BROOK HOUSE INQUIRY

First Witness Statement of Pierre Makhlouf

I provide this statement in response to a request under Rule 9 of the Inquiry Rules 2006 dated 17 November 2021. I have been authorised by Bail for Immigration Detainees ("BID"), 1b Finsbury Park Road, London N4 2LA to provide this witness statement.

My background

1. I am BID's Legal Director and I have been in post at BID since 2007. I am responsible for BID's legal strategy and the delivery of its legal advice services. I have worked in the field of Immigration and Asylum Law, including representing people held in detention under immigration powers since 1989. I am accredited with the Office of the Immigration Services Commissioner (OISC) as a Level 3 advisor in Immigration Law and Asylum Law, and with the Law Society as a Supervisor and Level 2 Senior Caseworker under the Immigration and Asylum Accreditation Scheme. I was employed as a Senior Caseworker at Simons Muirhead and Burton solicitors from 1989 to 1995, and then at Hackney Community Law Centre from 1995 to 2007 until I joined BID. I have been the co-convenor of the Immigration Law Practitioners' Association's working group on Removals, Detention and Offences since 2007.

About BID

2. BID is an independent charity established in 1999 to promote access to justice for those detained under the Immigration Acts. In terms of the number of people we reach, by way of example from 1 August 2020 to 31 July 2021, BID assisted 4,792 people. With the assistance of barristers acting *pro bono*, we prepare and present hundreds of bail applications in the Immigration and Asylum Chamber of the First-tier Tribunal

("FTT") each year. From 1 August 2020 to 31 July 2021 BID prepared 406 bail applications, of which 361 bail applications proceeded to a determination by the FTT (45 cases were withdrawn before or during a hearing). Of these 361 determined bail applications, 309 people were granted bail, an 86% success rate for clients of BID.

3. BID also assists a far greater number of unrepresented detainees by providing them with advice, assistance with drafting legal grounds to support their bail application and compiling bundles of evidence, which are provided to the client for their use, under our "DIY service". It is not possible for BID to record the outcomes of the hearings of this wider class of unrepresented people in any systematic way, though some will inform us of the outcomes of their hearings. Our work with this wider class of detained people also informs BID's knowledge of the bail and detention system.

4. BID also produces written self-help materials, runs legal advice sessions in all immigration detention centres in the UK (with the caveat that we are seeking to deliver advice at Derwentside IRC, which opened in November 2021) and also prisons. It operates a telephone helpline to assist detained people in representing themselves at bail hearings. The delivery of these services has been temporarily reduced during the course of the pandemic given restrictions on visiting IRCs and prisons, and the need to close our office and to work remotely. BID normally relies on its volunteers to assist with delivering advice on its advice line. As the delivery of immigration advice and advice on immigration detention is a regulated area of work, our volunteers can only assist us while supervised by our Level 3 OISC accredited staff or our solicitors or barristers who are responsible for the advice that we deliver. Since March 2020, with the onset of the pandemic we were forced to deliver our services and our advice line from home, and our Legal Managers have therefore had sole responsibility for this work during the pandemic. This has meant that the delivery of our DIY services has also been limited and without the support of our volunteers. BID's Legal Managers have focused on providing representation to as many people as possible. BID is however in the process of gradually returning to working with volunteers with the aim of renewing services that have been suspended because of the pandemic.

5. BID provides evidence to and conducts awareness-raising in relation to government agencies, parliament, international human rights bodies and the judiciary concerning difficulties faced by immigration detained people in the United Kingdom. For example, in October 2014, BID provided oral and written evidence to the Justice Committee's Inquiry into the impact of the legal aid cuts under the Legal Aid, Sentencing and Punishment of Offenders' Act and BID was called upon to give oral evidence to the Parliamentary Inquiry into the use of Immigration Detention in November 2014. BID also submitted written evidence to the Parliamentary Immigration Bill Committee in November 2015; to the European Committee on the Prevention of Torture (upon invitation) in January 2016; and in May 2016, jointly with others, to the Home Office in relation to a draft Detention Services Order relating to the treatment of women in detention. BID was also invited to meet with the Commissioner for Human Rights of the Council of Europe in January 2016 to discuss immigration detention.

6. BID met (on invitation) with the Tribunal Procedure Committee in January 2016 to consult on possible procedural rules relating to asylum appeals for people held in immigration detention. BID submitted evidence to the Stephen Shaw reviews of 2016[1] and 2018[2]. On behalf of BID and with other interested organisations ("NGOs"), I met with Stephen Shaw in November 2017 to give evidence for his 2018 review. BID gave oral and written evidence to the Home Affairs Select Committee's Inquiry into Immigration Detention in March 2018[3] and to the Joint Committee on Human Right's Inquiry into Immigration Detention in May and October 2018[4]. BID has also given written evidence to the UK Government's Windrush "Lessons Learned" Review[5] and the Review of the 2013 Legal Aid Cuts (both in October 2018); to the Independent Chief Inspector of Borders and Immigration for his annual inspection of the Adults at

[1] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/490782/52532_Shaw_Review_Accessible.pdf
[2] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/728376/Shaw_report_2018_Final_web_accessible.pdf
[3] https://publications.parliament.uk/pa/cm201719/cmselect/cmhaff/913/91302.htm
[4] https://publications.parliament.uk/pa/jt201719/jtselect/jtrights/1484/148402.htm
[5] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/876336/6.5577_HO_Windrush_Lessons_Learned_Review_LoResFinal.pdf

Risk policy (February 2019[6] and September 2020[7]) and again to the Independent Chief Inspector of Borders and Immigration in response to two calls for evidence (on the work of Home Office Presenting Officers[8], and the Home Office's use of sanctions and penalties[9] (both January 2020)); and to the UN Human Rights Committee (Office for the United Nations High Commissioner for Human Rights) into the UK's compliance with the UN Covenant on Civil and Political Rights in 2020[10].

7. On 13 December 2019 the Chair to this Inquiry confirmed that she had considered BID's report Voices From Detention[11] in her preliminary literature review.

8. BID also provides training on detention and bail matters. We have delivered training over the years to the OISC, legal practitioners and most recently, in 2021, to the Independent Monitoring Board. A training course for legal practitioners on bail is planned for 2022.

