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URGENT

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Our ref: RACHAELL/N062460001/ D1618

Your ref: E1420789

Date: 30 October 2017

Lewis Kett
Immigration

ddi: DPA
DPA

Branch: Harrow

Dear Sirs,

LETTER BEFORE ACTION – URGENT REQUEST FOR TRANSFER FROM BROOK HOUSE IRC

CLAIMANT : D1618
DOB : DPA
NATIONALITY : Afghanistan
HO REF : E1420789
DEFENDANT : Secretary of State for the Home Department
REPLY DATE : 4pm Wednesday 1 November 2017

We represent the above-named Claimant for whom we are already on record.

The purpose of this letter is to avoid litigation by giving you the opportunity to rectify the Defendant's unlawful action. We hope that this will limit the necessity of resorting to court proceedings in the spirit of the Civil Procedure Rules. Should the Defendant continue to act in an unlawful manner, we will have no choice but to commence an action for Judicial Review on the Claimant's behalf and recover the costs from you.



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These matters relate to serious concerns relating to the conditions of Brook House IRC which give rise to breaches of Articles 3, 5 and 8 ECHR, as well as flagrant breaches of the Detention Centre Rules 2001. These issues have already been previously raised by our firm; firstly in the case of **D668** (HO Ref: O1127254) in which a Letter Before Action was sent to the Defendant on 29 September 2017. Additionally these issues were raised in the matter of **D3282** (HO Ref: S1792590) in a Letter Before Action on 9 October 2017. Proceedings in the latter case have been filed with the Administrative Court on 30 October 2017 (CO/5004/2017) with a request for an abridged Acknowledgement of Service of 14 days. The Defendant has yet to provide a substantive response in either matter. However they have been on notice of the contents of these claims for over one month now and have thus had sufficient time to form a position.

Given the continuing breach of the Claimant's ECHR rights and given the amount of time the Defendant has already had to form a position on these issues, the truncated timetable on this matter is justified. Accordingly we insist on action being taken in response to this letter **WITHIN 48 HOURS**. In the absence of a satisfactory response, we will proceed to issue Judicial Review proceedings.

Background

The Claimant is a national of Afghanistan born in **DPA** on **DPA**. He arrived in the UK in 2014 as a minor having fled Afghanistan in order to join his father, a British citizen, in the UK. His father had fled Afghanistan in 1997 in fear of the Taliban rule and was awarded refugee status in the UK and subsequently naturalised as a British Citizen.

In 8 April 2015, his asylum claim was refused and appeal subsequently dismissed.

The Claimant was detained on 16 April 2017 and the Home Office attempted to remove him to Afghanistan on 29 July 2017. He was deemed to be disruptive when placed on the flight and removal was therefore deferred. He stated that he was in restraints so he could not move and as

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a result of the Tascor officials, he damaged his wrist and had to go to hospital after being returned to Brook House IRC. He continues to feel pain in his wrists. His injuries are referred to in his medical notes.

As a result of the attempted removal, he made a formal complaint and was due to have an interview with the Tascor and the Home Office Professional Standards Unit on 30 August 2017, this was confirmed to him in writing.

The Claimant was served with a fresh removal window which started on 16 August 2017. In light of the removal window and the interview with the Professional Standards Unit, we wrote to National Returns Command to inquire as to whether any removal directions had been sent, highlighting the Claimant's interview.

On Saturday 26 August 2017, the Claimant underwent an unannounced telephone interview with Tascor where he was informed that they would be investigating and interviewing the guards who had escorted him in his removal and an investigation would take place. Despite this, on 27 August 2017, the Claimant informed his legal representative at 11.45 to tell them that he was being removed to Afghanistan that day at 16.20.

We urgently sent out submissions to the Defendant, requesting that the removal directions be cancelled on the basis of his asylum and article 8 claim alongside the fact that he had an underlying civil claim and that the notice given to the Claimant was unlawful.

