BROOK HOUSE INQUIRY

First Witness Statement of Hamish Arnott

I provide this statement in response to a request under Rule 9 of the Inquiry Rules 2006 dated 17 November 2021 to D1275.

I, Hamish Arnott, solicitor, of Bhatt Murphy Solicitors, 10 Tyssen Street London E8 2FE, will say as follows:

Introduction

1. I am a solicitor and work as a consultant at Bhatt Murphy Solicitors, 10 Tyssen Street, London E8 2FE. I represent D1275 who is a core participant in this Inquiry, and I previously represented him in judicial review proceedings commenced in 2018 which involved challenges to his unlawful detention and treatment at Brook House during 2017.

2. D1275 came to be recognized as a Core Participant following the emergence of the BBC Panorama footage showing serious incidents of abusive behaviour relating to him. The Inquiry issued a Rule 9 request dated 17 November 2021 in relation to D1275, and this statement is a response to that request. For his part, he has provided instructions that he does not feel able to provide direct evidence to the Inquiry: he finds it very difficult and distressing to revisit his time in detention. In the circumstances, he has asked that I, as his solicitor, give evidence on his behalf and place his treatment at Brook House in its context by reference to (i) the information and material that was revealed in the above mentioned judicial review proceedings culminating in his release, (ii) my own experiences of representing him, and (iii) the documents that have been disclosed in the course of this Inquiry. I have sought to do so below, addressing the issues raised in the

Rule 9 request as far as I can without being able to obtain instructions from D1275 on the specific issues raised in the Rule 9 request.

3. Naomi Blackwell, who at the relevant time was working at Gatwick Detainee Welfare Group ("GDWG"), was involved in D1275's case and has therefore also provided a statement to assist the Inquiry in its task of understanding the full context to D1275's treatment.

4. Dr. Rachel Bingham, clinical advisor for Medical Justice, has reviewed the medical records and extracted documents concerning the 14 June 2017 incident and provided her observations of his treatment at Brook House from a clinical perspective to further assist the Inquiry.

5. There are also three medico-legal reports which had been obtained in the course of judicial review proceedings which also assist in putting D1275's case in a clinical context: Dr Ragunathan dated 9 March 2018; Dr. Appleyard dated 20 February 2019; Dr. Galappathie dated 28 October 2019. I exhibit these to this statement (HA/1 to 3 respectively). I also exhibit the final order in D1275's judicial review (HA/4) and the final orders in VC's case in the Court of Appeal (HA/5) and Supreme Court (HA/6).

Structure of this statement

6. In this statement, I will address the Inquiry on the following matters:

   a. the circumstances of the detention of D1275 and my role in representing him in judicial review proceedings, issued in May 2018 and concluded in December 2019, which challenged the lawfulness of his whole immigration detention and release from detention on bail. This included his detention at Brook House during the relevant period under investigation by this Inquiry.

   b. the case of VC, another client of mine who was detained at Brook House, whose case has been raised in the evidence given by GDWG and where

there are some common issues relating to the treatment of those whose vulnerability is so severe that they may lack mental capacity.

7. Where this statement is not made from my direct knowledge, it is made by reference to documents produced in the judicial reviews in which I acted for VC and D1275 and also on the basis of documents produced by the Inquiry.

D1275

8. In order for the Inquiry to fully understand the context of D1275's treatment in detention at Brook House IRC on 14 June 2017 it is necessary to examine the context of his lengthy detention and his severe mental health issues and how they were treated in detention.

(i) Background

9. D1275 is an Iranian national who entered the UK illegally in late November 2012. His initial claim for asylum was refused and he became appeal rights exhausted in May 2013. Further submissions made in 2014 were rejected with no right of appeal in December 2015.

10. Further to a short criminal sentence served at HMP Liverpool from August to December 2015, D1275 was detained under immigration powers on 1 December 2015 at HMP Bedford. Medical records disclosed relating to that period show that prison healthcare services had noted D1275 presenting with hallucinations and bizarre behaviour. An IS.91 issued by the Home Office to authorise his immigration detention noted one risk factor, his psychiatric illness. The Home Office nevertheless detained him under immigration powers, noting that investigations would be carried out into his mental health.

(ii) First Detention (1 December 2015 to 15 July 2016) – 228 days

11. Throughout D1275's first period of detention (initially in HMP Bedford and then at Colnbrook and Morton Hall IRCs), he was noted to present with erratic

behaviour, and was observed as being in another world, smiling and giggling to himself and appearing confused. There were repeated records of incidents of D1275 exposing himself to female staff and nurses at the detention centre. He also was reported to have smashed the glass of a fire alarm, thrown plates and food onto the floor, and otherwise caused damage in the detention centre. The IRC response to his outbursts and sexualised behaviour was to place him in segregation on multiple occasions over prolonged periods of time under Rules 40 and/ or 42 of the Detention Centre Rules 2001. This included when D1275 was first detained in December 2015, when he was held in segregation at Colnbrook Immigration Removal Centre ('IRC') for the best part of 4 months from 17 December 2015 to 11 April 2016.

12. The medical records between December 2015 and July 2016 refer to D1275 having several appointments with psychiatrists to assess whether and what underlying mental disorder he had. No specified mental disorder was diagnosed although several psychiatrists noted his presenting flight of ideas and the possibility of his odd presentation being associated with spice and cannabis intoxication.

13. When D1275 was first detained in December 2015, the Home Office's records stated that he had signed a disclaimer that he wished to be voluntarily returned to Iran. He cooperated with an interview for an emergency travel document ('ETD') with the Iranian Consulate on 29 January 2016, but the consulate declined to issue an ETD to him on the basis that there was insufficient information to issue him such a travel document (HOM007838). The absence of an ETD remained a barrier to removal throughout D1275's first period of detention from 1 December 2015 to 15 July 2016 and remained such a barrier for the entirety of his subsequent detention at Brook House in 2017 / 2018.

14. By 26 May 2016, the Home Office considered, in a detention review, that *"detention cannot be maintained with no prospect of removal"* and there was a

need to make *"arrangements necessary to release"* D1275. The lack of an address to which to release D1275 prevented his release. The review recorded *"progress the case for a safe release"* as the priority action point (HOM007236_0002). That conclusion was repeated at a further detention review on 11 June 2016. However, it seems that no *"safe release"* was arranged for D1275 and on 11 July 2016, an IS.106 Release Order was issued for D1275 to be released to *"no fixed abode"* and a requirement to report to Lincoln Police Station on 15 July 2016. This is notwithstanding previous assessments by the Home Office concluding that D1275 posed high risks of absconding and harm to the public.

15. On or around 30 July 2016, D1275 was arrested on a charge of Sensitive/Irrelevant He was convicted and Sensitive/Irrelevant sentence on 21 September 2016 and remanded into criminal custody.

(iii) Second Detention (20 October 2016 – 25 June 2018) – 615 days

16. On 20 October 2016, the day when D1275 was eligible for release in respect of his criminal sentence, the Home Office detained D1275 pursuant to paragraph 2, schedule 3 to the Immigration Act 1971, and served him a Notice of Intention to Make a Deportation Order (HOM007838). The Home Office's reasons for detaining D1275 were his high risks of absconding, public harm and risk of re-offending. It was also said that detention was to effect D1275's removal from the UK, despite the Home Office being already aware (since at least January 2016) that an ETD could not be obtained from the Iranian authorities in respect of an enforced return. The IS.91 authorising detention dated 26 October 2016 identified no risk factors in respect of D1275 save for his past Sensitive/Irrelevant offences despite the Home Office being well aware of his past bizarre and erratic behaviour in detention.

17. Shortly after this re-detention under immigration powers, the Home Office acknowledged in a detention review that a release referral needed to be drafted in

view of the absence of an emergency travel document and *"there is **no realistic prospect of removal** within a reasonable timescale"* unless D1275 wishes to help facilitate his own return (HOM011328_0004). Soon after this detention review, D1275 was transferred from prison to Morton Hall IRC. On his arrival at Morton Hall, D1275 was referred for another mental health assessment on account of his presenting with bizarre behaviour at a nursing assessment. On 13 December 2016, D1275's criminal licence period expired.

18. In a detention review dated 14 December 2016 (HOM011328), the Home Office maintained the view that there was no realistic prospect of removing D1275 and a recommendation was made for the submission of a release referral. This remained the view at a further review dated 12 January 2017 in which the authorising detention officer stated that it was necessary to engage with MAPPA (Multi-Agency Public Protection Arrangements) for a *"managed release referral"* given the *"prospects of removal are diminishing."* (HOM011377_0004) The same recommendation was repeated on 8 February and 5 April 2017.

19. Yet despite this, D1275 was transferred to Harmondsworth IRC on 21 March 2017. This was after having been in segregation at Morton Hall from 23 February 2017 (after an incident when he inappropriately touched another detained person and was then assaulted). He was then transferred to Colnbrook IRC on 25 March 2017. Medical records indicate that D1275 was put in segregation at Harmondsworth and Colnbrook for the entirety of the time he was held there until his transfer to Brook House on 1 May 2017. A record in the Detainee Detention Review maintained by the Home Office states on 28 April 2017 that *"36 days in R40 at Colnbrook will be having a detrimental psychological effect on him"* (HOM007752_0064). In total, D1275 was in segregation for 41 consecutive days at Harmondsworth and Colnbrook IRCs prior to his transfer to Brook House. A medical record dated 28 March 2017 noted that D1275 had been transferred to

the Heathrow IRCs whilst in segregation at Morton Hall, and that the detention centre officers were unable to explain why he was in segregation under Rule 40.

20. On 28 March 2017 he was seen by Dr Hillman, a psychiatrist, at Colnbrook who considered that there was no evidence of a major mental health disorder (HOM007561).

(iv) Brook House (1 May 2017-25 June 2018) – 422 days

21. On 1 May 2017 D1275 was transferred to Brook House IRC (CJS001148). The Reception Report is at (CJS001008).

22. In the 30 May 2017 detention review, it was recorded that the release referral was with the Senior Executive Officer ("SEO") pending *"onward escalation"* to the Strategic Director (HOM011172_0004). It was also recorded that the release referral needed to be cleared before the next review date. However by 27 June 2017, the release referral was not cleared and another decision was made to have *"a clear plan in order to manage his risks in the community .... He remains a high risk if released. He is also an adult at risk level 2 under the policy."* (HOM007466_0004).

