention makes it well placed to assist the Inquiry to understand how and why the abuse happened; it submits that its work in relation to the length of detention, its indefinite nature and the difficulties that detainees face in achieving release from detention are relevant to those issues. I have not yet reached a final decision on the scope of this Inquiry. However, my clear view is that the emphasis must be on the allegations of mistreatment arising from

the footage shown on *Panorama*, and that whether an applicant had a “direct and significant role” depends on its involvement in, or knowledge it had or should have had of, such mistreatment between April and August 2017. In my view, BID’s interaction with detainees in order to provide advice on bail and judicial review, and its research, advocacy and litigation on wider detention issues, are insufficient to amount to a “*direct and significant role*” in relation to the matters to which this Inquiry relates.

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

18. I have noted that the application references that “*it is through [this] casework that BID has first-hand knowledge of detainees’ concerns about their conditions of detention, reports of serious harm and wrongdoing by Home Office appointed contractors. BID is able to provide its informed views to the Inquiry as to what systemic failures may have led to the mistreatment of detainees at Brook House and how this can be prevented in future*”.
19. BID’s involvement with immigration detainees is directed primarily at BID’s work in assisting them to obtain bail. It is not primarily focused on the treatment of those individuals while in detention. BID argues that its general concern for detainee welfare, arising from the risk of harm to which it believes detainees are exposed in detention, amounts to a focus on mistreatment. However, in my view, BID’s underlying concern about detention, and about the risks of mistreatment associated with it, does not amount to a sufficient interest in the specific mistreatment that I am required to investigate. BID does not assert that it was aware of any such mistreatment at Brook House at the relevant time.
20. While the organisation has access to information about individuals to whom it provides advice, BID’s role was and is limited to the provision of legal advice and representation to

detainees during the relevant period. This legal advice relates to bail specifically, not abuse suffered in detention (although complaints about treatment may have arisen). I consider that it is likely that BID does have an interest in matters to which the Inquiry relates. However, in considering BID's application in its entirety, I do not consider that its interest is sufficient to justify its status as a Core Participant at this stage.

21. In relation to the systemic and/or structural issues that may relate to the mistreatment at Brook House, I accept that BID's focus on the reform of immigration policy and ending immigration detention means that it has an interest in the experience of immigration detention insofar as it informs the organisation's research and policy work.
22. While BID accepts that it is not this Inquiry's function to address whether harm arises from detention *per se*, BID argues that the Inquiry's task is to understand why and how the nature of immigration detention may have caused or contributed to the abuse of detainees at Brook House. In my view, while the nature of immigration detention will inevitably form part of the background of the mistreatment under investigation, it will be very important for me to maintain the Inquiry's focus on mistreatment itself; abuse should not occur, regardless of the reasons for which, and circumstances in which, an individual came to be detained.
23. The evidence sought and examined by the Inquiry may include evidence as to the nature of immigration detention. However, BID's interest in immigration detention, and its campaigning work in this field, do not in my view amount to a sufficient interest in the key matters that I am investigating for the purposes of the test under Rule 5(2)(b).

The test under rule 5(2)(c): explicit or significant criticism

24. I turn now to the possibility that BID may face explicit or significant criticism during the Inquiry's proceedings or in its reports. In its renewed application for CP status, BID submits:

"There is a real possibility that CPs such as G4S and the Home Office may raise issues concerning BID's presence at Brook House, what it did and did not do, suggest that BID were or should have been aware of what was going on, or alternatively suggest that BID's conduct indicated that abuse was not taking [sic] widespread or condoned by management."

25. In light of that submission, I have considered whether BID should be made a core participant under Rule 5(2)(c), on the basis that it might face criticism during the Inquiry proceedings.

26. I am not aware of any criticism in this respect having been made of BID by anyone. At the moment, I have no reason to believe that any such criticism will be made. I do not, therefore, believe that BID meets the test under rule 5(2)(c). This is a matter that I will, of course, revisit should any such criticism arise.

Other factors

The role of others as Core Participants

27. I have concluded that there are other Core Participants who have a more direct and greater role and interest in the Inquiry's ToR. Of most relevance in this context, is that there are detainee Core Participants who can speak directly of mistreatment at Brook

House, and two NGOs with more direct knowledge of the matters that the Inquiry is investigating. As indicated below, the Inquiry is endeavouring to contact former detainees and those efforts will continue.

28. I accept entirely that the number of Core Participants is not finite, and that it would be open to me to grant Core Participant status to any number of applicants. However, it seems appropriate for me to bear in mind the interests and perspectives of existing Core Participants as part of my consideration of this application. I recognise that the perspectives of each Core Participant and applicant are unlikely to align fully, but it is possible to identify common threads. There are others who, to use BID's phrase, have a "*detainee perspective*". In my view, BID has less direct involvement in the matters covered by the ToR than do existing Core Participants. These are factors that I take into account when considering whether the Inquiry would be assisted by BID having the status of a Core Participant.
29. BID argues that at the moment a number of State and corporate organisations have CP status, but only one NGO from a detainee perspective¹. It argues that this "*does not immediately inspire confidence in victims and the wider public*" and that, to the extent that CP numbers are relevant, they favour the grant of CP status to BID. BID also highlights the fact that there are currently only five individual detainee Core Participants.
30. It seems to me that this focus on numbers is misplaced. The number of Core Participants and their specific interests will vary according to the nature of the particular public inquiry. As BID has pointed out, other inquiries have hundreds of CPs. By way of example, the Grenfell Tower Inquiry website indicates that it has 568 individual Core Participants and 70 institutional ones. What is important in any inquiry is that those with the closest

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

and most significant links to the subject matter, and who wish to participate, are able to do so as Core Participants.

The provision of evidence by the Applicant

31. I turn now to the information provided in the application relating to BID's specific insights into the experience of detainees at Brook House in the relevant period. The application refers to the investigation commissioned by G4S in November 2017 (commonly referred to as the Lampard Review), citing the assistance that BID provided to the authors of that investigation, Kate Lampard and Ed Marsden, in the form of *"interviewing clients who had spent time in Brook House using the investigators' framework of questions....from December 2017 onwards BID carried out interviews with six Brook House detainees"*.
32. This Inquiry's own terms of reference are distinct from those of the Lampard Review. In addition, any information obtained in the course of the interviews completed by BID on behalf of the Lampard Review should, if at all possible, be provided by the original source. The Inquiry will ask BID to provide any interview records that it holds.
33. I have considered how best to hear about events at Brook House from those who experienced them directly, and therefore to enable meaningful opportunities for those individuals to be heard. It appears likely that NGOs with existing relationships with former or current detainees will be able to play a role in identifying those detainees and, if the NGOs and individuals so wish, supporting those detainees to participate in the Inquiry. The inquiry has begun the process of locating former detainees who were detained at Brook House in the relevant period. If it becomes evident that specific detainees do not wish to speak directly to the Inquiry, I will consider alternative methods through which their experiences could be heard.

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

Later consideration of an application for Core Participant status

36. BID's role in providing evidence to the Inquiry is an important one, and I welcome its input into the Inquiry. The Inquiry will be sending a written request for evidence from BID, under Rule 9 of the Inquiry Rules.

37. I do not consider at this stage that BID should be designated as Core Participant. This is, however, a matter that I would be willing to revisit if appropriate.

Kate Eves
Chair to the Brook House Inquiry
9 October 2020