These submissions were rejected on 5 September 2017. On 14 September 2017 the Claimant lodged Judicial Review proceedings to challenge his removal. Permission was refused by the Upper Tribunal on 26 October 2017 for which the Claimant is renewing.

The Claimant is currently detained in Brook House IRC. The Claimant states that he is deeply unhappy with the conditions in Brook House and is in fear of his safety because he is afraid of members of staff and their inability to appropriately manage other detainees.

The Claimant reports that he is unable to sleep or eat properly due to the level of stress he is experiencing in Brook House. The Claimant states that all detainees are locked in their rooms multiple times a day and overnight, which is affecting his mental health.

The Claimant states that the conditions in Brook House are awful. He states that the detention centre is very dirty, particularly in his room. The Claimant's mattress is so dirty that he does not use it, instead sleeping on his blanket. There is an unscreened toilet in the room and no ventilation, meaning the room smells like sewage. There is one window which is sealed shut. The lack of screen around the toilet means there is no privacy for the detainees. The Claimant reports that they hold a blanket around each other when they need to use the toilet as they are ashamed.

The Claimant states that the staff at Brook House fail to properly manage detainees. Drugs, particularly Spice, is a big issue and the Claimant is unaware of how there is such widespread availability. He reports that there are lots of fights between the detainees and with the staff. These fights occur over small issues such as when detainees are queuing for food. The Claimant is scared of the staff due to his experiences surrounding his attempted removal and having witnessed Brook House staff mocking other detainees. He states that the staff are unhelpful, particularly in Healthcare where they seem to prescribe only paracetamol for all issues and do give adequate consideration to concerns.

The Claimant reports that he does not trust the staff in Brook House to protect his safety and wellbeing. The Claimant recalls a recent incident on 25 October when 20 Albanian detainees attacked one of his friends. He states that the staff allowed this to go on for around 5-6 minutes

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until the detainee was unresponsive. The Claimant states this event made him scared as he realised that the staff wish to protect themselves first over the detainees.

Issues under Challenge

We have identified the following unlawful actions by the Defendant:

1. The failure to transfer the Claimant out of Brook House IRC, being unlawful in that:
 - The Claimant has been exposed to conditions that put him at a real risk of being subject to treatment contrary to Articles 3 and 8 ECHR;
 - The conditions of detention also amount to a breach of Article 5 ECHR in that they are unduly harsh;
2. The practice of locking-up detainees in their rooms for extensive periods of time, being pursuant to a secret policy and/or left to the discretion of individual IRCs, leaving an unacceptable risk of arbitrariness in decision-making in the way it is used;
3. Breach of the Detention Centre Rules in unlawfully locking-up detainees, including the Claimant, in their rooms for unreasonable, arbitrary and unjustified amounts of time;
4. Breach of Article 8 ECHR in unlawfully locking-up detainees, including the Claimant, in their rooms for unreasonable, arbitrary and unjustified amounts of time;
5. Breach of section 149 of the Equality Act 2010 in relation to their policy of lock-ups at Brook House

Non-Delegable Duties of the Defendant

The day-to-day running of Brook House IRC is done by private contracting firm, G4S, on behalf of the Defendant. The Defendant remains liable for any actions of G4S, individual detention officers or

the healthcare team in relation to the welfare and protection of immigration detainees, see *Woodland v Essex County Council* [2013] UKSC 66 (at para 23) and *GB v Home Office* [2015] EWHC 819 (paras 22-43).

Legal Framework

Section 149 of the Immigration and Asylum Act 1999 (“the 1999 Act”) allows the Defendant to contract out the running of removal centres. Section 149(4) requires the Defendant to appoint a contract monitor at every contracted out removal centre who are responsible for keeping under review and reporting the running of the centre and to investigate any allegation against any person performing a custodial function (s149(7)).