23. On 14 June 2017, D1275 was filmed by Callum Tulley after having been suspected of taking Spice. The Inquiry has already admitted the footage of this incident into evidence (KENCOV1035 V2017061400015 and V2017061400016) and it shows D1275 in a state of extreme physical distress on the ground with officers seeming unprepared in the response to what may well have been a life-threatening situation. Officers and other detainees look on whilst D1275 is on the floor experiencing what appears to be a severe physical reaction to spice.

24. The footage also records some IRC staff verbally abusing D1275 and showing a complete disdain and lack of concern for his well-being and dignity. This includes being mocked by detention custody staff Nathan Ring and Derek Murphy, and humiliating remarks such as *"Keep still, you div"*, "*scrotum*"; and the one

highlighted to the Inquiry as particularly "chilling" from Derek Murphy saying *"Absolutely no sympathy for them at all... if he dies, he dies."* This contempt for D1275 went unchallenged by others present including healthcare staff responsible for his care and despite his serious medical condition and his extreme vulnerability. A nurse was recorded as stating that his pulse was extremely high and he was tachycardic.

25. The medical record entry for 14 June 2017 contained a very bare description of the incident and did not bear any resemblance to what was seen on the footage. Instead, the medical record stated that D1275 was being rude to staff and swearing. The true nature of the 14 June 2017 incident only became known through the footage disclosed by the Inquiry (KENCOV1035 V2017061400015 and V2017061400016). Documents and other material relating to this incident (discussed later in this statement) were only disclosed in the course of the Inquiry's disclosure exercise. None of this had been produced by the Home Office in the judicial review proceedings.

26. A Detention Case Progression Panel met on 3 July 2017 and affirmed the recommendation for release noting that D1275 was an Adult at Risk (Level 2), repeating what had already been stated in successive detention reviews since January 2017, that there was *"no prospect of removal within a reasonable timescale."*

27. On 17 July 2017 D1275 was placed in segregation under Rule 40 for apparently fighting with another detained person. The record for this states that he was *"not making sense"*. (CJS001004_0004)

28. In a detention review dated 26 July 2017, a similar recommendation to that made on 3 July 2017 was again repeated although it was stated that D1275 appeared to have interest in returning to Iran which must be explored and that he should be encouraged to sign a disclaimer. It is not known from the documents disclosed

how the Home Office came to the conclusion that D1275 may wish to return to Iran.

29. On 8 August 2017 there is a G4S incident log stating that D1275was verbally abusive to an officer (CJS000478). The Rule 9 request dated 17 November 2017 asks D1275 to comment on a number of occasions when he was abusive to staff (CJS000893 on tab BH SIR LOG at row 497-501, CJS004740, CJS005245, CJS000895 on tab BH SIR LOG at row 155-159, CJS001054 at page 5, CJS000896 on tab BH SIR LOG at rows 42-46 and 757-761, CJS005098). As noted above I have not been able to take instructions on these incidents. Whilst this behaviour to staff, as recorded in the log, appears to be unpleasant, it needs to be considered in context of the repeated concerns raised by staff over the degree to which D1275's behaviour was impacted on by his serious mental ill-health, and during times when staff were aware of his vulnerabilities and were concerned that he was potentially being used by other detainees as a guinea pig to test illicit drugs in the detention centre. Those behavioural logs also need to be considered by reference to medical records recognising a need for D1275 to have a mental health assessment and detention staff contacting healthcare repeatedly to ask them to attend to him on the wing.

30. A subsequent detention review on 23 August 2017 clarified that D1275 remained unwilling to return voluntarily to Iran and that the Home Office had been advised by the Country Specialist Team that D1275 could not be deported without a travel document which the Iranian authorities would not issue in respect of enforced returns. In this review, D1275 was referred to now as an Adult at Risk Level 1 but no reasons or notes were stated to explain the downgrading of the risk level. The review concluded with a decision to escalate the already drafted release referral to the Strategic Director and to ensure *"mitigation in place for potential release."*

31. A detention review on 20 September 2017 (HOM007802) noted that notwithstanding D1275's unwillingness to return to Iran voluntarily, the Home Office arranged for him to be interviewed by the Iranian authorities. This was said to be a *"significant breakthrough in terms of re-documentation"* and it *"is possible that removal may proceed if an [Emergency Travel Document] is issued."*

32. The interview with the Iranian Consulate on 4 October 2017 did not produce any prospects of obtaining an ETD for D1275 (HOM007561). The GCID record of that date noted that the interview with the consulate was not in fact a documentation interview. It is not clear what its purpose was given D1275 maintained his wish not to return to Iran and the Home Office was fully aware of the fact that the Iranian authorities would not issue travel documents for an enforced return. In any event, it was noted that D1275 was difficult to understand, gave bizarre responses to questions by the consul and appeared to lose concentration during the interview (HOM011253_0002).

33. Further to this interview, on 13 October 2017, the Home Office wrote to D1275's Probation Officer to seek advice, indicating that they were considering D1275's release (HOM007561). By a response on the same day, Probation stated that it was concerned about D1275's release and had not been provided with an address by the Home Office to check for suitability.

34. A detention review dated 17 October 2017 noted that the documentation process was slow (when in fact there was no prospect of being completed). The review went on to say that removal *"cannot be said to be imminent"*. Detention would be maintained *"pending release referral and assessment for how [D1275] might be managed effectively in the community."*

35. On 24 October 2017 he was escorted to hospital under escort (CJS001008) for an X-ray. It is not clear why.

36. On 25 October 2017 an updated release referral confirmed that removal could not be enforced in D1275's case as an ETD could not be obtained (HOM007561 and HOM007430).

37. On 17 December 2017, a Detention Case Progression panel repeated the recommendation made in July 2017 for D1275 to be released, and for a decision to be made for release in principle pending the provision of a bail address under section 4(1)(c) of the Immigration Act 1999 ("IAA 1999"). It was noted that the release referral should be with the Strategic Director by 18 December 2017 (HOM007561 and HOM007469). There is nothing in the records to indicate whether the release referral was in fact escalated to the Strategic Director and / or what decision was made by the director.

(v) My contact with D1275

38. I was first contacted by Naomi Blackwell who was then working at GDWG about D1275 on 6 November 2017. She sent an email that confirmed she had seen him on 3 November 2017 and was very concerned about his vulnerability. He had attended the meeting with his cellmate who was assisting him. Her email stated that she was concerned that he did not have capacity to make decisions about his immigration case. He did not have a solicitor and did not appear to understand why he was detained. His behaviour was very odd. She noted that he spoke a good deal but very tangentially and did not finish his sentences. He seemed paranoid and mistrustful. He had stated that he had many visitors although his cellmate stated that he had none. The only document she could provide me with at that time was a monthly progress report. This gave limited information about his case. She stated she was in the process of obtaining his medical records.

39. On 10 November 2017, Ms. Blackwell emailed me to say that another detained person had contacted her to say that D1275 seemed very unwell and was spending time just staring into space. She was still waiting for disclosure of the medical

records. Ms. Blackwell emailed me medical records for D1275 on 13 November 2017. These records showed that D1275 had been detained for a significant period of time and that there had been concerns about his mental health at various times during his detention.

40. Observation records show that on 17 November 2017 Ms. Blackwell contacted Brook House by an email to the Safer Custody Inbox with *"concerns reported from other detainees concerning his mental health. I have referred this to the wing managers for tomorrow and the healthcare managers"* (CJS001054_0006). There is no record of a response in the medical records around this time. The next substantive entry in the medical records is on 16 December 2017 where it says he did not attend an appointment with a mental health nurse and so a further appointment was made on 24 December 2017. He did not attend on that date either and so was discharged from the mental health team caseload. As noted below this was a repeated pattern at Brook House.

41. The medical records showed that when he had transferred to Brook House on 1 May 2017 he was referred to see a mental health nurse on admission as the medical records state "*Claims mental health issues. States he hears voices. Vague and misleading with answers to questions on admission*". The nurse also recorded that he said "*they will find me*" but "*would not elaborate on who he was*" (CJS001121_0106).

42. The medical records showed that he did not attend a GP medical appointment the next day and he did not attend mental health appointments on 9 and 17 May 2017. In response to this he was discharged from the RMN caseload on 18 May 2017. The notes say that he would be expected to *"self refer whenever he has any mental health concern"*. The records also show he was discharged after he failed to attend appointments on 30 June 2017, 18 September 2017, and 24 December 2017. On 25 January 2018 the medical records state that he had failed to attend 13 appointments and was, therefore, discharged. As noted by Dr. Bingham in her

case review, there appeared to have been no consideration of or investigation into the reasons why he may have missed the appointments on so many occasions or that this may be itself be symptomatic of underlying mental health or capacity issues. This omission is particularly concerning where a wing officer noted in a Security Information Report on 22 June 2017 (CJS005347_0001) that he may not have capacity to understand appointments with doctors and attend them.

43. On 15 November 2017 I confirmed to Ms. Blackwell that I would agree to take the case on and would need to arrange a legal visit to see him. Because of pressure of work which included preparations for a 2-day hearing in the Court of Appeal in the case of VC (see below) on 28 to 29 November 2017, I could not arrange the visit until 5 December 2017 when my assistant contacted Brook House for a double slot legal visit which was provided for 19 December 2017.

44. Observation records disclosed to the Inquiry note that on 16 December 2017 it is recorded that his *"behaviour has become strange. He has flooded the ground floor with water then started mopping, was also talking to himself"* (CJS005986_001).

45. I visited D1275 with Ms. Blackwell on 19 December 2017. I was very concerned over his presentation as he was incoherent and appeared unable to focus on what I was saying (although he obviously was capable of understanding and speaking in English). He seemed to understand that I was a lawyer and that I might be able to assist in securing his release but despite this would not provide coherent instructions. I believed that I had sufficient instructions to pursue initial steps in a case to secure his release but considered that it was necessary to instruct a psychiatrist to provide a capacity assessment and an opinion on his mental state before proceedings could be issued as it was clear he might require a litigation friend.