My role during the relevant period

9. Between 1 April 2017 and 31 August 2017 (the "Relevant Period") I was BID's Legal Director. I was responsible for ensuring the delivery of BID's legal advice surgeries at Brook House. These surgeries were normally delivered by my former colleague and Legal Manager, Ionel Dumitrascu, who left BID in 2020. I did not attend the legal advice surgeries at Brook House myself.

10. As now, I was also responsible for managing BID's legal strategy including having oversight of project-focused work, interventions before the higher courts, as well as

[6] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/881648/Annual_inspection_of_Adults_at_RIsk_in_Immigration_Detention__2018-29_.pdf
[7] https://www.gov.uk/government/news/inspection-report-published-second-annual-inspection-of-adults-at-risk-in-immigration-detention
[8] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/951120/An_inspection_of_the_Home_Office_Presenting_Officer_function__November_2019_to_October_2020.pdf
[9] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/951438/An_inspection_of_the_Home_Office_s_use_of_sanctions_and_penalties__November_2019___October_2020_.pdf
[10] List of issues published here: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2fC%2fGBR%2fQPR%2f8&Lang=en
[11] https://hubble-live-assets.s3.amazonaws.com/biduk/redactor2_assets/files/803/Voices_from_Detention_Website.pdf

the management of BID's legal staff (which at the time included four Level 3 OISC accredited members of staff and one solicitor); and oversight of BID's policy work where this related to its legal casework. I was also responsible for ensuring that BID's written legal advice materials were kept up to date, as well as working with its Director, its Policy and Research Coordinator and its Communications and Fundraising Coordinator on its policy and communications strategies.

Immigration bail and the process in detention

11. It may assist the Inquiry if I set out how the bail process works. A particular focus of our work is on the inadequacies of safeguards for immigration detained people, which has led to the inappropriate use of detention in many cases. There are many obstacles to access to justice in detention and the lack of transparency in the system makes people detained in immigration detention particularly vulnerable. Bail should be a safety valve but dysfunctionality is built in at every stage of the bail process.

Who can apply for bail?

12. Only people who have been in the UK for over 7 days and who are detained for immigration reasons (whether in an IRC or in prison) can apply for bail before the First-tier Tribunal (Immigration and Asylum) ("FTT").

13. Anyone detained for immigration reasons can also apply to the Home Office for immigration bail, at any stage in their case. I am aware that some solicitors advise their clients in IRCs to apply to the Home Office for bail. I assume this may be because such applications are relatively straight forward and do not incur disbursements to Counsel, or travel and other administrative steps when appearing before the FTT. However, in BID's view applications to the Home Office - which is after all the detaining authority - are extremely unlikely to succeed. We consider that a detained person's energy is best put into making an application for bail to the FTT, which is an independent judicial authority and more likely to grant bail.

Applying for bail every 28 days

14. Notwithstanding the above, applications for bail to the FTT can only be made every 28 days unless there has been a change in circumstances. It needs to be understood that this 28-day period can stretch out for a significantly longer period, much to the frustration of immigration detained people. This is because the FTT will only accept applications for a hearing to be listed where the application is received at least 28 days after the date of the previous hearing. So invariably a person has to wait longer than 28 days and often it takes 14 days or more for a Hearing Centre to list a case (particularly at busy times where there may be fewer FTT judges due to holidays or Hearing Centre workload pressures, such as during the Christmas period). This means that a case may not be listed for 42 days after the previous bail hearing and sometimes the period is even longer.

15. BID has raised the unfairness of this procedure and argued that this cannot be what Parliament intended. Despite the logic of our position the Home Office has opposed our request that the FTT be allowed to receive applications for bail within 28 days as long as it ensures a 28-day gap between application hearings. It is an issue we are still exploring with a view to possible legal challenge, but for the moment the unfairness and the frustration remains.

Accommodation and the Residence Condition

16. Since 15 January 2018, when Schedule 10 of the Immigration Act 2016 came into force, an applicant for bail needs to fulfil at least one condition from a list of mandatory bail conditions. The list includes a reporting condition, electronic monitoring and a residence condition. Before then, however, it was (and indeed to an extent still is) standard practice for the FTT to require an applicant to have a bail address so that a residence condition could be imposed.

17. Many detained people in the Relevant Period, as now, have no accommodation to be released to and so they will need an offer of accommodation from the Home Office before bail will be granted. Since around 2008/2009 it has been consistently difficult for people in detention to obtain an offer of Home Office bail accommodation whether as an asylum seeker, a refused asylum seeker or where there would a breach of their human rights if they would otherwise be left destitute (under section 4(1)(c) of the Immigration and Asylum Act 1999 'section 4'). This is largely due to shortages of such accommodation, procedural problems including allocation arrangements and decision-making, and associated delays. Delays in the Home Office considering applications for accommodation were typical during the Relevant Period, including both delays in considering applications for accommodation and support and delays in actually allocating accommodation.

18. Bail accommodation is broken down into three types:

    a. **Initial Accommodation ("Level 1"):** this was invariably accommodation within large blocks, which was used to accommodate mixed genders and ages, including children, and was suitable for a wide range of people seeking support from the Home Office, including former offenders detained for comparatively low-level crimes;

    b. **Standard dispersal accommodation ("Level 2"):** this was the accommodation to which all persons accommodated initially in Level 1 accommodation were 'dispersed' after a short period in Level 1 accommodation. Where an applicant for Section 4 support was assessed as unsuitable for Initial Accommodation, but suitable for standard dispersal (Level 2) accommodation, for example, a former offender, they would be placed directly into Level 2 accommodation. This type of accommodation was made up of a variety of different units, including shared flats in smaller blocks. In the case of offenders assessed as unsuitable for Initial Accommodation, it would be necessary for checks to be made by the Probation Service, where the person remained within their licence period; or the police, in cases where a person was under reporting requirements following the expiry of their licence;

c. **Complex bail accommodation ("Level 3"):** this category of accommodation was self-contained single occupancy flats, which was reserved for offenders assessed as posing higher risks and whose licence conditions could not be met in Level 2 accommodation. This accommodation type would generally not, for example, be in close proximity to schools or parks.