Section 151 of the same Act allows the Defendant to intervene and take back the running of the centre in certain circumstances where the manager has lost, or is likely to lose, effective control of the centre or of any part of it; or it is necessary to do so in the interests of preserving the safety of any person, or of preventing serious damage to any property. Section 153 requires the Defendant to make rules for the regulation and management of removal centres. Section 153(2) states the rules may make provision “with respect to safety, care, activities, discipline and control of detained persons.”

The Defendant gave effect to section 153 by introducing the Detention Centre Rules 2001. The general purpose of detention centres and how they should be run is set out at rule 3, namely to: “provide for the secure but humane accommodation of detained persons in a **relaxed regime with as much freedom of movement and association as possible**, consistent with maintaining a safe and secure environment, and to encourage and assist detained persons to make the most productive use of their time, **whilst respecting in particular their dignity and the right to individual expression**. [our emphasis].

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Rule 39 sets out the general approach to security and safety of the centre, stating that security shall be maintained, but with no more restriction than is required for safe custody and well ordered community life.

Articles 3 and 8 ECHR

Article 3 of the European Convention on Human Rights (ECHR) sets out that no one shall be subjected to torture or to inhuman or degrading treatment or punishment. Although the primary obligation in Article 3 is a negative one, the Court has recognised that a positive obligation to protect individuals from ill-treatment may also arise. The ECtHR have frequently found detained persons to be “in a vulnerable position” and “the authorities are under a duty to protect them” (*Edwards v United Kingdom* (2002) 35 EHRR 19 at para 56). This includes persons in immigration detention (*Slimani v France* (2006) 43 EHRR 49).

In *HA (Nigeria) v SSHD* [2012] EWHC 979, the High Court found the Defendant to be in breach of Article 3 ECHR regarding the care of a mentally unwell immigration detainee in Brook House through a combination of acts and omissions including prolonged periods of time in segregation, being allowed to sleep on the floor, allowing self-neglect, inappropriate medical treatment, and repeated use of force. Mr Justice Singh outright rejected at paragraph 181 the Defendant’s claim that these failures were not her responsibility.

Article 8 prohibits a disproportionate interference with a person’s private life.

We submit that in the Claimant’s case his continuing detention at Brook House, and the Defendant’s failure to transfer him to another centre, breach his Article 3 rights and unnecessarily and disproportionately interfere with his rights to a private life contrary to article 8. In particular because

of the Claimant's experience of abuse and evidence that this is widespread within Brook House, and because of the excessive use of lock-ins of detainees.

Abuse of Detainees

The Claimant has made serious complaints of excessive use of force by Tascor escorts in attempting to remove the Claimant from the UK. Although this appears primarily to be related to treatment at the hands of Tascor escort staff, it remains to be investigated to what extent Brook House staff may have been involved (when related to the allegations of assault within the IRC prior to being transferred on each occasion to the airport). **Either way, the Claimant is now terrified of the staff within Brook House and it is clearly highly inappropriate for the Claimant to remain in Brook House whilst his complaint remains unresolved.**

The physical and verbal abuse of detainees has been extensively revealed in the BBC Panorama documentary, 'Undercover: Britain's immigration secrets', shown on national television on 4 September 2017. At its most extreme, this footage revealed a detention officer physically strangling a detainee with clear mental health issues. This incident was followed by the detention officer in question and an attending nurse both agreeing that the 'use of force' would not be recorded. In addition, the footage showed:

- Further physical abuse of detainees (one scene showed an officer banging a detainee's head and pulling back his thumb, and later boasting about this);
- Staff discussing plans to physically assault a detainee if they did not comply with a removal;
- Casual mocking and verbal abuse of detainees, with multiple instances having clear racial undertones (e.g. one staff member advises using the term "nigger" to deal with one detainee's protest);
- Threats to kill detainees by staff ("I'm going to put you to fucking sleep"), and other direct threats including to those with suspected mental health conditions (e.g. a staff member threatens to one detainee to "make your life a fucking misery");