46. He spent much of the appointment with me talking in a very disorganised way involving non-sequiturs and raising irrelevancies and without any focus to the conversation. For these reasons, I had concerns about his mental capacity and the extent to which he was capable of retaining or weighing information in relation to decisions he had to make regarding instructing me to take legal proceedings on his behalf.

47. I then took steps to obtain documents regarding his case so that I could instruct a psychiatrist to prepare a report dealing with both D1275's mental state and his capacity to instruct a solicitor.

48. D1275 had not been able to provide either me or Ms. Blackwell with any documents about his case from the Home Office. It is not clear to me what documents D1275 had been provided by the Home Office. Although Ms. Blackwell had provided the monthly progress report, this did not include his Home Office reference number. There was also some confusion about his correct date of birth which delayed the process of obtaining documents. I understand that Ms. Blackwell had asked staff at Brook House to help but they had refused.

49. I was informed by Ms. Blackwell that she submitted a section 4 application on 27 December 2017 for Home Office bail accommodation in order to progress the possibility of D1275's release. It was already clear to me that he would need suitable accommodation for release and that it would be important given his evident vulnerability that he should not be released without a suitable address.

50. On 29 December 2017, a week and half after the case progression panel's recommendation for release, documents subsequently disclosed show that the Home Office sent a letter to D1275 confirming that he was considering a request to arrange accommodation under s.4 IAA 1999. GCID records show that on 3 January 2018, a pro forma was completed and returned to the s. 4 Bail Accommodation Team by the Criminal Casework team.

51. Although the Home Office arranged another interview with the Iranian authorities on 10 January 2018 it appears that this was not a documentation interview (HOM007561).

52. In records subsequently disclosed it appears that the recommendation to grant D1275 bail in principle was agreed in January 2018 (HOM007561). This was not actioned on the basis of an attempt to have him re-interviewed by the Iranian authorities for the purposes of obtaining an ETD, even though this had already been previously rejected. On about 13 February 2018, an Iranian consular official met D1275, confirmed that he was an Iranian national but maintained the view that there was insufficient information to issue an ETD. The Home Office GCID record on 14 February 2018 states that *"Consular Official raised concerns about his welfare as he was repeating questions and not understanding the answers"*. It remained the case that D1275 could not be removed to Iran because the Iranian authorities did not accept enforced removals and D1275 confirmed he did not want to return to Iran. But the Home Office GCID records showed no concrete steps to progress his release, a view having been taken for many months that his release should be arranged.

53. I took steps to instruct a psychiatrist to prepare a report on D1275. This took some time due to lack of availability from a specialist which is not uncommon in this context. A number of psychiatrists could not see him quickly and Medical Justice were also unable to provide someone who could prepare a report urgently. I eventually instructed Dr Ragunathan, a consultant psychiatrist of St Andrew's Healthcare, who was eventually able to see him on 23 February 2018.

54. A detention review on 7 March 2018 subsequently disclosed (HOM007561 and HOM007458) noted that D1275 was not willing to voluntarily return and stated that the country specialist team had confirmed again that *"we cannot deport him at this time"*. It confirmed that D1275 had expressed no wish to return to Iran in

the interview on 12 February 2018 and that a release referral had been agreed in principle on 26 January 2018. The detention review noted the release referral that had been made and noted that there was delay in securing accommodation. It stated that detention should be maintained whilst there was a plan for a managed release (HOM007458 and HOM007561).

55. The disclosure provided by the Home Office in July 2018 showed that repeated emails were sent by the Home Office's Criminal Casework team to the s.4 Bail Accommodation Team chasing an update on accommodation arrangements during this period.

56. Medical records in January through to March 2018 also noted concerns raised by detention security with healthcare staff that D1275 was being bullied and used to test NPS (spice), an illicit drug that was widely available in detention. Detention security expressed concerns that D1275 was being pushed to act inappropriately (see medical records entry for 12 March 2018 for example). On 31 March 2018, the medical records show that security contacted healthcare asking that a mental health nurse attend D1275 on the wing *"as it is felt he does not have the capacity to make his way to the RMN office"*.

57. The medical records indicated that D1275 was referred for mental health input in detention but missed too many appointments and was actually discharged from the mental health team. There is no evidence of proactive follow up to find out why or to relate that to his mental illness. Until late March 2018, there was no indication in the medical records of any mental health assessments being carried out and /or consideration given to to what decisions D1275 had mental capacity to make, including about his treatment, and his attendance at medical appointments.

(vi) Report of Dr Ragunathan

58. On 23 February 2018 Dr. Ragunathan interviewed D1275 at Brook House IRC for the purposes of determining whether he suffered from a diagnosis of a mental

disorder and whether he had mental capacity to consent to medical treatment and / or provide instructions to lawyer to take steps on his behalf to secure his release. Dr. Ragunathan's report was completed on 9 March 2018. Its key points were:

a. D1275 was suffering from a mental disorder, most likely of a mood disorder such as bipolar affective disorder with psychotic symptoms or a psychotic illness with mood abnormalities: §§4.4-4.5.
b. The observations of D1275's bizarre and thought disordered presentation recorded in the medical notes supported this diagnosis. The presence of symptoms of hallucination meant a diagnosis of a psychotic illness could not be ruled out: §4.6.
c. Although several IRC psychiatrists (prior to D1275's transfer to Brook House) had either ruled out a diagnosable mental disorder or that found that D1275 did not suffer from an acute or florid psychotic type illness, the way he presented to Dr. Ragunathan, taken with what had been recorded in the medical notes at Brook House, led him to be of the opinion that D1275 currently suffered from a mental disorder: §§4.6-4.7.
d. The time and language constraints of his assessment meant that a further period of assessment would be appropriate, particularly with the help of a Farsi interpreter: §4.8.
e. D1275, by reason of his underlying mental disorder, did not have the necessary capacity to provide instructions to a lawyer to take steps on his behalf to secure his release or take steps to resolve his immigration status: §§4.9-4.10. D1275 was unable to retain information long enough to appropriately weigh up information and make an informed decision: §4.11.
f. D1275 did not have capacity to consent to medical treatment as he does not have any insight into his mental disorder: §4.12.

59. Dr. Ragunathan expressed a strong view that immigration detention was *"perpetuating his mental disorder"* and that he *"is not able to receive the appropriate care and support for his mental disorder whilst he remains at the*

immigration detention centre.": §4.13. Whilst Dr. Ragunathan did not consider D1275's mental disorder to be severe enough at the time to require a hospital transfer for urgent treatment under the MHA 1983, he was of the view that D1275 did require *"a comprehensive psychiatric assessment with the support of a Farsi speaking interpreter to gain a better understanding of the nature and the severity of the mental disorder."*: §4.14. If released into the community, D1275 would require *"a comprehensive support package from the local authority to provide him with care and support in the community."* He would also require support from the local community mental health services to safely manage his mental disorder and to ensure his own health, safety and the safety of others were appropriately addressed in the community: §4.15.

60. Further to Dr. Ragunathan's assessment of D1275's lack of mental capacity to instruct solicitors and to litigate, I contacted the Official Solicitor ("OS") who agreed to act as D1275's litigation friend. The OS acts as a litigation friend of last resort for those who lack capacity to instruct a solicitor for legal proceedings. The OS confirmed that she would act as a litigation friend on 14 March 2018.

(vii) D1275's judicial review

61. I then drafted letters of claim that were sent to both the Home Office, the local authority that covered Brook House and the healthcare department. These had to be approved by the OS and were sent on 22 March 2018, enclosing Dr. Ragunathan's report.

62. The letter to the Home Office stated that D1275 was clearly being unlawfully detained. It stated in part:

> *In summary our client is an Iranian national who has been detained under immigration powers (although it appears he has also served a short criminal sentence) since 1 December 2015. The enclosed medical report raises concerns that he is suffering from a serious mental illness. He has been detained by the*

Home Office for a period in excess of two years and has been subject to prolonged periods of segregation during that time. Dr Ragunathan concludes that detention "is perpetuating his mental disorder...I am also of the view that [he] is not able to receive the appropriate care and support for his mental disorder whilst he remains at the immigration detention centre" (paragraph 4.13). There does not appear to be any prospect of removal in this case within a reasonable period of time. We would ask that you give full consideration to the chronology set out in our letter to healthcare.

63. The letter made it clear that D1275's detention was unlawful both by reference to the Hardial Singh principles and as it was in breach of the Home Office's policy:

Our client is clearly a person "particularly vulnerable to harm" within the meaning of section 59(1) Immigration Act 2016 and the statutory guidance presented to Parliament pursuant to section 59(4). He is also a person whose mental health, is "likely to be injuriously affected by continued detention or any conditions of detention" within the meaning of Rule 35 of the Detention Centre Rules 2001. The report of Dr Ragunathan should be considered at Level 3. The guidance confirms that "Level 3" evidence is "professional evidence...stating that the individual is at risk and that a period of detention would be likely to cause harm".

64. The letter raised concerns that there had been an unlawful failure to assess and take steps to make reasonable adjustments of his lack of capacity:

Given our client's mental disorder and lack of capacity there is a concern you have also acted unlawfully in failing to take any steps to ensure that he can make representations in respect of his continued detention and/or decisions on his treatment such as use of segregation or seclusion under Rules 40 and 42 of Detention Centre Rules 2001. This failure is in breach both of the requirements of fairness under common law and the requirement to make reasonable

adjustments under the Equality Act 2010 – R (VC) v SSHD [2018] EWCA Civ 57.

Human Rights

The continued detention of our client is also unlawful as it is in breach of article 5 ECHR as it is in breach of domestic law (see above). Insofar as our client has been suffering from a mental disorder that has not been properly treated in detention, and insofar as he has been subjected to extended periods of inappropriate segregation, our client will also have been subject to inhuman degrading treatment in breach of article 3 ECHR – see R (HA Nigeria) v SSHD [2012] EWHC 979 (Admin) at [174].