19. BID has a major and long-standing concern relating to the accommodation delays experienced by detained people assessed as unsuitable for Initial Accommodation who can be offered only Level 2 or Level 3 accommodation, for the purposes of a bail application or release. In the Relevant Period, and now, this group of applicants will usually have completed a sentence of imprisonment following conviction for a criminal offence and while many will have been detained in prison, many will have been transferred to an IRC. This group of Section 4 applicants typically experience (and experienced in 2017) repeated and excessive delays at all stages of the accommodation application process, far longer than delays encountered by any other category of applicants.

20. Delays in the provision of Section 4 bail accommodation to these applicants, especially the pattern of significant delays of many months or in some cases over a year, were systemic, unfair and acted as a significant practical barrier to detained people gaining access to the FTT and judicial scrutiny of their ongoing detention. It prevented people being released from detention by the Home Office on bail even in cases where the detention was - or was likely to become - unlawful being beyond a reasonable period of time. It extended detention, in what often seemed to BID and detained people a particularly arbitrary way because the accommodation system was so impossible to navigate and understand, and so it increased despair.

The importance of a bail address to a bail application

21. Although having an address to which an applicant can be bailed was not, and still is not, a statutory or mandatory requirement for the lodging of a bail application, it was

in practice a *de facto* pre-requisite for making an effective bail application with a real prospect of success.

22. In BID's long experience, absence of a bail address is frequently treated by the FTT as a reason to refuse bail. In bail applications by former foreign national offenders ("FNOs"), who had served a sentence of imprisonment, it was in the Relevant Period, and continues to be, virtually impossible to obtain bail without a bail address. This was for a number of reasons:

    a. An identifiable and secure address was obviously a foundation for establishing conditions for release, for addressing risk on release, particularly absconding, and persuading a judge that conditional release was appropriate;
    b. A bail address was needed in order to impose electronic monitoring following release. Electronic monitoring was not imposed in all cases, but would be imposed where the risks of absconding and/or reoffending were thought sufficiently high. This was frequently the case in the context of the cohort of people who had served prison sentences. Electronic monitoring allowed the Secretary of State's concerns about these issues to be addressed. If there was no bail address, electronic monitoring could not be available;
    c. The proximity of a bail address to any surety was relevant, in the view of the FTT, to the extent to which the applicant would be in a position to stay in touch with that surety and thereby comply with the conditions of bail. This of course acted, and still acts, as a further constraint on what accommodation was practically available;
    d. Where an applicant was on licence, a bail address was needed to satisfy a FTT judge that the applicant would be able to abide by any licence conditions placed upon their release, including requirements to report to a Probation Officer (for reviews of compliance with the conditions of parole and to discuss any concerns relating to rehabilitation into the community);
    e. Advocates instructed by BID were at a serious disadvantage in responding to Home Office objections to granting bail where there was no clarity as to where the applicant would reside on release; and in the absence of a bail address there

was little prospect of persuading the judge that release was appropriate. This was despite the fact that the delay in making an address available to the applicant was usually down to the Home Office.

"Bail in Principle" and bail accommodation delays

23. During the Relevant Period there was provision within the then *Bail Guidance for Immigration Judges*[12] to grant "bail in principle" to allow an address to be identified (paragraph 46). This was sometimes granted for a period of 48 hours pending the provision of documentary evidence, e.g. a tenancy agreement (paragraph 48), but occasionally also for longer periods of around 7 days. However, applications relying on this provision would often be refused unless it could be proved that Home Office bail accommodation, and in particular Section 4 accommodation, would be issued imminently. It was, in reality, virtually impossible to prove this in the case of applicants who had an outstanding application for a Home Office bail address. FTT Judges were well aware of the lengthy delays in the Home Office bail accommodation system, the unpredictable nature of those delays and the lack of any certainty around the process. It was impossible for the Judge to be given any clarity in the absence of a clear indication from the Home Office. In turn, in our experience, it was impossible to obtain any timescale from the Home Office. When pressed, they would either say that they could not give a timescale, or that they would chase the relevant person. However, they would never actually be in a position to know how much longer the applicant would need to wait before being offered an address. Thus, the "bail in principle" provisions were, in practice, of no real assistance to those wanting to apply for bail who were waiting for a Home Office bail address, especially in cases where Initial Accommodation was found to be unsuitable.

24. Many of these problems remain today. However, over the past one to two years (after the Relevant Period) the FTT has changed its approach, and will now grant bail in principle *and* issue a set of standard directions requiring the Home Office to take

[12] https://www.judiciary.uk/wp-content/uploads/2014/07/bail-guidance-immigration-judges.pdf

certain steps relating to the provision of accommodation, including informing the FTT of developments in sourcing accommodation. The process for making applications for accommodation and support has also changed but it is perhaps unnecessary to provide the detail here.

25. While the availability of a bail address is not the only factor for the Judge to consider in a bail application, BID frequently saw both meritorious, as well as finely balanced applications, by former FNOs refused by FTT judges for reasons which relied wholly or partially on the lack of a bail address. Accordingly it was very common in the Relevant Period for people in detention to have to defer applying for bail for very long periods whilst awaiting the outcome of their application for section 4 accommodation.

26. Often it was a difficult tactical decision whether and when to apply for section 4 accommodation and it was fraught with further complications for former FNOs. For these applicants, even when a Home Office bail address was sourced, the suitability of the address would then need to be checked and approved by the Probation Service and the police (in relation to the latter, whether or not the person was still under licence). Addresses were often rejected as unsuitable and in that event the Home Office would have to conduct a search for a new address. In some cases, this process would happen repeatedly with new addresses rejected as unsuitable by either the Probation Service or the police.

Sureties/Financial Condition Supporters

27. A further obstacle many people in detention faced, which acted as a barrier to applying for bail, was the mistaken assumption on the part of some detained people and some legal representatives that a bail application should not - or indeed could not - be made unless a surety (now known as a Financial Condition Supporter ("FCS")) was available to support an application. Even now, and despite a surety not being listed as one of the mandatory conditions for bail (of which, as I have said, only one is required in any event), some legal representatives wrongly advise their clients that they cannot apply for bail until a surety is found. In these circumstances, BID would usually offer

to represent a person on an application for bail and we often succeed in obtaining bail without a surety.