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- Staff discussing and joking amongst themselves about letting detainees kill themselves or about intentionally assaulting detainees (“Turn away and hopefully he’s swinging”);
- Clear complicity by healthcare staff and complete lack of sympathy towards mental health issues which could undermine the quality of care provided (a nurse on a mentally unwell person who has just tried to commit suicide “He’s an arse, basically”. A nurse (possibly the same one) following the strangulation of the same detainee by a custody officer intentionally fails to record the use of ‘control and restraint’);
- Intentional failure to record uses of use of force/‘control and restraint’ (C&R) where such use amounts to Article 3 ill-treatment and which amounts at a criminal assault;
- Wilfully not recording food refusals of detainees, potentially putting their health and welfare at risk;
- Use of excessive force to restrain detainees, including with suspected vulnerabilities;
- Failure to protect detainees from ill-treatment at the hands of other detainees (including experimenting the strength of drugs on vulnerable detainees);
- Detention of suspected minors, with detention custody officers expressly failing to report their concerns;

High prevalence of drug use

Another of the Claimant’s concerns, and one raised by the Panorama documentary, was the high prevalence of drug use, particularly spice. The documentary revealed not only the extent to which spice is regularly available to detainees, but also a complete failing by detention staff of ensuring that those affected are properly cared for. Footage also showed how young detainees are being forced to be ‘guinea pigs’ to test the strength and toxicity of new batches of the drug. The detention staff are revealed to be fully aware of its prevalence and even note how the induction wing is being clearly misused by management to house many of those who are involved in its distribution.

Mr Wilson in the Home Affairs Select Committee evidence describes the use of spice as “*rife*” (see Q64), and how due to the “*level of desperation being so great*” and its “*availability*” that it is “*becoming hard to avoid.*”

This concern is echoed by the findings of the Home Affairs Select Committee. Rev. Ward believes it is a mixture of visitors, the postal system and staff (see Q62). At Q108, Mr Neden even concedes that he does know that “*occasionally some of our staff do indeed enter into inappropriate relationships and start to bring contraband into our centres*”. Mr Neden also confirms that staff have been dismissed in G4S centres previous where they have known to have brought in drugs to the centre (see Q123). Yet Mr Petherick claims no investigations or suspensions have occurred at Brook House (see Q110).

The evidence shows that the availability of drugs and the ability of drug dealers to force detainees into addition in Brook House, is not only causing degrading and ill-treatment, but is not being adequately addressed by staff. Even more distressing is credible evidence that staff may be involved in drugs entering Brook House. Drugs are being placed into an environment where detainees are vulnerable, stressed and anxious about their detention and their futures, and where mental health issues are highly prevalent. We submit that the Defendant’s failure to deal with this issue has caused a risk of inhuman and degrading treatment. There is also an unnecessary and disproportionate interference with his private life arising from the circumstances, which could be remedied by transferring him to a detention centre without the problems that are evident in Brook House.

The locking-in of detainees in their rooms several times a day, and in rooms which do not appear to be fit for purpose;

The locking of detainees into their rooms for regular periods during the day gives rise to independent grounds of challenge. However we submit that the issue is also a contributory factor that leads to a real risk of exposure to a breach of Article 3 and 8.

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The dire conditions of these rooms exacerbate the concerns of further restricting the liberty of those who are supposed to be in detention purely for administrative reasons. The conditions of the Claimant's room exacerbate the lock-ins, with the conditions themselves amounting to inhuman and degrading treatment. In particular, the Claimant has highlighted his distress at the dire situation of the toilet facilities in the room. There is no screen around the toilet. The Claimant is forced to share the toilet with his roommate with no privacy and shame in having to use it in front of another detainee.