65. Importantly, due to the findings of Dr Ragunathan and the evident vulnerability of D1275 the letter made it clear that the Home Office had a responsibility to arrange a safe release for D1275. Whilst it was clear that he was being unlawfully detained, there needed to be planning of how he could be released to suitable accommodation. The letter of claim therefore gave the Home Office 14 days to respond and stated:

We would in particular draw your attention to the conclusion in Dr Ragunathan's report that our client is likely to need a detailed support package should he be released into the community to ensure that "his own health, his own safety and the safety of others are appropriately addressed in the community" (paragraph 4.15).

You will see that we have also written to the Local Authority in relation to its duties under the Care Act 2014 in light of our client's condition. We are aware that an application for Home Office release accommodation was made on our client's behalf by Gatwick Detainee Welfare Group (GDWG) on 27 December 2017.

We would also remind you that it is your policy under DSO 8/2016 to arrange multi-disciplinary meetings where the release of adults at risk is being considered, "to agree a plan to safely release the individual" (paragraph 28). In this case if you are considering release then you will need to liaise with both healthcare and the local authority and in light of our client's lack of capacity we would ask that we are involved in any planning meetings on our client's behalf.

66. Because of concerns that D1275 was clearly suffering from a mental disorder in light of Dr Ragunathan's report but did not appear to be receiving any treatment in the detention centre, I also wrote to the healthcare department of BH with a copy of that report. This made the following requests to healthcare:

In summary the contents of this report raise serious concerns over the continuing detention of our client, the treatment he is receiving whilst detained, and the steps that are required to ensure that he is properly treated whilst detained, and that are needed to ensure that any release takes into account his health and vulnerabilities. He has been detained under immigration powers now for well over 2 years and there appears to be little prospect of his removal from the UK.

The enclosed report raises concerns over our client's mental health and we would therefore ask that you confirm he will be fully assessed by a consultant psychiatrist in light of his records (summarised below) and the attached report.

The report also raises concerns over his mental capacity to represent himself. As you will be aware the statutory Mental Capacity Act Code of Practice states that "it is important to carry out [a capacity] assessment when a person's capacity is in doubt" (at paragraph 4.34). Our client's capacity, including to consent to medical treatment, should also be subject to an immediate assessment.

Following consideration of the enclosed report and any further assessment consideration should urgently be as to whether a report should be completed

pursuant to Rule 35 and the policy in DSO 09/2016, as to whether our client's mental health is likely to be injuriously affected by continued detention, and whether any special arrangements need to be made "necessary for his supervision or care" (Detention Centre Rules 2001 Rule 35(5)). This letter is also being copied to the Local Authority Safeguarding Team. As you will be aware you are under a duty to co-operate with the Local Authority under section 6(1) Care Act 2014.

67. There was no substantive response to either of these letters and so I was instructed by the Official Solicitor to apply for legal aid to seek a judicial review of D1275's detention. I made the legal aid application on 4 April 2018, and legal aid was granted on 16 April 2018. I then instructed counsel and proceedings were finally issued on 17 May 2018.

68. I also wrote separately to West Sussex County Council's Adult Safeguarding Team to request a care needs assessment and to initiate a safeguarding enquiry in respect of D1275 in preparation for his safe release pursuant to ss.9 and 42 of the Care Act 2014.

69. On 29 March 2018, the medical records show that D1275 was seen by a psychiatrist, Dr. Belda, for the first time in Brook House. He observed that D1275 presented as confused and giving irrelevant information in answers to questions. Dr. Belda expressed the view that it was difficult to give a diagnosis based on one appointment, but observed that D1275 *"presents as vulnerable"* and recommended that a *"full capacity"* assessment be undertaken in the light of Dr. Ragunathan's report.

70. On 4 April 2018 a detention review (HOM007384 and HOM007561) stated that detention was authorised for 28 days in order that arrangements could be made for release in this period. The review was confused as to whether he was assessed

as Level 1 or 2 under the AAR framework. On 10 April 2018 an ongoing observations log noted that he seemed very depressed and low (CJS001052).

71. On 12 April 2018, the medical records show that D1275 was seen by Dr. Mark Harrison, another psychiatrist within the IRC, who purported to conduct a capacity assessment but, for reasons not clear from the medical records, only in respect of his mental capacity to instruct a solicitor to act for him. The assessment did not address all statutory considerations under the Mental Capacity Act 2005. No complete assessment was disclosed in the judicial review proceedings and it is not clear how Dr. Harrison arrived at this conclusion.

72. The medical records show that Dr Harrison considered that D1275 initially stated that he did not want a solicitor as "*he thought they would try and send him back to Iran*" but that after the role of a solicitor was explained that he considered that *"I believe he has does have capacity to instruct a solicitor. I don't see that we need to see [D1275] again unless he presents with the symptoms of a mental illness which were not evident today."* The doctor did give a diagnosis of "*Possible intellectual impairment, needs further examination for IQ*". Dr. Bingham's review of D1275's case expresses concerns about the adequacy of this capacity assessment.

73. On the face of the medical records, there was no indication of any consideration of whether D1275 had mental capacity in respect of decisions regarding his treatment and / or his ability to make or have representations made on his behalf on matters relating to his detention, applying the criteria under section 3 of the Mental Capacity Act 2005.

74. On 20 April 2018 we were contacted by Simon Robinson from Lawrence Lupin solicitors who I understand saw him as he had been contacted by Ms. Blackwell in order to assist with D1275's immigration case as I was solely instructed in relation to the detention. He said that he had very unclear instructions. He did

offer to help with his case but this did not get progressed due to D1275's subsequent release.

75. On 11 May 2018, a learning disability test was carried out, the results of which were said to indicate that D1275 had a learning disability. Further medical records in April and May 2018 continued to describe D1275 as presenting as muddled, confused and incoherent and lacking awareness of there already being solicitors acting for him.

76. On 26 April 2018, West Sussex responded to my letter of 22 March 2018 asserting that it had been informed by Brook House's detention healthcare that D1275 had no mental disorder and had full mental capacity. The response did not engage at all with the analysis, conclusions and recommendations of Dr.Ragunathan. In a subsequent Care Act assessment dated 16 May 2018, provided to me on 11 June 2018, West Sussex accepted that D1275 lacked mental capacity to make decisions about his welfare and treatment, but that he required no care and support whilst he remained in detention. The assessment failed entirely to address the core issue as to the care and support he would require on release and how his safe release should be managed and proceeded on the basis that any care needs were met by his being detained.

77. I saw D1275 again with Ms. Blackwell on 20 June 2021. He remained vague and would not answer questions coherently. He seemed distracted and kept spitting into a cup. He did say that he did not want to be in the detention centre and at one point mentioned that he would like a job and some money. When I asked about the visit of the psychiatrist he did not remember this. He presented very much as I had experienced him on my previous visit.

78. I sent a letter challenging the social services assessment on 21 June 2018, but D1275's subsequent release to a different area of the country superseded any such

challenge and West Sussex was later removed as an interested party to the judicial review proceedings.

79. No response was received to my letters to the Home Office or from healthcare before proceedings were issued.

80. In records subsequently disclosed, there was a detention and case progression review on 3 May 2018 (HOM007561) which noted repeated release referrals and the fact that an ETD could not be obtained. It confirmed authorisation of segregation under Rule 40 for 24 hours so that a mental health assessment could be carried out (although this was never progressed). It stated that attempts were being made to find a suitable address but strangely made a recommendation that detention should be authorised to pursue an ETD, despite the acceptance that this was not possible.

81. On 18 May 2018, I issued judicial review proceedings. I was not aware at the time when proceedings were issued (because the Home Office had not provided a pre-action response) that a section 4 bail address had been sourced in Bolton in the Greater Manchester area. The disclosure subsequently received from the Home Office in July 2018 indicated that the Bolton address was rejected by the Greater Manchester Police as inappropriate due to his offending history.

82. After issue of this Claim, Supperstone J ordered on 22 May 2018 that the acknowledgement of service and summary grounds should be served by 4 June 2018.

83. On the last day for compliance with that order the Home Office made an application to extend time for service of the acknowledgement of service and summary grounds until 25 June 2018. I made objections to that application on D1275's behalf in a letter to the court dated 6 June 2018. On 12 June 2018Nicklin

J made an order extending time for service of been acknowledgement of service and summary grounds to 25 June 2018.

84. On that day at 16.58 the Home Office served an acknowledgement of service by email stating that D1275 was to be released on 25 June 2018 (see release order at CJS000941) and that accordingly this claim should be transferred to the Queen's Bench Division or County Court to proceed as a private law claim. No substantive response was made to any of the grounds.

85. When I received the acknowledgment of service, as it turned out, D1275 had already been released without first notifying me as his legal representative, despite the OS acting as his litigation friend and despite the known vulnerabilities presented by D1275. I was extremely concerned about the welfare of D1275 given that it appeared he had been given a release address in Bolton, and had been released at about 18.00 hrs with an expectation that he would be able to find his own way to that address that evening.

86. On 26 June 2018 I was informed by Ms. Blackwell that they had contacted the accommodation provider who had confirmed that D1275 had not yet arrived at the accommodation. I therefore wrote to the Home Office on 26 June 2018 raising urgent concerns over D1275's safety and regarding what appeared to be the inadequate release planning in this case. I was not able to reach D1275 myself as I did not have a telephone number for him.

87. I did not receive any substantive response to that correspondence. However, on 2 July 2018 I was informed by Ms. Blackwell that D1275 had by then reached the release accommodation in Bolton. I am unaware of where he was between release and reaching the Bolton accommodation. It appears that he signed on with the police in Bolton on t29 July 2018.

88. Ms. Blackwell informed told me she had spoken to the accommodation provider who noted that he had concerns about D1275 as there were young children living

in the same accommodation, which had shared outside space. I spoke to the accommodation provider, David Whittle who works for Serco, on 2 July 2018 and he confirmed these concerns, commenting on the strange behaviour of D1275.

89. In light of these concerns, I sent an email to the Home Office's lawyers confirming that there were concerns over the suitability of the property and asking for substantive disclosure relating to the documents and risk assessments relating to the release process.

90. On 3 July 2018 the Home Office's solicitors, the Government Legal Department ("GLD"), confirmed that a request had been made for D1275 to be relocated to accommodation without communal parts.