Grounds for Bail

28. As mentioned above, BID provides many people in immigration detention with guidance on how to make their own bail applications, where we are unable to provide them with representation at bail hearings. However, this does rely on people being able to understand the guidance and how to apply it in a meaningful way. While BID also provides a service to review and help improve grounds for bail, relying on the availability of trained volunteers, interpreters and capacity to do the work in response to demand, a person's literacy and being able to articulate arguments in support of bail are very important.

29. For a bail application to stand a good chance of success it should respond to all the reasons the Home Office oppose bail. This will include the person's immigration history, explanations surrounding entry into the UK, their reporting history, risk of harm and risk of reoffending assessments, issues surrounding cooperation with the immigration, deportation, removal and documentation process, and claims relating to their risk of absconding, etc. Understanding the circumstances in which continued detention is arguably unlawful, is a complex issue and requires some legal training. It is certainly a difficult, if not an impossible, task to expect people in immigration detention who will have no relevant legal training, and may have no education, to be able to argue against a Home Office Presenting Officer.

The Home Office Bail Summary

30. Once a bail application is submitted the Home Office is required to produce a document known as a "Bail Summary" setting out their understanding of the factual circumstances relevant to the case and their reasons for opposing bail. This must be produced by 2pm on the day before the hearing, but it is sometimes produced on the morning of the actual hearing, or even at the hearing itself. This means bail applicants,

including those who are not legally represented, often have insufficient time to prepare their response, or even to understand the Home Office's arguments as to why bail is opposed.

Being prepared for the day of the hearing

31. Most people in IRCs appear at their hearings via video link. This can be problematic in the absence of good coordination between the hearing centre and the IRC. Further coordination is also needed if any sureties are supporting the application, with sureties invariably being required to attend hearings in person (particularly pre-pandemic and in the Relevant period). On occasions a surety will be delayed or will not be able to attend (for example if a surety is refused permission to take leave by their employer). People in detention are meant to have the opportunity for a short advice session with their legal representative prior to a hearing, but this can be fraught with problems where the Home Office bail summary has been disclosed late, requiring additional instructions; or there are language barriers.

After the hearing

32. In the Relevant Period, and now, when an applicant for bail was produced in person for a hearing they were often confined in an escort van for several hours travelling to and from the hearing (without access to a toilet). If they were refused bail on return to the IRC they not infrequently found that their original cell had been allocated to someone else and they were moved to a new cell. Clients often reported to us that paperwork and other personal possessions became lost, often adding to the distress and frustration caused by the refusal of bail.

33. If bail was granted subject to a condition for electronic monitoring release may be delayed for up to 72 hours while steps are taken to enable monitoring to be installed at the property and a tag fitted to the detained person.

34. BID have been aware, including during the Relevant Period, of occasional failures to provide a detained person with a travel ticket to enable them to get to their bail address and/or for a detained person to be released so late in the day that travel is difficult and the person struggles to reach their bail address in time to obtain access. We have known of cases where people have had to spend a night on the streets homeless.

Quality of representation

35. Legal representatives' understanding and experience of bail varies greatly. Some legal representatives fail to deal comprehensively with all the Home Office's reasons for opposing bail, which can result in the FTT refusing bail. Others think that having a surety is the main consideration for applying for bail, and some think that any risk of reoffending would justify bail being refused. It always dismays BID that some of the legal representatives on the Detention Duty Legal Advice Service ("DDLAS") do not provide legal representation on bail applications so that their clients have to appear unrepresented. This lowers the prospects of success of the application and causes detained people immense frustration. This was less of a problem at the time of the Relevant Period, when an earlier version of the legal aid contract operated for this scheme, however it was nonetheless a problem during the Relevant Period. We refer further to problems with the DDLAS in the section headed Access to Justice below.

BID's purpose, function and remit at Brook House during the relevant period

36. During the Relevant Period BID was delivering legal advice surgeries at Brook House twice a month. Attendance at each surgery numbered between 11 and 16 detained people and a total of 144 people were seen in person by BID at Brook House during the relevant period.

37. The legal advice surgeries (sometimes referred to as 'self-help workshops') involved people being interviewed in turn. Some people we encountered may have been existing clients of BID and others would have been seeking assistance for the first time. Attendees were provided with "Outreach packs" providing information on

making a bail application. They were encouraged to draft applications themselves and to send these to BID for review, along with a signed letter of authority allowing BID to assist them. In the meantime, BID would triage cases so that depending on its capacity and its strategic priorities, some people's cases would be taken on for the purpose of representation by pro bono counsel.

38. BID's strategic priorities included prioritising the cases of the most vulnerable people; people who had physical or health problems or who had claimed to have been tortured; people separated from a child for whom they had been a primary carer; people detained in prisons and people detained for the longest periods of time. In all cases we prioritised people for representation where they did not have a lawyer advising under the Legal Aid Scheme or where their lawyer was not assisting them to apply for bail.

39. From the 144 people that were seen by BID during the relevant period, we opened 70 cases (having received the client's letter authorising us to advise them) in relation to their detention and bail matters. The table below displays the outcomes we recorded at the time in relation to those cases.

OUTCOMES OF 70 CASES OPENED DURING THE RELEVANT PERIOD

OUTCOME	CASE CONCLUDED DURING THE RELEVANT PERIOD	CASE CONCLUDED AFTER THE RELEVANT PERIOD
GRANTED BAIL BY THE FIRST-TIER TRIBUNAL	7	9
GRANTED TEMPORARY ADMISSION BY THE HOME OFFICE	13	11
DEPORTED OR REMOVED	5	13
CASE TAKEN ON BY EXTERNAL SOLICITORS (OUTCOME UNKNOWN)	6	3
LOST CONTACT	1	2

40. At the time of the Relevant Period, BID's Legal Manager, Ionel Dumitrascu, delivered the legal advice surgeries in the Welfare Officer's room at Brook House, with sessions of about 10-15 minutes per person (depending on the numbers waiting to be seen). Those seen would be provided with some information about BID and how we could help.