The Panorama documentary alludes to serious under-staffing at Brook House IRC but this provides no satisfactory reason as to why the Defendant allows detainees to not only sleep in such conditions but also be forcibly locked in to their rooms during the day. These concerns appear to be exacerbated by recent decisions to increase the number of detainees in a room to three. As Reverend Ward sets out in his evidence to the Home Affairs Select Committee, *"the windows do not open, so now we are putting three grown men into a room that is supplied with air solely by a ventilation system. That is never going to be conducive to mental health or mere behaviour."*

We submit that the accommodating of the Claimant and other detainees in these rooms and regularly locking detainees into their rooms is a contributory factor to the conditions in Brook House IRC exposing the Claimant and other detainees to a breach of Article 3 and 8.

The latest unannounced inspection of Brook House IRC by the HM Chief Inspector of Prisons (HMCIP) took place between 31 October-11 November 2016, and was published in March 2017. At paragraph 1.41, the HMCIP noted that detainees were locked in their cells from 9pm to 8am and against for two half hour roll calls during the day. They noted the comments of one detainee who said "Closing and opening time should be changed because we are not prisoners, we are just detained... I am feeling like a prisoner without crime."

At paragraph 1.49, they made the recommendation that: *"Detainees should not be locked in cells and should be allowed free movement around the centre until later in the evening."*

In the Service Improvement Plan that accompanied the report, it appears that the Defendant/Brook House rejected the recommendation, quoting rule 3 of the Detention Centre Rules and arguing that detainees are only confined to their rooms overnight. The HMCIP however clearly found that at least two half hour periods during their inspection when detainees were lock-up in their room. It appears that the Defendant has increased this further. Additionally the Defendant has failed to justify why a lock-up of 11 hours overnight can be justified.

Article 5 ECHR

We submit equally that the conditions in Brook House IRC, for all the reasons listed above, have exposed the Claimant to a breach of his Article 5 ECHR rights. In *Saadi v United Kingdom* (2008) 47 EHRR 17, the ECtHR considered a case concerning the detained fast-track regime at in Oakington Reception Centre. At para 67, the court stated that article 5(1) requires that any deprivation of liberty "should be in keeping with the purpose of protecting the individual from arbitrariness".

The interpretation of *Saadi* was considered by the Court of Appeal in *Idira v SSHD* [2015] EWCA Civ 1187 (20 November 2015). The Court summarised their approach at paragraphs 52 and 61:

"52. In these circumstances, it seems to me that the phrase "unduly harsh" captures the essential point that the place and conditions of immigration detention must be seriously inappropriate before a detention can properly be described as "arbitrary" and therefore unlawful.

numbers of staff. It appears that the Defendant/G4S may be using day-time lock-ins to assist in dealing with under-staffing during roll-calls. The Claimant submits this is unlawful.

The Defendant has in her powers under the DCRs the use of rule 40 and rule 42 to remove detainees from association where it is either deemed necessary in the interests of safety and security, or where a detainee is violent or refractory. The Defendant simply has no power to universally restrict further the freedom of association of all detainees in the centre in the manner in which they are.

It is clear that in producing the DCRs, the Defendant never intended such a wide-ranging use of lock-ins, particularly for such long periods overnight. This can be seen in the Operating Standards Manual which the Defendant describes as “*designed to build on the Detention Centre Rules and to underpin the arrangements we have for the management of removal centres.*”

The standard, ‘Activities – Adults’ notes that the centre must provide a programme of educational activities amounting to at least 25 hours per week of which “at least seven hours must be in the evening”. The same standard requires 2 hours of library time in the evening per day, and for physical education there must be at least 30 hours per week where “at least seven hours must be in the evening”. It is not clear how detainees can have such extensive access to education, physical activity and the library in evenings when they are locked up from 9pm each evening.

Similarly the standard, ‘Communications’, requires detainees to have access to phones for “at least fourteen hours a day”. Assuming that this relates to detention call phones, the lock-in times at Brook House IRC would mean that detainees would not have such access.

