

23 NOVEMBER 2020

**Rt Hon Suella Braverman QC MP**  
Attorney General  
102 Petty France  
London  
SW1H 9EA

Dear Attorney General,

### **Brook House Inquiry – Request for Attorney General’s Undertaking**

I am the Chair of the Brook House Inquiry. I was appointed by the Home Secretary 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.

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 accordingly will be investigating conduct which may well be of a criminal nature and which may implicate both natural and legal persons.

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, from current and former employees of G4S, to detainees, and a range of other relevant organisations and individuals.

### The Request for an Undertaking

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 punishable by up to 51 weeks' imprisonment. 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.

### The Scope and Terms of the Undertaking

The Inquiry has sought and received submissions from its Core Participants on the question of whether the Inquiry should seek an undertaking from you and, if so, on the terms of such an undertaking. Having considered those submissions in detail, I have concluded that it is clearly appropriate to seek an undertaking in respect of evidence given to the Brook House Inquiry.

The key factors that appear to me to be relevant are:

- (i) The Inquiry will be seeking evidence from current and former G4S and healthcare staff who may be said to have mistreated detainees and/or encouraged others to do so, or to have failed to report abuse that they had witnessed or of which they were aware;
- (ii) Evidence will also be sought from managers and Home Office staff who may be said to have failed to spot, or failed to take action on, mistreatment of detainees;
- (iii) A Sussex Police investigation following the *Panorama* broadcast did not lead to any prosecutions;
- (iv) Witnesses are highly likely to fear that testimony they give to the Inquiry could form the basis for a prosecution, essentially providing the evidence that was lacking at the time of the police investigation;
- (v) Offences against the person are not the only possible criminal offences. There may be the prospect of prosecution not only of individuals but of corporate entities, if evidence came to light of complicity in mistreatment on the part of senior staff who could be regarded as directing minds of the employing institution. There may be evidence to indicate that the offence of misconduct in public office has been committed, or that there have been breaches of health and safety legislation;
- (vi) I hope to conclude the Inquiry's hearings by the autumn of next year, and intend that those hearings should take a matter of weeks. Witness statements will be taken in the coming months. If no undertaking is given at this stage, witnesses will be reluctant to provide witness statements, so the preparation for the hearings will be delayed;
- (vii) It is not practical to delay this request for an undertaking until a witness raises the self-incrimination issue, or to seek undertakings on a case-by-case basis for specific individuals. To attempt to do so would be time-consuming and costly, and would jeopardise the Inquiry's timetable as a whole;
- (viii) It is important that the Inquiry is not side-tracked by lengthy legal argument as to whether an individual is giving evidence in his or her individual capacity or as a representative of an institution. My view on that issue would not be binding and, in any event, absent an undertaking, evidence given by A as an individual could still be used in a prosecution of A and/or of the corporation employing A;
- (ix) It is obvious that witnesses at risk of incriminating themselves or their employers will be advised by their legal representatives, in the absence of an undertaking, to refuse to

answer. I would have to advise any unrepresented witness of his or her right against self-incrimination;

- (x) If there is no undertaking, it therefore seems inevitable that the Inquiry will be deprived of valuable evidence;
- (xi) The provision of an undertaking will not make prosecution any less likely than it is at the moment. The police investigation is no longer active. If there is no undertaking and witnesses exercise their privilege against self-incrimination (as, in reality, they undoubtedly will) then no evidence of value to a potential prosecution will be given in any event;
- (xii) It must be in the public interest for the Inquiry to receive full and frank evidence, so that its conclusions and recommendations can be as robust as possible, and so that the public money spent on the Inquiry will be well spent. There can be no public interest in an inquiry that cannot properly fulfil its terms of reference because it cannot obtain the evidence it needs.

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

*An undertaking in respect of any legal or natural person 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 a person may give before the Inquiry, will be used in evidence against that person in any criminal proceedings or for the purpose of investigating any criminal offence or deciding whether to bring criminal proceedings, unless the evidence is to be used or considered in such proceedings as are referred to in paragraph 2 herein.*

*2. Paragraph 1 does not apply to:*

*(i) A prosecution where the person is charged with having given false evidence in the course of this Inquiry or having conspired with or procured others to do so, or*

*(ii) Proceedings where the person is charged with any offence under section 35 of the Inquiries Act 2005 or having conspired with or procured others to commit such an offence.*

*Finally, nothing in these undertakings is intended to provide immunity against prosecution for any criminal offence.*

The requested undertaking set out above is co-extensive with, and no wider than, the scope of the privilege against self-incrimination likely to be claimed by witnesses to the Inquiry. It is drafted in

terms reflective of those which have been requested in a number of recent public inquiries and granted by Attorneys General. Considering both the legal framework and the practice of a number of other public inquiries, I have reached the conclusion that an undertaking in the above terms is necessary to allow the Brook House Inquiry to fulfil its statutory purpose, for the reasons set out above

For completeness I should mention that I have also written today to the Home Secretary seeking an 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. The undertaking requested is limited in its terms and does not amount to a general immunity from adverse decision-making, or deportation amnesty, and 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.

I hope that you will feel able to provide the undertaking sought. The Inquiry Team and I would be pleased to assist you with anything further you may require.

Yours sincerely,



**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.