Panorama and its aftermath

41. Whilst we had only limited access to Brook House in the Relevant Period, it is nonetheless a significant concern to us at BID that we were unaware of the abuses exposed by Panorama when we were visiting the IRC on a regular basis. I should perhaps say that over the years, I have heard the Home Office refer to the access to detention centres that is permitted to some NGOs and visitor groups as evidence of independent oversight. But the reality is that the access that organisations like BID have to Brook House, and all other IRCs, is not what is needed to unearth systemic abuse. Sometimes visitors or people who develop regular contact with individuals can develop friendships and trust which may lead to a better sense of a person's circumstances in detention. Most of the time, however, legal advice organisations such as BID are in contact with people for a short and defined period of time and purpose - to take instructions and provide advice on a specific legal issue and this limits what we are able to uncover or discover.

42. Since Panorama our lawyers and volunteers have become more acutely aware of the need to ask clients about their personal experience of detention, including the conditions that they face and abuse they may experience. However, I think the fact that we were not aware of what was happening in Brook House in 2017 demonstrates the increased level of oversight by the Home Office, as well as the IMB and other monitoring bodies, that is required for there to be a realistic chance of abuse being exposed.

43. As part of our reflection after the airing of the Panorama documentary, BID decided to talk to some of our clients and former clients who had been detained at Brook House

during the relevant period. On the 29th and 30th November 2017, BID called a number of people we were in touch with and who were detained at Brook House at the time. The conversations were unstructured and took different directions depending on what the individual wanted to speak about. I recognise that this limits the value of this exercise, and the Inquiry is of course carrying out its own much wider investigation. However, our focus was on finding out whether the mistreatment uncovered by Panorama persisted.

44. In addition, BID contributed to the investigation undertaken for G4S by Kate Lampard and Ed Marsden, published by Verita in November 2018 [*VER000060*]. BID's former Director, Celia Clarke, and Ionel Dumitrascu met with Ed Marsden on 24 October 2017 [*VER00197*]. I did not attend this meeting. I note that the Inquiry has asked BID to comment on a note produced regarding this meeting. I refer below to areas on which I am able to comment.

45. BID was asked to speak to some of the people we were in contact with and who had been detained in Brook House. On 5th December 2017, we carried out six interviews, which were then provided to the Verita investigation. Two of the people we spoke to were detained at Brook House during the Relevant Period, whereas three had been released before April 2017. The sixth person was not a BID client and we do not have a record of the period they were detained at Brook House.

46. The six people we interviewed reported mixed experiences. While some did not describe many examples of negative experiences in detail, others had wide ranging and alarming complaints.

47. This work led us to conduct further interviews with people detained in other IRCs to find out the extent to which the experiences of people detained in Brook House were reflected elsewhere. This formed the basis of BID's "Voices From Detention"[13] report.

[13] https://hubble-live-assets.s3.amazonaws.com/biduk/redactor2_assets/files/803/Voices_from_Detention_Website.pdf

48. After Panorama, BID wrote to Amber Rudd to raise concerns and to call for an Inquiry. Our request focused on the events exposed by Panorama and also raised concerns regarding the failure of the Home Office to properly apply its Adults and Risk policy. We called for G4S to be suspended from operating its contract at Brook House in view of horrific nature of the events that were exposed.

Mistreatment and conditions at Brook House

49. I refer below to some of what detained people told us following Panorama. We were only able reach a small number of detained people and we undertook this exercise in the immediate aftermath of Panorama so this also limits the level of insight. I will therefore be brief.

50. BID heard accounts from detained people of violence, racism and general lack of respect by Brook House staff. Some of the people that we interviewed described graphic examples of having force used against them by officers or witnessing force being used on other people. One of the people we interviewed reported that abuse, racism and violence from staff was worse in the Care and Separation Unit (he called it the "the block") and described the abuse he received and witnessed there - including a use of restraint in which he was beaten and struggled to breathe. Another detained person told us about being put in a headlock and suffering a serious injury to his hand during a removal attempt. He also referred to verbal abuse by officers against him during incidents of self-harm and told us that he had tried to hang himself twice during the period that he was detained at Brook House.

51. The conversations that we had with detained people conveyed a tense and charged atmosphere that could break out into fights or violence.

52. A number of people told us that the conditions at Brook House were even worse than other detention centres and more prison-like. People were unhappy about healthcare (we refer to this further below), the food, the levels of hygiene, the poor ventilation

and standard of heating. People also spoke about understaffing. There was mention, for example, of there being just two members of staff for 120 people on the wing in autumn 2017.

53. There were complaints about lack of access to basic services, including IT and scanning facilities. Many websites were restricted, with all social media and several news sites being blocked.

54. Detained people across the IRCs have for years reported to us that important websites are blocked. Since 2016, BID has asked detained people about internet access in our surveys. In the majority of our survey results, more than half of respondents who tried to use the internet to research their legal cases complained about blocked websites. The types of websites that people frequently refer to being blocked included BID's website, some news websites, sites offering advice on immigration matters or legal advice, solicitor organisations' websites, human rights organisations' websites and some gov.uk websites. Detained people's own personal email accounts were also blocked. The effect of this is of course that there may be people who tried to contact BID and were unable to. In turn it would be more difficult for people to secure their release, particularly if they were unable to obtain legal representation for their bail matter from another source.

55. I have recently been in contact with my former colleague, Ionel Dumitrascu, who informs me that at one point Brook House moved its Welfare Office to within the 'legal corridor' area (comprising the legal interview rooms and video link facilities). People in Brook House could then only book themselves to see the Welfare department by appointment. Then to access the booked appointment they would have to bang on the metal door, a guard would open the door for them and ask what they wanted. They would be given a ticket with a number on it, and they would then have to wait for their turn. Sometimes they would have to wait days to see Welfare Officers. If they had an urgent issue, such as removal directions, people would normally be allowed to skip the queue, although this could cause conflicts.