The Claimant thus submits that the extensive use of lock-ins at Brook House IRC is contravention of the DCRs.

We have already set out above how Brook House IRC universally lock-up detainees in their rooms at regular intervals during the day.

The Claimant has been unable to identify any express power in the Detention Centre Rules (DCRs), the Operating Standards Manual or the Detention Service Orders (DSOs) that would allow the Defendant or IRC staff to apply a blanket approach to locking-up all detainees in their rooms for regular extended periods. The only relevant sections are the generally-worded rules 3 and 39 of the DCRs (already set out above).

In January 2016, Stephen Shaw published his comprehensive review into the welfare of vulnerable persons in detention (the "Shaw Review"). Mr Shaw noted at paragraph 6.167 of his review that there were a range of documents in place, mainly through the DCRs, DSOs and the Operating Standards manual, which contained guidance on security issues related to "the protection of detainees and others, the prevention and management of violent behaviour, and the prevention of escape." When summarising the Defendant's policies and approach to security in detention (and the aims of these policies), Mr Shaw noted at paragraph 6.168 that: *"To give effect to those aims, there are detailed requirements in respect of, for example, the hours when detainees may be locked in their room, and the way in which searches are carried out."*

Mr Shaw concluded on this point that (para 6.176): *"...while I think some of these aspects of detention are unavoidable, I believe there are ways that would allow for a more relaxed environment without damaging overall security. I would like to see each provider give real thought to mitigating the appearance of the internal security regime, and for all risk assessments in this context to be carried out on the basis of a presumption of relaxation."*

Despite these concerns, it appears that Brook House IRC have in fact increased the amount of lock-in time. As already set out above, the Defendant/G4S appear to have rejected the HMCIP's recommendation that detainees at Brook House should not be locked in cells.

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We submit that the extensive failures of Brook House IRC already highlighted above would make the Claimant's detention arbitrary and in breach of Article 5 due to a failure in the conditions of detention. We submit that the conditions meet this high threshold.

Article 8 ECHR

We submit that at the very least that the conditions in Brook House has exposed the Claimant to a real risk of a breach of his Article 8 ECHR rights, namely his right to physical and moral integrity, for the extensive reasons set out above in relation to conditions. There is a simple and proportionate answer to these problems in this case which is to consider the Claimant's request to be transferred out of the environment of Brook House to a safe and drug-free environment while he undertakes the lengthy wait for his complaint to be resolved.

Unlawfulness of Defendant's approach to lock-ins

The Defendant's use of lock-ins at Brook House IRC is unlawful for four primary reasons:

1. It is a highly contributable factor to the Defendant's breach of the Claimant's Article 3 ECHR rights at Brook House (as already set out above)
2. It appears to either be in pursuant to a secret policy and/or left to the discretion of individual IRCs, leaving an unacceptable risk of arbitrariness in decision-making in the way it is used;
3. Its use is contrary to the Detention Centre Rules 2001;
4. Its use is contrary to Article 8 ECHR.

Secret Policy/Individual Discretion of IRCs

We have already set out above how Brook House IRC universally lock-up detainees in their rooms at regular intervals during the day.

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The Defendant is either operating a secret policy on the use of lock-ins or are allowing the private contractors running each IRC to set their own policy on lock-ins. Either position is unlawful.

Whether the Defendant operates a secret policy or whether she simply leaves the use of lock-ins to the discretion of IRCs, she has created an unacceptable risk of arbitrariness in decision-making, and has resulted in practices being put in place which are in clear breach of the DCRs and Article 8 ECHR. This discretion affects individuals' freedom and autonomy and, if exercised inappropriately as we assert, is liable to have a significant detrimental impact on detainees – many of whom are particularly vulnerable.

Breach of the Detention Centre Rules

As stated above, rule 3 DCRs emphasises that the “purpose of detention centres shall be to provide for the secure but humane accommodation of detained persons in a **relaxed regime with as much freedom of movement and association as possible**, consistent with maintaining a safe and secure environment, and to encourage and assist detained persons to make the most productive use of their time, whilst respecting in particular their dignity and the right to individual expression.