91. I also made a referral to social services in Bolton by email on 4 July 2018 as I was concerned over D1275's ability to care for himself in the community given his needs. I also made contact with the police Greater Manchester as they were also involved in ensuring that he had registered with them. A social worker did visit D1275 and informed me that he was going to try to see him again with an interpreter. I also learned from Ms. Blackwell that the police had also visited the property.

(viii) Detention under Mental Health Act 1983 (22 July 2018 – 7 December 2018)

92. On 25 July 2018 I received an email from Emma Thomason of Greater Manchester police who I understand was the Officer who had visited D1275. This confirmed that D1275 had been arrested on 22 July 2018 Sensitive/Irrelevant

Sensitive/Irrelevant

Sensitive/Irrelevant The email confirmed that D1275 was released from police detention but was then held under section 136 Mental Health Act (MHA) 1983, and then transferred to Whiston Hospital under section 2 MHA 1983.

93. On 27 July 2018 I received a further email from Emma Thomason of Greater Manchester Police that confirmed that D1275 had been moved to Broad Green Hospital in Liverpool. She understood that this might be for treatment under section 3 MHA 1983.

94. The Home Office adduced no evidence (either in disclosure or otherwise) as to any steps taken to contact the local area Adult Social Care and Safeguarding teams or the community mental health team so as to ensure a release care package in line with the recommendations of Dr. Ragunathan could be arranged and implemented for D1275's release.

95. Subsequent disclosure showed that the Home Office released D1275 from immigration detention with a travel warrant to the Bolton address on the basis that it was said to be the "*best fit*" address and "*more preferable to destitution*". The Greater Manchester Police were informed but no other statutory agency, including social care and community mental health services were informed.

96. On 17 August 2018, D1275 was sectioned for treatment under s.3 MHA 1983 at Broad Green Hospital. He remained there until 7 December 2018 when he was discharged subject to a Community Treatment Order.

97. On 6 November 2018, I visited D1275 at the Albert Ward in Broad Green Hospital where he was held under section. I spoke to him through a Farsi interpreter provided by the NHS. He appeared improved since I had seen him in the Brook House detention centre. He clearly did not want to be kept in hospital. He said he did not know why he was in hospital, but then also said that he "maybe" had mental health problems, but did not understand why he was in hospital for so long. He did seem to understand who I was: that I was a solicitor who was helping him to be released. He was far less unfocussed when talking than when I had first met him. He said he wanted to be released to Liverpool and that he would need somewhere to live, some money, access to a GP and help with

language if he was released. Although he seemed improved, given that I knew he had been sectioned, and from what I knew of his medical history and how he had presented in Brook House, I was not sure whether he had regained capacity to instruct me. He was very slow in responses, vague and occasionally would contradict himself. In particular I was concerned about his ability to instruct me in relation to the ongoing judicial review.

98. Prior to D1275's discharge from hospital, I wrote repeatedly to the Home Office to ask what steps it was taking to help facilitate D1275's discharge from hospital, including consideration of what if any bail conditions would be appropriate and / or whether D1275 would have mental capacity to comply with conditions imposed under Sch 10 Immigration Act 2016.

99. On 12 November 2018 the Home Office confirmed that a further application for accommodation had been made on D1275's behalf by the hospital. On 21 November 2018 I wrote to the Home Office agreeing a further stay of the judicial review on the basis that accommodation was being sought and discharge planning progressed which might resolve the outstanding issues. However, I did ask the Home Office to confirm "*under what conditions our client will be granted bail and how* [you have] *determined that he has specific mental capacity to comply with such conditions*". A further order staying the proceedings was sealed on 4 December 2018, that stay expired on 28 January 2019.

100. On 19 December 2018, the GLD emailed me to say that they were *"awaiting an update from my client regarding accommodation and bail"*. As set out below by that date D1275 had been released with no notice to me.

101. D1275 was discharged from hospital on 7 December 2018. Again, neither the Official Solicitor nor I were informed of date he was to be released, or the fact of his release. D1275 was provided with accommodation arranged by the Home Office in Wigan, Lancashire pursuant to s.4(2) IAA 1999. On 10 January 2019,

he was given a Bail Form 201 which set out the conditions of bail imposed by the Home Office pursuant to paras 1 to 3 Sch 10 IA 2016. These included: weekly reporting on Thursday at Manchester Reporting Centre in Salford; a restriction on work and study and a residence condition requiring him to stay at the Wigan accommodation. The first reporting event was on 17 January 2019. The letter accompanying the Bail Form 201 stated that should D1275 breach any of his bail conditions, he may be re-detained or criminally prosecuted under s.24(1)(g) Immigration Act 1971 (as amended).

102. I was only informed of D1275's release by the Home Office after contacting GLD about his case on 18 January 2019. By letter dated 18 January 2019, I raised concerns with the Home Office via GLD as to the basis on which the Home Office determined D1275's ability to comply with bail conditions given repeated concerns raised about his potential lack of mental capacity to do so. I queried how the Home Office determined D1275 would be able to manage reporting conditions that involved a weekly 3-hour round trip on public transport and significant fares. I requested disclosure of all documents relating to the Home Office's communications with social services and the hospital in preparation for D1275's discharge from hospital. No response was provided to these queries.

103. In light of my concerns about D1275's mental state, I made arrangements to obtain a further independent psychiatric assessment.

104. On 7 March 2019, the Home Office wrote to me enclosing a 'Notice of Breach of Immigration Bail Condition' in respect of D1275 on account of his failure to report on a weekly basis as required and a threat to re-detain him. The Home Office stated that he may be arrested, re-detained and / or criminally prosecuted if he did not comply with his bail conditions.

105. That same day, I wrote to the Home Office via GLD, serving a mental capacity assessment by consultant forensic psychiatrist Dr. Matthew Appleyard dated 20

February 2019. He saw D1275 on 12 February 2019 in Wigan. He was of the opinion that he was currently suffering from a major mental disorder namely schizoaffective disorder (at 8.7), that he currently lacks capacity to conduct this litigation or instruct solicitors to act for him (at 8.11), that he lacks capacity to comply with the bail conditions relating to residence and weekly signing (at 8.12) and that he lacks capacity to consent to medical treatment (at 8.13) I questioned the Home Office's failure to properly address concerns regarding D1275's mental capacity despite this having been raised repeatedly with the Home Office. The Breach of Bail notice illustrated the well-founded nature of those concerns. I gave notice of an intention to amend the grounds of JR to include the Home Office's exercise of bail powers as part of the systemic challenge to the Home Office's management of mentally incapacitated persons subject to immigration control and sought agreement on case management directions.

106. There were, therefore, obviously serious concerns about the circumstances of D1275's release, and his ability to comply with bail conditions set by the Home Office. The Home Office has continually failed to adequately address the concerns about these issues raised in the proposed amended grounds. The circumstances of D1275's release, given his obvious vulnerabilities, demonstrate the same cavalier approach.

107. On 11 July 2019, permission was granted to bring judicial review proceedings. A substantive hearing was listed for four days from 3 to 6 December 2019.

108. The Home Office defended the judicial review proceedings, making no concessions that D1275 was mentally ill or lacked mental capacity at the time of his detention. However, shortly before the full hearing of the judicial review settled the Judicial Review involving the live issue of bail conditions by granting D1275 discretionary leave in the UK which meant that he was no longer on bail. The Home Office also settled his detention claim accepting that his detention had

become unlawful and with a payment of very substantial compensation. No apology was given.

(ix) Documents obtained by this Inquiry

109. In the course of judicial review proceedings, the Home Office did not provide full disclosure. The only documents from the Home Office in our possession were the documents provided through the subject access requests to the Home Office and IRC healthcare. The Home Office documents were sparse for the period that D1275 was in Brook House, and the medical records were equally sparse, largely indicating D1275's non-attendance at mental health appointments and his discharge from the mental health case load. Neither the OS, nor I nor counsel were aware of the serious incidents of mistreatment suffered by D1275, who was incapacitated and unable to give us instructions of his own account. He was hospitalised for many months of the period that I was representing him.

110. It was only when I viewed unpixellated footage disclosed by the BHI that I realised that D1275 featured in the Panorama programme that prompted this Inquiry. I contacted D1275 and he instructed me to apply for core participant status.

111. There have subsequently been disclosed to this Inquiry more than 1,000 pages of documents pertaining to D1275's detention whilst at Brook House. These documents demonstrate that there were serious concerns about his vulnerability, the fact that he was not legally represented, and that he might lack capacity to make key decisions affecting his detention.

112. D1275 was filmed by Callum Tulley on 14 June 2017 and this incident formed part of the Panorama programme that led to this Inquiry. Crucially, this took place at a time when D1275 should not have been detained at all. As noted above, the Home Office had realised for many months before this that D1275 could not be removed within a reasonable period. As noted above, on 30 May 2017, a detention

review noted that a release recommendation had been sent to the Strategic Director, who is required to authorise release in foreign national offender (FNO) cases.

113. The documents disclosed to the Inquiry (but not previously disclosed in the judicial review proceedings) also revealed clear recognition and concerns by detention staff over D1275's vulnerability and mental capacity. These however appeared not to be notified to the Home Office and factored into the decision making about continued detention.

114. On 20 June 2017, DCO Andy Jennings raised a security intelligence report (SIR 1209/17 (CJS004642). This stated:

> *"At about 13:40 hours on Tuesday 20th June 2017 I was working on Eden Wing, working a shift 07:45 hours until 21:15 hours. At this time I left the wing, and as I did I saw a detainee I now know to be D1275 squatted down by a window and was attempting to pass something under the door. I took hold of the item which was a piece of paper that - coloured in – and had some writing on it I asked him what this was and who he was giving it to. He was very aggressive and tried to snatch it from me. He would not say what he was doing and who it was for – he just said it was his*". (CJS004642_0002).

115. The supporting evidence box on this SIR noted "*mental health issues, erratic and strange behaviour, wing staff reported concerns yesterday regarding his associations and believe he may be easily led and vulnerable. RMN requested to add him back on their list*". (CJS004642_0005).