56. We were told by clients that the scanning, fax and copier services available were also very limited. People could access these facilities in the Welfare Office and the library but there were queues to use them. Each wing had a fax machine and it was fairly easy for residents to send faxes, though there were also often queues. Unfortunately, there were frequently delays in faxes reaching our clients on the wings. If Ionel wanted to send something urgent, he would email or fax it to the Welfare office, then ring them up and ask them politely to give this to the addressee.

57. People also expressed anger and frustration about severe lockdown regimes and the amount of time that they were locked in their rooms.

Barriers to disclosure and complaints

58. People spoke to BID about having difficulties with making complaints at Brook House because they did not know who to complain to, felt that complaining would be pointless or even that it would attract punitive retaliation from staff or damage their immigration case before the Home Office. Through interviewing people in other IRCs for our "Voices from Detention" report we found similar issues with complaint procedures to be present in other IRCs.

59. Detained people that we meet in our capacity as legal advisors at BID are consistently and understandably very preoccupied by any applications that they need to make in relation to their entitlement to release from detention or to remain in the UK. There is often a reluctance to make complaints about conditions or abuse experienced in detention for fear of jeopardising immigration claims. Although the two should not be related, we have been told about cases where the Home Office or IRC staff have told detained people that behaviour they do not approve of could harm their cases. This has recently included, for example, the Yarl's Wood hunger-strikers[14] and people speaking out about the conditions at Napier Barracks[15].

[14] Yarl's Wood hunger strikers in 2018 were told in a letter by the Home Office that "*The fact that you are currently refusing food and/or fluid: may, in fact, lead to your case being accelerated and your removal from the UK taking place sooner.*" https://www.theguardian.com/uk-news/2018/mar/06/minister-defends-deportation-threats-over-yarls-wood-hunger-strike

60. When individuals are driven into a state of despair by the conditions of, and their experiences in detention, we find that this tends to be expressed in terms of mental health breakdowns or suicidal ideation rather than being framed as a complaint about mistreatment. It also seems to us that people held in detention all-too-often assume or expect that mistreatment in that environment is normal and so feel they have to acquiesce.

61. Legal representatives are often working within the stringent requirements of legal aid funding with large, urgent caseloads focused on securing a person's release from detention or their right to remain in the UK and in that context, may have very limited time and resources to offer to detained people in terms of assisting with making complaints. While BID is not funded by legal aid, we have to prioritise managing the demand for representation at bail hearings.

Access to legal advice in the detention estate

62. Based on our experience of conducting research and taking instructions from detained people at Brook House and at other IRCs during the relevant period - as well as before and after - access to legal advice in IRCs is generally poor.

63. Since 2010, BID has been carrying out 6-monthly surveys to document people's experiences of accessing legal advice while in detention to better understand the barriers they face (although the surveys have been paused since the beginning of the pandemic). In February 2021 we published a 10-year review of findings from our Legal Advice Survey[16].

64. We have found consistently low levels of legal representation among people in immigration detention and particularly low levels of people represented by a legal aid

[15] People held at Napier Barracks were told by staff employed by private Home Office contractors that their asylum applications could be impaired if they were to speak out about conditions at the camp. https://www.theguardian.com/world/2021/jun/06/asylum-seekers-in-napier-barracks-face-blacklist-threat-for-speaking-out

[16] https://hubble-live-assets.s3.amazonaws.com/biduk/redactor2_assets/files/1293/10_Years_of_Legal_Advice_Survey.pdf

practitioner. These figures have considerably worsened since cuts to legal aid in 2013, which removed non-asylum immigration work from the scope of legal aid. We have also found that the quality of legal advice in IRCs is often poor and waiting times to see a solicitor are long.

65. BID carried out a Legal Advice Survey in autumn 2017[17]. In that survey, we interviewed 101 immigration detained people. Only 44% of people held in immigration detention at the time had a legal representative and only 55% of those had a legal aid solicitor. Almost a third of people (29%) had never had a legal representative while held in immigration detention. Just 10% of detained people who were moved from prison to an IRC had received legal advice about their immigration case while they were in prison.

66. The above findings are generic across the immigration detention estate. 25 of the people interviewed for the Survey in 2017 were held at Brook House but we did not make IRC-specific findings because we did not break down the results by IRC.

67. In September 2018, the Legal Aid Agency made significant changes to the contractual arrangements governing the Detention Duty Legal Advice Scheme. There was a significant increase in the number of providers of immigration advice. Under the previous contracts, a single firm would provide 20 – 25 weeks of Legal Advice Surgeries per year. Under the new arrangements, each firm would run surgeries for 1 or 2 weeks a year in any given IRC. The vast majority of providers had never run DDLAS surgeries in the past and lacked experience of working with detained people. They were also not running surgeries regularly enough to develop expertise in the area. BID is very concerned that these changes have contributed to a decline in the quality of advice.

68. Lack of access to legal advice lengthens detention and leaves those detained particularly vulnerable to systemic abuse and mistreatment.

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[17] https://hubble-live-assets.s3.amazonaws.com/biduk/redactor2_assets/files/592/Legal_Advice_Survey_-_Autumn_2017.pdf

Healthcare

69. The healthcare service that people receive in detention is often said to be poor. Detained people we work with often complain of a culture of disbelief amongst medical staff and being unable to access adequate medical treatment for their health problems. A very common complaint is that people are just offered paracetamol, or other over the counter painkillers, for whatever ailment they may be suffering from; and it is rare to see a proper (or any) care plan in place. People generally complain that mental health services are wholly inadequate. Whilst advising on bail applications, we often see reports from independent medical experts diagnosing that detained people have serious conditions, including mental illness, when detention centre healthcare staff diagnosed nothing or denied there was a problem.

70. Across the detention estate, BID finds that Rule 35(1) and Rule 35(2) reports are often not produced where a person is presenting with mental health problems, including even when they are exhibiting suicidal ideation. We have observed in our casework that the focus (to the very limited extent that it can be said that there is a focused approach) seems to be upon producing Rule 35(3) reports (to address the position of people who say they have been tortured) – an observation that has been echoed by the Independent Chief Inspector of Borders and Immigration[18]. Such Rule 35 assessments that do take place are often initiated when a person is first inducted into a detention centre. However, there is a failure to undertake Rule 35 reports that assess ongoing health issues, including deterioration in a person's mental health following their initial admission to detention.