The Defendant's use of lock-ins at Brook House IRC (and arguably in other IRCs) is unlawful in that it is contrary to the purpose of detention centres as set out in rule 3 DCRs. The extensive use of lock-ins at Brook House cannot meet the requirements of 'secure but humane accommodation' nor is it consistent with being a 'relaxed regime with as much freedom of movement and association as possible'.

The recent BBC panorama documentary shows that G4S are ill-equipped to deal with the detention population in Brook House. The documentary suggests that part of the reason is not hiring sufficient

numbers of staff. It appears that the Defendant/G4S may be using day-time lock-ins to assist in dealing with under-staffing during roll-calls. The Claimant submits this is unlawful.

The Defendant has in her powers under the DCRs the use of rule 40 and rule 42 to remove detainees from association where it is either deemed necessary in the interests of safety and security, or where a detainee is violent or refractory. The Defendant simply has no power to universally restrict further the freedom of association of all detainees in the centre in the manner in which they are.

It is clear that in producing the DCRs, the Defendant never intended such a wide-ranging use of lock-ins, particularly for such long periods overnight. This can be seen in the Operating Standards Manual which the Defendant describes as "*designed to build on the Detention Centre Rules and to underpin the arrangements we have for the management of removal centres.*"

The standard, 'Activities – Adults' notes that the centre must provide a programme of educational activities amounting to at least 25 hours per week of which "at least seven hours must be in the evening". The same standard requires 2 hours of library time in the evening per day, and for physical education there must be at least 30 hours per week where "at least seven hours must be in the evening". It is not clear how detainees can have such extensive access to education, physical activity and the library in evenings when they are locked up from 9pm each evening.

Similarly the standard, 'Communications', requires detainees to have access to phones for "at least fourteen hours a day". Assuming that this relates to detention call phones, the lock-in times at Brook House IRC would mean that detainees would not have such access.

The Claimant thus submits that the extensive use of lock-ins at Brook House IRC is contravention of the DCRs.

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Article 8 ECHR

The unjustified, extensive and daily use of lock-ins has breached the Claimant's Article 8 ECHR rights. Where an individual's autonomy is already restricted, a further interference with physical and psychological integrity will be regarded as an interference with private life under Article 8 ECHR. This has been found in the context of seclusion/segregation in mental health hospitals (*Munjaz v United Kingdom* [2012] MHLR 351) and in the prison contexts (see *Dennehy v Secretary of State for Justice* [2016] EWHC 1219 (Admin) at para 151).

Significantly, the High Court has recently found that the use of removal from association under rule 40 DCRs in immigration detention engages Article 8 ECHR in the case of *Muasa v SSHD* [2017] EWHC 2267. Although this was in the context of immigration segregation and the Defendant's direct powers under rule 40, we believe that this case is analogous to the Claimant's case where he is being locked in his own rooms for regular significant periods of time (including for 11 hours over night).

The High Court in that case stressed the importance of the freedoms of association and liberty that immigration detainees do enjoy in circumstances where such rights have already been restricted by administrative detention, placing reliance on rule 3 DCR - see paragraph 27: "*human beings are sociable creatures and any removal from association necessarily impacts upon personal autonomy and may be deleterious, and in some cases very deleterious, to psychological well-being. Indeed, the purpose of detention centres is identified in DCR rule 3(1) as being...*"

On the facts, the High Court in that case found that the claimant's Article 8 rights were breached for a period of 3.5-4 hours because her removal from association was not in accordance with the law for the period beyond 24 hours (because not properly authorised). In the Claimant's case (and all

detainees at Brook House for that matter) his freedoms of movement and association are infringed for a combined total of approximately 13.5 hours for every single day that he is detained. It therefore cannot be in doubt that the Claimant's Article 8 ECHR has been interfered with and thus the question remains whether such interference can be justified under Article 8(2).