116. The intelligence assessment stated "*Intel suggest detainee was found posting a coloured picture under the window. His reasons for this are unknown as there wasn't anyone waiting for it on the other side*". (CJS004642_0005). The Security manager's comments were that an RMN referral had been made, he would be

monitored and there would be a referral to "*safer community*". The SIR document states that the only action was a safer custody referral made on 22 June 2017 and the SIR was then closed. It is unclear what happened with this referral. As I have stated above however, a pattern at Brook House was that he would be referred to mental health services and then would be discharged when he failed to attend appointments.

117. On 22 June 2017, some 8 days after the incident filmed by Callum Tulley, DCO Marina Mansi raised a security intelligence report (SIR 1210/17 CJS005347) that led to the creation of an anti-bullying plan. This stated that she was concerned that D1275 was "*not in a positive mental state*" and that it was believed by the officer that:

> D1275 was "*used as a guinea pig to try out the drugs that are trafficked in. He has been socialising with detainees that are known drug users or dealers. He has been cleaning tables even though he is not a cleaner and his roommate has seen cleaners get him to do this so they get paid but don't have to work and they give him biscuits and other items. The officer has seen detainees take his plate and cutlery from him in the mail queue and he does not say anything. He has also been seen being used as a messenger for detainees not residing on the wing who treated him in an abusive manner and have been seen to clutch him round the neck forcing him to go back with messages. He was seen by an officer being asked to get a phone from someone and was then seen demanding the phone as requested. The officer does not feel he is aware of some of his decisions and has been taken advantage of*". (CJS005347_0002).

118. The intelligence assessment on the SIR stated "*intel suggests detainee's associations and activity is causing r/o concern. She feels he is vulnerable and possibly being used. It appears other officers have witnessed him being mistreated but have not reported it*". (CJS005347_0005). An email regarding the SIR sent from Kelly Harris to James Begg at 15.57 on 22 June 2017 states that

"*the officer has been asked to open an ABS, but it appears that this has been going on for some...unreported*" (CJS004642_0007).

119. The SIR referred to a linked SIR 1209/17. The actions and comments for 1210/17 referred to the SIR 1209/17 referred to above. This means that the actions for this SIR merely relied on what had been done in relation to 1209/17 – namely a referral to "safer community".

120. Shortly after the incident on 14 June 2017, an anti-bullying Support Plan was opened (CJS001127). The reasons given for opening this were "*believe that D1275 to be vulnerable as have seen detainees use him to carry out tasks on his behalf when not on this wing and do cleaning duties that they are being paid for*".

121. The form states that D1275 attended the initial meeting with a friend D2553 who interpreted for him. The record of that meeting states

> "*a lot of D1275's answers made no sense to what I was asking him. I asked if anyone was bullying or being aggressive or forcing him to do things and he said no, and then went on to talk to me about clothing and food and not getting paid anything. Have explained he is not a cleaner on the wing and he shouldn't be cleaning and that's why he's not getting paid. I don't believe he grasped what I'm saying. D2553 is also concerned because he tries to sort out appointments for him with solicitors and doctors but it appears D1275 doesn't have mental capacity to know when his appointments are and to attend them. Have informed him that we are opening an anti-bullying log which means we will be keeping an eye on him if he needs to talk to any of us just come to see us about any concerns*". (CJS001127_0003).

122. In the section of the document designed to set out the support plan there is only one entry – the objective/action is for DCM Yates to "*look into reasons why he's being detained*". The reason given for this is "*possibly not fit for detention*". (CJS001127_0004).

123. The document includes sections that are to be used for reviews of the anti-bullying plan although none of these are completed and it is unclear whether there were any reviews, the reasons for closing the support plan or what became of DCM Yate's investigations.

124. The document does include a section for observations. These run from 22 to 25 June 2017. These do not make clear why the plan was stopped. There are a number of entries that raise concern that a DCM was meant to review the plan. The last one on 24 June 2017 states "*DCM Dix to implement investigation and inform staff of observations*". (CJS001127_0008). There is no record of the outcome of any investigation.

125. The first page of the Support plan notes that the first review of the plan should have been on 29 June 2017. However, it appears that there was no such review as the plan seems to have been stopped when the observations ceased on 25 June 2017. This is despite the fact that the second page of the document states that "***A document must be open for at least 14 days*** *before it can be closed. This is to allow sufficient time for the individual to be supported and monitored*".

126. This is important as this anti-bullying document was created at a time when the Home Office recognised that D1275 could not be removed within a reasonable timeframe. It raises further grounds upon which he should not have been detained at this time due to his vulnerability and possible lack of capacity to make decisions regarding steps that might assist in his release. It appears this was a lost opportunity to ensure that D1275 would not be further detained unlawfully.

127. The Inquiry has disclosed a transcript of footage from 3 July 2017 (KENCOV1039 V2017070300007-2) that appears to show D1275 stumbling around the wing under the influence of drugs. As stated above, I have not been able to take instructions on this incident but would note that this incident, as with

that on 14 June 2017, occurred at a time when staff were concerned that D1275 was vulnerable, being used as a guinea pig to test out drugs, and that he was demonstrating bizarre behaviour.

128. A further missed opportunity was around the time the Panorama programme was shown. A Supported Living Plan (SLP) was opened on 4 September 2017 and closed on 15 September 2017 (CJS001036_0001). It seems that the SLP was opened on the day the programme was to be transmitted as G4S had advance notice of who would be featured in the programme. An IS91RA Part C was produced on 4 September confirming that a SLP had been put in place (CJS001011).

129. The SLP on its first page had tick boxes giving the reasons for it being put in place – this ticked "*Learning Disabilities*" and "*Other*" with "*Safeguarding*" written in. The plan stated that there should be observations "*each AM/PM/EVE with a conversation plus two nightly observations*". The first page states the plan was closed on 15 September 2017 because "*no longer feels vulnerable and scared in the centre*". It appears that D1275 refused to sign the SLP when it was opened (CJS001036_0002).

130. The initial assessment document to determine whether an SLP was required (CJS001036_0005) states that D1275 had not been identified as an adult at risk (which obviously conflicts with detention reviews) but the reasons for the SLP were "*concerns over safeguarding of him due to allegations made by BBC Panorama*". The support needed was said to be "*support from staff in light of BBC Panorama program [sic]*". The document ticked a box saying that he required reasonable adjustment to "*fully engage with the regime*". This was signed by S Povey-M, Head of Safeguarding at 14.30 on 4 September 2017.

131. The SLP set out a number of issues and corresponding actions (CJS001036_0009). The first issue was "*possible learning difficulties with*

reading[?]". The action identified as required was for Sebastian Cangarello to visit. The action completed box states that an appointment was made for 18 September 2017. In relation to this first issue, another action noted was for "*RMN to remind of appointments in case reading issues*[?]". This was to be completed by a nurse Karen Churcher and the action completed box noted again that an appointment had been made on 18 September.

132. The medical records show that on 4 September 2017, an RMN went to the wing to explain about an appointment. However, D1275 could not be located. An appointment was made for 11 September 2017 with an entry in the diary to call the wing and explain on that day.

133. The medical records show that on 11September 2017 Daliah Dowd rang a wing and spoke to a DCO requesting that he tell D1275 to attend his mental health appointment. The records state that he refused to attend his appointment. The DCO was recorded as saying "*he does not want to see the mental health nurse*".

134. The medical records show that another appointment was made for 18 September 2017. The medical records show that on 15 September 2017 Karen Churcher saw D1275 on the wing as part of the SLP review. This entry says "*states he no longer feels scared after BBC report on the unit. Does not wish to be on SLP*". The entry stated that the SLP would be closed. The medical record entry on 18 September 2017 states "*despite a reminder did not attend his mental health appointment. Could not be located on wing. This is the third recent appointment not attended and has been offered three appointments previously. Therefore discharged from mental health caseload. Plan: to self refer if required.*"

135. As with the anti-bullying plan opened in June, because D1275 was not actively stating that he needed help, safeguarding steps stopped and no other steps were apparently taken to properly assess his capacity and put in place reasonable adjustments to ensure that his detention was properly reviewed and brought to an

end. There was no plan to proactively to monitor him. Similarly, it seems his mental health continued to deteriorate because he stated he did not wish to engage with the mental health team.

136. Another issue raised on the SLP care plan was "*requires solicitor*" and the action required stated "*welfare to book appointment for solicitor*". The document states that he "*saw welfare 13/9/17*" – this was recorded as completed on 15/9/17 but without any record of the outcome and so it is not clear whether welfare had assisted in D1275 accessing a solicitor. The antibullying plan in June 2017 was opened with information that there was a concern he lacked capacity to keep appointments and it does not appear that any reasonable adjustment was made to ensure that he saw a solicitor this time in breach of the requirements under sections 20 and 29 of the Equality Act 2010, later established in the VC case as unlawful (see below).

137. The last issue raised in the SLP required Oscar 1 "*to check on him*" after the Panorama programme was aired. This is marked as completed on 15 September 2017as "*no issues any more*". This is confusing as the SLP was opened because it was known that the Panorama programme was to be shown, not because D1275 had raised any issues. In fact, in the "on going events" log of the SLP (CJS001036_0016), it records on 5 September 2017 that in fact "*he missed the Panorama documentary last night as he was struggling to operate the remote which I have now given him some guidance of how to use it. D1275 did not appear interested in the programme*". The review of the SLP (CJS001036_0011) is therefore difficult to understand as it states "*D1275 came to the office and I asked him how he feels as he felt vulnerable and afraid after the events shown in the Panorama documentary. He now feels more settled and safer in the centre. He has no issues with any detainees or staff in the centre and will let us know if he has any issues therefore the document is now closed*". This was completed by DCM Steve Loughton (?). What should have been clear to staff by now was that D1275 would not bring problems to staff or healthcare.