71. In 2018 BID published a report entitled "Adults at Risk: the ongoing struggle for vulnerable adults in detention"[19] which demonstrated problems with both the design and the implementation of the Adults at Risk policy (a safeguard designed to reduce

[18] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1027583/E02683602_ICIBI_Adults_at_Risk_Detention_Accessible.pdf

detention of vulnerable adults), as well as persistent problems with the quality of Rule 35 reports and Home Office responses to those reports.

72. As part of our research project into the Adult at Risk policy, we carried out a small study regarding the cases of 25 detained people that BID represented. We sent a copy of our study to Stephen Shaw with our submissions for his follow-up review (*HOM032600*). BID's summary of the results were included in the Stephen Shaw's 2018 report as follows:

> *... the AAR policy does not appear to have made any tangible improvement in the protection of vulnerable persons from harm in detention either in substance or practice. Indeed, we have observed a worsening of health in the cases examined through the application of the AAR policy. The stated objective of the government's response to the Shaw report was to reduce the number of vulnerable people detained and treat those in detention with dignity and respect. The experiences of our clients have shown that these objectives have not been met.*
>
> *Our findings show that not one individual in either sample group was released as a result of the application of the AAR policy, despite being confirmed as at risk by medical practitioners in Rule 35 reports ... Vulnerable detainees in the study were only released from detention after we represented them in an application for bail; they were not released through the application of the AAR policy.*

73. Rule 35 reports are an opportunity for medical practitioners in detention healthcare and decision-makers at the Home Office to understand a person's medical circumstances, the likely impact of detention in that context and to decide whether or not detention should be maintained. They therefore need to be robust. However, in BID's experience, Rule 35 reports are of variable quality. They may be lacking in detail or fail to address the key issue (e.g. whether continued detention is likely to cause harm). This despite the fact that Rule 35 is a crucial part of the decision-making of whether the individual will be released under the Adults at Risk policy.

74. The Home Office appears to be overly and inappropriately concerned that the Rule 35 and AAR safeguards, which are designed to prevent the wrongful detention of vulnerable adults, are being abused by detained people. In their second Annual

Inspection of the Adults at Risk policy the Independent Chief Inspector of Borders and Immigration made a number of comments about the preoccupation of Home Office with the view that safeguards (such as Rule 35 or the provision of Medico-Legal reports) are abused by detained people. The Chief Inspector identified that this widely held view within the Home Office is in tension with the identification and protection of vulnerable adults[20].

75. Where legal representatives, including BID, are able to refer to or rely upon a Rule 35 report in a bail application, this improves the prospects of success. However unrepresented detained people, and even inexperienced legal advisors, may find it difficult to either understand the significance of a Rule 35 report, its relevance to the Adults at Risk policy and how it can be relied upon in an application for bail, and in an assessment of the lawfulness of continued detention. They are all the more likely to miss it when the report does not meaningfully address the issues.

Mental health amongst detained people

76. During the course of BID's work, it regularly encounters people who are stressed, anxious and suffering a deterioration in their mental health due, it seems to BID, to the impact of their experience of immigration detention. In fact, that is true for the majority of people that BID encounters in detention.

77. Independent medical reports and accounts from BID clients are evidence that the very experience of immigration detention can itself be very traumatising. Often the treatment and therapy recommended to assist with a person's recovery from illness or trauma is unavailable in immigration detention and requires release. Frequently, the experience of detention itself is causing or exacerbating mental illness. The fact that Rule 35 reports do not focus on these issues and some detained people inform BID that their health problems are not taken seriously by healthcare staff suggests to BID that staff working in detention centres are poorly trained, and/or desensitised from the

[20] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1027583/E02683602_ICIBI_Adults_at_Risk_Detention_Accessible.pdf See for example, Page 2, Page 7, page 11

possibility that the people in their care may be suffering from mental health problems that require assessment and care. These presentations are often instead viewed as self-serving and evidence of manipulation by the detained person to enable their release from detention.

78. Where there is evidence that detention is harmful to a person's health, particularly where there is documentary evidence, this can be an important factor in the decision-maker's consideration of whether detention continues to be appropriate and whether bail should be granted. However, the operation of the Adults at Risk policy, and the success of a bail application, is heavily dependent on the extent to which detained people are able to gather professional medical evidence of any health conditions or history of torture they may have. It is particularly vital for detained people to be able to access professional evidence if detention is *likely to cause harm*. In the absence of such evidence, the fact that an individual is particularly vulnerable or is suffering harm in detention is unlikely to lead to their release from detention

79. BID does not have funds available to obtain independent expert evidence except in very limited circumstances. In appropriate cases, where a client appears to have a particularly serious health condition, we will instruct an organisation such as Medical Justice[21] to assess our client's health condition. However, this takes time and meanwhile, a person who appears to be very unwell and vulnerable will often continue to be detained.

Drugs and alcohol at Brook House

80. Before Panorama, BID was not aware of the extent of drug use at Brook House, as this had not been reported to us by our clients in the course of our bail casework. Our knowledge was limited to having occasionally come across cases where clients were reported to have been in contact with drugs in Brook House.

[21] Medical Justice can in certain circumstances provide us with an expert medical report free of charge.

81. Several of the people we spoke to following Panorama stressed the easy availability of drugs in Brook House. Some of the people we spoke to who were still in detention in November 2017 reported that Spice was widely available.

82. However outside of these interviews, clients did not tell BID about the widescale use of drugs. That is not particularly surprising given that it would usually not be relevant to a bail application. Equally, it could be that such was the prevalence of drugs at Brook House that their widespread use simply became normalised and was not considered worth remarking upon by detained people we spoke to.

83. Beyond that, we do not have detailed knowledge on this topic.

Oversight

84. BID has occasional contact with members of the IMB who may seek its advice about aspects of immigration detention about which they are unfamiliar. In addition, members of the IMB have sometimes referred people in detention to BID for advice. While BID does not have a formal relationship with the IMB, we are familiar with its reports into places of detention.