We submit that the interference cannot be justified because it is neither in accordance with the law nor is it proportionate to the legitimate aim pursued.

Interference with the Claimant's Article 8 rights are not proportionate or connected to any legitimate aim pursued. Even if the Defendant were to argue that the blanket use of lock-ins against all detainees in Brook House is pursuant to rules 3 and 39 DCRs, we submit that the practice is disproportionate.

Breach of section 149 the Equality Act 2010

We submit that due regard has not been made to s149(1) in the Defendant's exercise of a policy/practice that allows Brook House to routinely and arbitrarily lock-up detainees for significant periods of time at time a day, amounting to over half a day.

The blanket policy applied to lock-up all detainees indicates that the Defendant has failed to have due consideration to the relevant protected characteristics for those in immigration detention who have particular vulnerabilities. This would include victims of torture, victims of trafficking, those who have escaped persecution in their home countries, and/or those with mental health problems, who would all fall within the wider protection characteristic of disability. The blanket approach is at odds with the Defendant's claimed commitment following the Shaw Review to take a more individualised and holistic approach to vulnerability in detention that cumulated in the introduction of the Adults at Risk in Immigration Detention policy.

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It is unclear how the Defendant could have discharged her duties under section 149 when applying such a blanket policy towards lock-ups at Brook House and appears prima facie unlawful. In the event the Defendant disputes this, disclosure is requested from the Defendant of all documents she intends to rely upon to show she has met her section 149 duties.

Action to be taken by the Defendant

Intervention by the Defendant

Section 151 Immigration and Asylum Act 1999 gives the Defendant the power to intervene in a contracted out detention centre and take over running of the centre where the manager has "lost, or is likely to lose, effective control of the centre or of any part of it" or "it is necessary to do so in the interests of preserving the safety of any person, or of preventing serious damage to any property."

G4S have clearly lost effective control of Brook House IRC and it in the interests of preserving the safety and well-being of detainees that the Defendant take direct control of the centre and take immediate steps to rectify the breaches alleged in this letter.

We must therefore make it clear that, **before 4pm on the reply date** specified at the opening of this letter, the Defendant agree to take the following action:

- (i) Release the Claimant, or in the alternative, transfer the Claimant to a detention centre other than Brook House IRC where there are no lock-in procedures;

Further, this claim raises wider issues and our client wishes to see that:

- (ii) The SSHD takes control of Brook House IRC herself, ensuring that G4S has no further involvement in the operation of that particular centre, pursuant to s151 of the 1999 Act;
- (iii) Ensures that the lock-up process at Brook House ceases immediately;

In the event that the Defendant does not deem these to be appropriate courses of action, she is to provide her reasons in writing to the Claimant prior to the prescribed deadline, any in any event to provide all data held about the Claimant including the following documentation:

- (i) GCID Case Records;
- (ii) Detention Reviews;
- (iii) Monthly Progress Reports;
- (iv) IRC Healthcare Records;
- (v) Internal Security Log Entries;
- (vi) Any ancillary documentation that pertains to the detention of the Claimant at Brook House IRC;
- (vii) All policies, guidance and written documentation (whether publicly available or not, and whether applied universally or at local Brook House level) that the Defendant relies upon to allow the current regime of lock-ins at Brook House IRC, and changes to any previous such regimes;
- (viii) If relevant, disclosure of all documents the Defendant intends to rely upon to show she has met her duties under section 149 Equality Act 2010 in relation to her policy of lock-ups at Brook House.

Action to be taken by the Claimant

Should the Defendant fail to take the above detailed action the Claimant will commence judicial review proceedings.

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If you have any queries, please contact Lewis Kett by telephone on DPA.

Please ensure that you quote our reference number in all correspondence and communications with this office

Yours faithfully

Signature

Duncan Lewis