(x) Owen Syred's 2nd witness statement

138. I am aware that the Inquiry has heard evidence from Owen Syred apparently regarding D1275. At paragraph 14 of his second statement (INN000010_0005), he stated that he believes he was aware of D1275's case and stated that D1275 was transferred to Tinsley House IRC shortly after the incident on 14 June 2017. This is factually incorrect as D1275 remained at Brook House until released on 25 June 2018. He also suggests that he spoke to a DCO called Mo to recommend that he raise a security information report on the incident. There is no record disclosed in the documents obtained by the Inquiry that show an SIR was raised by someone called Mo after the incident on 14 June 2017. The first SIR after that date was raised on 17 June 2017 by David Waldock, about a detained person being in the wrong room, although it is unclear if this was about D1275 (see CJS004771_0005). The subsequent SIRs raised on 20 and 22 June 2017 were raised by Andy Jennings and Marina Mansi respectively.

139. This, together with the fact that Owen Syred erroneously believes D1275 was transferred to Tinsley House suggests he might have been thinking about another detained person in his evidence, and I therefore consider that his evidence relating to D1275 be disregarded.

The Case of VC

140. My involvement with D1275 was not the first time that I had represented someone who lacked capacity to instruct solicitors at Brook House. I represented HA (R (HA) v SSHD [2012] EWHC 979 (Admin)) whose treatment in 2010 after his mental health had seriously deteriorated at Brook House was found by the court to have been in breach of article 3 ECHR. The Inquiry is also aware of the case of VC as there has been evidence of the fact that Ms Blackwell had provided a statement in VC's case in 2015 and that this had caused difficulties between GDWG and the management of Brook House.

141. VC's case is important, as the Court of Appeal in a judgment dated 2 February 2018 ([2018] EWCA Civ 57) confirmed not only that VC had been unlawfully detained between 30 June 2014 and 27 April 2015 at Brook House IRC following production of a Rule 35(1) report that had raised concerns that his mental health would deteriorate if he was further detained, which it did, but also that the Home Office had acted unlawfully in failing to make reasonable adjustments for his disability. In particular, it held that there was a breach of the Public Sector Equality Duties under sections 20 and 29 Equality Act 2010 and a violation of the common law principle of fairness. This was because adequate measures were not taken to ensure that those who lacked mental capacity were not at a disadvantage in relation to their ability to participate in decisions relating to detention and removal from association under Rule 40 of the Detention Centre Rules 2001.

142. The Court of Appeal did not hold that the treatment of VC breached article 3 ECHR but concluded the issue was "finely balanced". This aspect of the case was appealed to the Supreme Court. In an order dated 11 January 2021, the Supreme Court allowed the appeal by consent. This was on the basis that the Home Office conceded that VC's treatment in detention had breached Article 3 ECHR. The order stated that "*It is declared that during the period of immigration detention when the Appellant suffered from a serious psychiatric illness, his rights under Article 3 ECHR not to suffer inhuman and degrading treatment were infringed*". The entirety of this period was at Brook House IRC.

143. The findings of fact of the Court of Appeal are instructive as to why the Supreme Court approved this Order. The statement of reasons that the Court considered before making the Order referred to paragraphs 2 – 6 and 22 – 27 of the Court of Appeal's judgment.

144. In summary, VC suffers from bipolar affective disorder and had been admitted to psychiatric hospital on approximately ten occasions prior to his immigration

detention. The Home Office was aware of his illness when he was detained. A Rule 35(1) report dated 5 June 2014 raised concerns over his condition and stated:

> *"[VC] is very unstable currently and the stress of detention is impacting negatively on his mental illness. I have concerns that should he continue to deteriorate he will be unfit for detention and will pose a risk to himself or others".*

145. Despite this Rule 35 report, detention was maintained by the Home Office. VC's condition did deteriorate to the point of losing mental capacity to instruct solicitors or to make decisions regarding his participation in decisions relating to his detention and removal from association. He was repeatedly segregated and subjected to use of force to remove him to segregation. He was eventually transferred to hospital under section 48 Mental Health Act 1983 on 5 May 2015.

146. The Court of Appeal summarised the evidence about his condition as follows in paragraph 27 of its judgment;

> **(7) Material in medical and other records: Morton Hall IRC, June to October 2014, Brook House IRC, between December 2014 and March 2015:**
>
> On various dates the following are recorded: persecutory thoughts; meaningless speech; elation, hypo mania, psychosis, lack of insight, refusing to take his medication (throughout October 2014, and also recorded on dates in December 2014, and between January and March 2015); inability to engage rationally or answer questions; delusions of grandeur; having erratic sleep patterns and conducting tangential and pressured speech (at Brook House in February and March 2015) "*in every conversation*" with detention and health care staff; drinking dirty water and unable to meet his daily needs; deluded, seeing visual hallucinations and messages from angels; unkempt delusional

and thought disordered; and strange and challenging behaviour including asking for the telephone number of the Royal Navy and demanding to go to his palace. On 10 February, the appellant was placed in "*medical single occupancy ... with a review [a month later] due to worsening mental health concerns by health care*". On 17 and 20 February 2015, soon after he was segregated on 15 February, see (8) below, the GP and a psychiatrist were more positive, respectively stating "*no thought disorder or evidence of psychosis or hallucinations. Currently has capacity*", and "*no formal thought disorder or psychotic symptoms*". But see (9) below for deterioration in March.

(8) Removal from association on 15-16 and 21-25 February, and 3, 18 and 24-27 March 2015 (at Brook House):

a. The appellant was forcibly removed from association and segregated for a period of approximately 25 hours on 15 February. One of the officers recorded: "*I've had several dealings with [him] over the past 2 weeks and noticed that his mental state seems to be diminishing over time. ... [H]e made threats of violence to me and other detainees on the wing. His capability for mental reasoning has now got to the point of he doesn't see reality [sic]. [He] has been acting in very strange ways*". Other officers recorded that he was behaving erratically and strangely, and rambling incoherently. It is stated that he aggressively refused to move to the segregation block. There is a detailed account of the team entering his room in arrow formation and striking him with a shield, how he resisted when they were trying to get handcuffs on him, and how an officer "*took control of*" his hands and legs. One officer stated that a mental health nurse suggested that he should be sectioned due to his behaviour.
b. On 21 February, after removing a metal postbox from the wall, saying that he had done so as he was sure he was sent mail that he did not receive, he was placed in segregation for four nights.

c. On 22 and 23 February detention officers noted that he was displaying random outbursts of aggression, incoherent, and refusing his medication on the basis that it was illegal. He is recorded as rambling incoherently, unpredictable and unable to understand why he had been removed from association, but on 27 February the psychiatrist who saw him recorded *"an improvement from last week"*.
d. On 3 March, the appellant was placed in segregation for just under 24 hours, and on 18 March for two and a half hours (see (9) below for concerns raised in March).
e. The appellant was segregated for seven days between 24 March and 31 March because of threats of violence by him to officers.

(9) Concerns raised in March 2015:

It is clear that the appellant's condition deteriorated in March. On 10 March, it was decided to keep him in a single room because of his worsening mental health. On 20 March, the mental health nurse recorded deterioration in his mental state and his refusal to accept anti-psychotic medications, and stated that the continued deterioration "*is now having a negative impact on his active daily living, [and] it is becoming difficult for his needs to be met here at Brook House*". On 21 March detention officers were warned by health care to be aware of the appellant's presentation. On 23 March, a detention officer recorded that he was "very confused" and "very out of touch with reality … he seems to have lost contact with reality"; and the mental health nurse concluded that he lacked capacity and needed to be in hospital. He was also recorded as having pressured and tangential speech, and believing that he was a member of the royal family and going to parties at Buckingham Palace. On 25 March, he was recorded as being "very confused", appearing to have "lost all contact with reality", and as drinking tea with dirty water and buttons in it.

(12) 27 March - 6 April 2015:

The appellant is recorded by the GP as being "*delusional and hallucinatory*", "*unkempt, thought disordered between periods of lucidity*" saying that messages from fallen angels were being related to him and having visual hallucinations of these angels. On 30 March, the GP recorded that the appellant "*has demonstrated signs of relapse of his Bipolar affective disorder*". At the request of the medical staff in the IRC, the appellant was assessed by Dr Kassia Lowe, a forensic psychiatrist. Dr Lowe's report, dated 13 April 2015, concluded:

> "*His mental state is deteriorating due to his lack of compliance with treatment and possibility [sic] exacerbated by his current stressful environment .... I agree that this man is not currently in the best environment to treat his mental health and he would benefit from treatment in hospital.*"

(13) 25 – 27 April 2015:

The appellant was removed from association and segregated for two days because of his aggressive and disruptive behaviour. On 27 April, it was determined that he met the criteria for compulsory treatment in a mental hospital and a direction was given under section 48 of the 1983 Act for him to be removed to a hospital.

(14) 5 May 2015:

The appellant was "sectioned" under the 1983 Act and transferred to a psychiatric unit.

(i) VC's Legal Representation

147. VC's case was referred to me by Ms. Blackwell from GDWG in similar circumstances to D1275. I believe it is important to set out the facts of how he came to be represented to put the findings of the Court of Appeal, in relation to the failure to make reasonable adjustments for those that may lack capacity to instruct solicitors or meaningfully participate in decision-making regarding his detention or segregation, in context - as similar issues are raised in D1275's case.

148. I was first contacted about VC on 6 February 2015 when I received a telephone call from Ms. Blackwell. She had concerns that he was suffering from mental illness and she was concerned that his condition was getting worse. She stated that she had also referred his case to Medical Justice. I telephoned VC on the same day and tried to discuss with him the possibility of helping him get out of detention. He seemed keen to be visited but eventually hung up on me. I understood that Medical Justice were going to attempt to arrange a doctor to see him. I was subsequently on leave but on my return on 23 February, I contacted Ms. Blackwell and Medical Justice who were concerned that he was continuing to deteriorate. I made arrangements to see him with Ms. Blackwell on 6 March 2015. Prior to this I obtained copies of his medical records.

149. At that meeting, VC made it clear that he did not want to be detained although he said that if he was released he would go to his "destination" of Edinburgh Castle. Although he did not have representation for his immigration appeals, and I informed him I could not take this on as our firm does not have a legal aid contract for such work, he did not seem concerned as he was adamant he would win his appeal, and he encouraged me to come and see his appeal as it would be fun. He told me he was on E wing which was next to the cells where detainees are held when formally removed from association. He said this had a restricted regime as you are not allowed access to the shop, or outside after lunch. At that time, he said he did not want to move from E wing although his medical records show that at other times he was very unhappy about being there.