85. Of the other oversight mechanisms including HMIP, the PSU, the PPO and the police, the effectiveness of these organisations seems very limited as they are either not present at all at IRCs (the police) or they visit infrequently (HMIP). We have little contact with these organisations.

Current position at Brook House

86. BID's experience has recently been limited by the fact that we have been unable to deliver legal advice surgeries at Brook House due to restrictions placed upon our presence because of the pandemic. We do however continue to receive requests for advice via calls on our advice line and via emails to our casework email address from people held at Brook House. I would say there is no discernible difference in general

in the treatment and conditions our clients report between the relevant period and currently.

87. We have very recently been in touch with the Assistant Director of Safeguarding at the Gatwick IRCs, who has agreed that re-starting our surgeries would benefit people in detention. We have agreed the practical arrangements and we hope to re-start advice sessions soon.

Recommendations

88. Immigration detention creates extreme power imbalances and fosters a climate of othering, which in turn creates fertile conditions for a culture of abuse or racism to develop. Cultural norms may differ but there may also be an assumption on the part of people held in detention that they will not receive sympathy if they complain about their lot. Those who have experienced periods of solitary confinement or prolonged cell confinement in prisons while serving criminal sentences (or while being held under immigration powers) may also feel that such treatment is normal.

89. The intention of immigration detention was historically to prevent people from absconding while recognising that they are not being held for the purpose of punishment or coercion, and that therefore they should be provided with looser regimes that resemble civilian life where possible e.g. to allow regular and easy social contact, no locked doors, access to television or entertainment throughout the day, etc. Increasingly however IRCs have come to resemble prisons with high levels of security, giving a sense that they are places of punishment, even though the people being held in them are not being punished for a crime. This is a particular problem at Brook House because it was built to Category B prison specification so it closely resembles a prison. People held in detention centres are therefore increasingly treated as deserving of punishment, an aspect of detention which unavoidably influences the attitudes of those responsible for running the centres.

90. We have been asked by the Inquiry to set out any suggested recommendations which we think might help to prevent the recurrence of the mistreatment identified on Panorama.

91. BID is opposed to immigration detention and we believe that its use should be ended. However, while it continues to exist there are important changes that should urgently be made which would make it less harmful. We endorse the recommendations set out by Gatwick Detainee Welfare Group and we have a few additional recommendations to make. None of the recommendations we make should be taken to dilute our key message that immigration detention is harmful, unnecessary and expensive and should end altogether.

92. BID makes the following recommendations:

a. While immigration detention is used, it should not be indefinite or indeterminate. There should be a statutory time limit. People in detention face uncertainty due to the indeterminate nature of detention and it has become common to hear immigration detained people, who are not being punished of any crime, referring to the trauma of having to count up the days in detention rather than counting them down had they been serving a criminal sentence. People in immigration detention think they are being punished despite not serving a criminal sentence, leaving them feeling humiliated, shameful, fearful and angry. Such impacts upon people that arise from the experience of immigration detention must be recognised and addressed if the harms caused to individuals are to be addressed, and safeguards put into place to protect those held in immigration detention.

b. People held in immigration detention should be given a meaningful choice as to whether they have their bail hearings held by video link or in person. Where video links are used, this should be via links that are of a high quality and enable people to see and hear everyone in a court room so that they are able to engage and participate fully. Hybrid hearings should also be made possible where some

participants such as bail applicants are able to attend in person, while others, such as sureties or accommodation providers can only attend via video link. Interpreters should be made available whenever necessary, and before as well as during a hearing, to allow people in detention or at hearing centres to communicate freely with their legal representatives and other participants to a hearing.

c. The Home Office's Adults at Risk in Detention policy needs to be reformed so that it provides better safeguards for vulnerable detained people.

d. The quality of Home Office casework needs to improve. It is far too slow and the decision-making is all too often poor. Much of the suffering, frustration and desperation of immigration detained people is the result of poor or slow decision-making by the Home Office.

e. Regular judicial oversight of the use of immigration detention to examine the lawfulness of the use of detention is essential. It is simply wrong for assessment of the use of detention to be exercised by the detaining authority. The bail process is an inappropriate procedure for the consideration of the lawfulness of detention since it has as its starting point the assumption that the use of detention is lawful. Regular independent judicial oversight of detention should be accompanied by Rules or guidance requiring or recommending a court and all parties to take particular account of the harm that is caused by the use of immigration detention, and to therefore constantly review the conditions of detention and the impact of its use upon individuals.

f. Family rooms should be created so that persons with visiting children and partners can meet in conditions that approximate life outside of detention and not in prison-like conditions. These facilities should also be made available to experts when preparing reports relating to a person's family life and relationship to their children.

g. People held in immigration detention should be allowed to access social media, so that they can be more freely in contact with the outside world.

h. The Home Office should engage meaningfully with stakeholders. As external stakeholders we are rarely consulted in a meaningful way or given the opportunity to provide expert views at an early stage, when there would be an opportunity to substantially influence policy. By the time civil society organisations are consulted on policy proposals, the plans are already effectively in a finalised form and are rarely changed. It often appears to us that consultation is little more than a box-ticking exercise. We spend much time and resources gathering evidence and responding to consultations but our expertise is rarely incorporated into the formulation of policy.

i. The Home Office should seek to learn lessons from unlawful detention cases. There is very little evidence that the Home Office seeks to learn lessons in order to improve the quality of its decision-making. The Home Office is forced to pay a significant amount of compensation to detained people every year. When mistakes are made that lead to unlawful detention, it appears that nobody within the Home Office is held to account. In response to an FOI request[22], we were told by the Home Office that: "There has been no formal assessment of the reasons why the number of people found to have been detained unlawfully, and the amount of compensation paid, has risen sharply in the last year. Individuals have six years to bring a claim for unlawful detention and consequently current costs do not necessarily relate to incidents of unlawful detention that year." This response represents a concerning lack of open mindedness or curiosity about the serious issue of unlawful detention, and a failure to acknowledge mistakes that are systematically being made on an increasing scale.

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

[22] FOI response received 09/09/21, reference number 65584

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	PIERRE MAKHLOUF
Signature	**Signature**
Date	5th APRIL 2022