150. I had concerns about his condition and the fact that he had no-one to represent him in his immigration matters. I discussed this with Ms. Blackwell and we agreed that she would refer his case to the Public Law Project who might be able to make an application for exceptional funding in light of his mental health, so that an immigration lawyer would have funding to take on his appeals, which otherwise would be outside the scope of legal aid. I was waiting for Medical Justice to see him and prepare a report before deciding the most appropriate advice on challenging his detention. Such a report would also deal with whether he had capacity to instruct me.

151. I was also concerned about his location in E wing and the fact that this appeared to me at the time to be de facto removal from association without the use of the proper safeguards. I therefore wrote to the Director of the Detention Centre copied to the Home Office contract monitor raising concerns about the use of E wing without such safeguards. I never received a response to those letters. Shortly after those letters were sent, I was told that VC had been formally segregated under Rule 40.

152. I was aware of the potential use of E wing as a place of de facto removal from association because of the Independent Monitoring Board's (IMB) report for 2013. This referred to E or Eden wing as a place that foreign national offenders might be held, but also for those about to be removed and two 'constant watch' rooms. The changed use of Eden wing it was said had contributed to the reduction in the use of formal segregation powers. One comment in the report: "*although foreign national offenders cannot be held on normal location, they no longer have to be segregated*" (at 6.7) caused me concern as if detainees need to be removed from "normal" location this suggested that they were being removed from association but outside of the Rules. The fact that when VC discussed E wing with me it was in terms of a restricted regime, and lack of contact with the general detainee population, made me concerned that this was de facto removal from

association without the safeguards of the Detention Centre Rules 2001 and was therefore unlawful.

153. Medical Justice informed me that they had made an appointment for a doctor to see VC on 27 March 2015. However, this appointment was cancelled as the detention centre informed Medical Justice that a psychiatrist was attending on that day.

154. At the end of March 2015, I received up to date medical records from the detention centre which included details of the Rule 35 report dated 25 March 2015. As the medical records included a clear indication that the VC lacked capacity, I also prepared an application dated 1 April 2015 to the Official Solicitor to request that they acted as litigation friend in relation to these proceedings. On the 13 April 2015 I received confirmation that the Official Solicitor had agreed to instruct me on VC's behalf.

155. On 17 April 2015 I sent a letter of claim in relation to proposed judicial review proceedings. As one of VC's immigration appeals was also to be heard on 21 April 2015 and he was still unrepresented, I also sent a letter to the First Tier Tribunal on 17 April 2015. I informed the tribunal that although I was not instructed in the appeal, in light of VC's mental health problems and his lack of capacity I considered that it was in his best interests to inform the Tribunal of the position and invite it to consider adjourning the appeal until such time as VC could be represented.

156. I telephoned the FTT on the same day to make sure the letter had been received. I was told that it would be placed before a judge but that no response would be sent to me but one would be sent to VC. Subsequently I heard from GDWG that they had been informed that VC's appeals were to be heard on 8 May 2015. I sent a further letter to the FTT on 5 May 2015. This confirmed that the Legal Aid Agency had on 30 April 2015 granted the exceptional funding application subject

to a solicitor with an immigration contract being secured to represent him. I again suggested that the FTT should consider an adjournment pending a solicitor being found. I received a response refusing to consider an adjournment dated 6 May 2015.

157. By that time, I had referred the case to Daniel Furner, a solicitor at Birnberg Pierce. However, he had concerns that as VC lacked capacity he could not act for him as he was without instructions. In the end he made representations to the FTT that it should appoint Ms. Blackwell of GDWG as a litigation friend so that he could be instructed in relation to the appeal. The FTT refused, stating that there was no power to appoint a litigation friend in the FTT. However, that decision was successfully challenged in judicial review proceedings. VC subsequently won his appeal and was granted leave to remain in the UK.

158. Without the assistance of Ms. Blackwell VC's plight would not have been known about, and action would not have been taken to challenge his unlawful detention, segregation and the discrimination and inhuman and degrading treatment he suffered during the 10 months he was held at Brook House IRC.

Conclusion

159. The detention of D1275 at Brook House covers both the pre and post Panorama periods between 2016-2018 and highlights long standing concerns that were also evident from the detention of VC at Brook House in 2015.

160. The failure of AAR detention policy and safeguards to identify D1275's extreme vulnerability, deteriorating mental illness and lack of or compromised mental capacity exposed him to an experience marked by reckless indifference for his safety, neglect of his mental and physical health, as well as conditions that left him subject to bullying, exploitation, further humiliation and abuse. No Rule 35 report was produced during his detention.

161. Whilst individual officers like Nathan Ring and Derek Murphy must be held responsible for their reprehensible conduct, other officers and healthcare staff offered no challenge to this and many more were aware of D1275's acute vulnerability but took no or no effective action to protect him. His case is therefore an example of the systems failure and institutional culture within the immigration detention system that allowed this abuse of D1275 to go on for so long 615 days in total, 422 at Brook House - including 295 after Panorama had been broadcast.

162. In assessing what caused or contributed to the mistreatment, abuse and humiliation of D1275 the Inquiry is asked to consider the following:

a. D1275 had serious and untreated mental health issues which were not properly identified or managed at Brook House. This was despite recurring healthcare logs citing his bizarre and at times aggressive behaviour and incoherent answers to questions. No Rule 35 report was ever produced by the IRC during his detention there.

b. Allied with this was the failure to undertake any assessment of D1275's mental capacity in circumstances where it was noted that he appeared not to understand questions asked of him or appointments with doctors, their purpose, their relevance or their importance. Until November 2017, when Gatwick Detainee Welfare Group encountered D1275 and referred him for legal advice and assistance, he did not take any steps to seek advice about his immigration detention for more than a year because it appears he lacked mental capacity to do so.

c. This failure to deal sensitively and effectively with detained persons who might lack capacity and to ensure they have an ability to access legal remedies in respect of their detention and treatment in detention was not new to Brook House in 2017. Two years earlier, the same experience happened

to VC. In February 2018, the Court of Appeal found in VC's case a wholesale failure to do anything to recognise severe mental ill-health and mental incapacity in detained persons. The absence of any measures to support them to understand their rights and access legal remedies for their treatment was held to be unlawful and discriminatory contrary to the Equality Act 2010. Yet even after the Court of Appeal directed the Home Secretary to take urgent steps to remedy the serious systemic lacuna – this did not happen.

d. D1275 was detained for a further 4 months after the judgement in DX with no action being taken to remedy the deficits in the law and practice to make the necessary adjustments to meet his needs. Indeed, he was discharged from Healthcare and safeguarding protection precisely because he was unable himself to proactively participate in his own care.

e. Indeed 16 months later, the Court of Appeal made the same direction in a later case of *R (ASK / MDA) v Secretary of State for the Home Department* [2019] because no steps had been taken to address the ruling in VC relating to the duties under the EA 2010:

> *"In my view, in this regard, ASK's case is not materially different from the cases of VC or MDA. Because of his illness, ASK suffered from a disability. It seems likely that, from time-to-time, he lacked the capacity properly to engage with the detention authorities in relation to important decisions that related to him, e.g. with regard to his continuing detention, segregation and non-transfer to hospital. In those respects, he was treated differently from those detainees who were not disabled. In breach of the PSED, the Secretary of State failed to have due regard to eliminate discrimination. Further, the duty on the Secretary of State to make reasonable adjustments having arisen, no adjustments were made and obvious adjustments (e.g. in the form of*

IMCA-type representation) could have been made. The burden was therefore on the Secretary of State to show he had complied with the duty to make such adjustments; and he adduced no evidence that he had even considered such adjustments and certainly no evidence that he had complied with the duty."

f. By the time of D1275's substantive judicial review hearing in December 2019, the lacuna still existed. Almost 4 years after the VC judgment, there is still is no effective measure to address the specific vulnerable position of mentally incapacitated detainees in immigration detention in particular the "obvious" reasonable adjustment in the form of IMCA-type representation identified as necessary in VC and ASK (and supported by the Equality and Human Rights Commission) has still not been made.

g. Vulnerability and powerlessness to object are recurrent features in which Article 3 breaches can and have occurred at Brook House as the cases of VC and indeed two earlier cases of *R (HA) v SSHD* [2012] EWHC 979 (Admin) and *R (D) v SSHD* [2012] EWHC 2501 (Admin) confirm. In each case, severe mental illness deteriorated over time and went untreated to the point that the men lacked mental capacity and were subjected to inhuman and degrading treatment at Brook House IRC.

h. Counsel for the Inquiry noted in opening that for those detained persons who were vulnerable, the prevalence of drugs and the levels of intoxication created a frightening and unpredictable environment in which their general welfare would undoubtedly have suffered. In D1275's case, he was bullied, exploited and apparently used as a guinea pig for drugs.

i. All of this happened with the knowledge and acquiescence of detention centre staff, despite it being their statutory duty under R45(2) of the

Detention Centre Rules 2001 to promptly report any abuse or impropriety which comes to his knowledge.

j. Worse still, this was set against Home Office decision-making, which was characterised by a disregard of the clear and credible clinical indicators of D1275's vulnerabilities and the maintenance of prolonged detention where it was known that there was just no prospect of achieving that. The Home Office refused to address that reality and continued to make attempts for D1275 to be interviewed by Iranian Consulate officials on 5 occasions even after the even Iranian Consulate officials themselves raised concerns about D1275's bizarre behaviour and incoherent speech.

k. To date there has been no real accountability within the Home Office for these unlawful actions whether at a system or individual level. The challenge to the lawfulness of D1275's detention was settled for a very substantial sum of money but with the most minimal concession on when the detention became unlawful and why. No apology was offered. The concessions were in my view tactical to avoid the full proceedings and scrutiny of the court. Only this Inquiry is uncovering the true extent of the failure of the safeguards and the gravity of the consequences for D1275's fundamental rights, physical and mental health, his moral integrity and human dignity.

Statement of Truth	
I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth. I am content for this witness statement to form part of the evidence before the Brook House Inquiry and to be published on the Inquiry's website.	
Name	Hamish Arnott
Signature	**Signature**
Date	10 February 2022