Duncan Lewis

Brook House IRC

BY FAX: 01293566580581

Correspondence Address:
Spencer House
29 Grove Hill Road
Harrow On The Hill
HA1 3BN
DX 4216 Harrow

t: 020 7923 4020
f: 020 7923 3320
www.duncanlewis.com

Sulaiha Ali
Immigration
ddi: DPA
DPA

Branch: Harrow

Our ref: B151650001
Your ref: B1262471

Date: 26 April 2018

Dear Sirs,

FORMAL COMPLAINT LETTER

CLIENT NAME : D643
DOB : DPA
NATIONALITY : **St Vincent and the Grenadines**
HO REF : **B1262471/4**

We represent the above-named client. Please find enclosed a signed client authority form for your records.

On behalf of our client, we write to complain about the following:

1. The extended period of being locked-in his room between 9pm on 26 March 2018 to 1:30pm on 27 March 2018.

2. The use of segregation and an unreasonable use of force used on our client on 27 March 2018.

This complaint must be considered in light of our client's known and serious vulnerabilities. Our client suffers from H44 hearing loss, freezing cold injury and PTSD; injuries he sustained while serving for the British Armed Forces.

We refer you to our client's Rule 35 report dated 29 January 2017 which states the following regarding our client's PTSD symptoms in the context of detention:

"Detention is bringing home all those tragic scenes. He states that at night, when every has been locked up in their rooms, he often hears other detainees banging on the doors and this reminds him of when he was on duty in Iraq. It makes him bundle himself up on the bed and cry."

We also refer you to the enclosed letter from Dr Chaudhary of G4S Healthcare at Brook House, which clearly states that our client is **not fit for detention** due to his diagnosis of PTSD.

COMPLAINT 1: Lock-in – 26-27 March 2018

We have been informed by our client that he was locked in his room between 9pm on 26 March 2018 and 1:30pm on 27 March 2018, along with all other detainees in Brook House. He instructs that detainees were not told why they were locked in their rooms for this extended period of time. He states he was not provided with a break or any food during this time.

Our client was extremely distressed to be locked in his room for this extended period of time. He states that this experience triggered symptoms of PTSD causing him great distress. In particular, he is sensitive to noise and the excessive banging of detainees in their rooms felt like "mental torture" for him as it triggered the feeling and memories of multiple explosions from a war zone.

It is entirely unacceptable that our client was locked in his room without an explanation.

The regime under which IRCs are regulated and managed comprises the Immigration Act 1999, Detention Centre Rules 2001 ('the Rules'), Detention Service Orders (DSO) giving guidance on a range of issues, and the Detention Services Operating Standards manual designed to "build on the Detention Centre Rules and to underpin the arrangements ... for the management of removal centres." The relevant requirements of the Rules are as follows:

"The purpose of detention centres shall be to provide for the secure but humane accommodation of detained persons in a relaxed regime with as much freedom of movement and association as possible, consistent with maintaining a safe and secure environment, and to encourage and assist detained persons to make the most productive use of their time, whilst respecting in particular their dignity and the right to individual expression." [Rule 3(1)]

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> *"Due recognition will be given at detention centres to the need for awareness of the* ***particular anxieties to which detained persons may be subject and the sensitivity that this will require****" [Rule 3(2)]*

It should be noted that there is no statutory authority for the Home Office's operation of a system of lock-in's in the IRC. There is nothing in the statutory scheme (Part 8, Immigration Act 1999), the operative Rules governing the IRC (Detention Centre Rules 2001), nor any of the guidance (Detention Services Orders) that authorises the Defendant's operational use of 'lock-ins'.

The Defendant "can only do that which it is authorised to do by positive law: *R v Richmond London Borough Council, ex parte Watson* [2001] QB 370 (CA), [385C]. That is "a sinew of the rule of law": *R v Somerset County Council, Ex p Fewings* [1995] 1 All ER 513 [524A]. "Without specific statutory authority, she cannot adopt measures which are coercive; or which infringe the legal rights of others (including their rights under the Human Rights Convention); or which are irrational or unfair or otherwise conflict with the general constraints on administrative action imposed by public law": *New London College Ltd v Secretary of State for the Home Department* [2013] UKSC 51, [2013] 1 WLR 2358, [2372D].

It is submitted that the operation of the use of lock-in's is unlawful and in breach of our client's Article 5 rights.

We urgently request information as to why detainees in Brook House were locked in their room between 9pm on 26 March 2018 and 1:30pm on 27 March 2018. We also urgently request the Home Office to provide the legal basis for this decision.

COMPLAINT 2: Segregation – 27 March 2018

Our client instructs that shortly after he was allowed out of his room at 1:30pm on 27 March 2018, he got into an altercation with a fellow detainee and was subsequently placed in segregation for approximately 17 hours. Our client instructs that an unreasonable and excessive amount of force was used during this procedure.

Our client states that the altercation ensued after our client tried to stop a detainee bullying another detainee. Our client maintains that he acted in self-defense. The situation was neutralized when an officer pulled the two detainees apart. Our client states that he refused to be placed in segregation at this point because he did not think he had done anything wrong.

Our client states that around 2 hours later, he refused to be placed in segregation when a second officer came into his room and asked him. Around ten minutes later, while our client was changing clothes in his room, 5 or 6 officers in riot gear entered his room and forced him to the ground. Our client states that he was not resisting and an unacceptable amount of force was used.

Our client states that he was knocked unconscious by an officer who hit him on the head with a riot shield. He states that when he regained consciousness, he was in extreme pain. He had been handcuffed, and two officers were standing on his shoulders and back. He states that a nurse was called however she did not attend to him in any meaningful way.

Our client states that he was asked to stand up but could not respond. He states that he was unable to reply because "his brain had shut down". Our client was then forcefully taken to E-wing. He states that the officers were deliberately slamming him into the door edges.

Our client states that he was placed in segregation for approximately 17 hours. Our client states that the experience of the use of force and being placed in segregation was traumatic and triggered his symptoms of PTSD. He experienced intense flashbacks and believed he had been kidnapped by the enemy. He states that when he was placed in the cell, he began to bang his head against the wall repeatedly. Our client was not provided with any clothing or food during the time he was placed in segregation. He was also not provided with a Rule 40 notice.

Our client raised a complaint regarding this incident which was followed by a meeting with G4S officers on 28 March 2018. A letter dated 23 April 2018 addressed to our client, states that footage of the incident has been considered and it was concluded that an appropriate amount of fore was used.

We submit this letter is an unsatisfactory response to our client's complaint.

The removal of detainees from association is governed by rule 40 of the Detention Centre Rules 2001, which provides as follows:

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(1) Where it appears necessary in the interests of security or safety that a detained person should not associate with other detained persons, either generally or for particular purposes, the Secretary of State (in the case of a contracted-out detention centre) or the manager (in the case of a directly managed detention centre) may arrange for the detained person's removal from association accordingly.

(2) In cases of urgency, the manager of a contracted-out detention centre may assume the responsibility of the Secretary of State under paragraph (1) but shall notify the Secretary of State as soon as possible after making the necessary arrangements.

(3) A detained person shall not be removed under this rule for a period of more than 24 hours without the authority of the Secretary of State.

(4) An authority under paragraph (3) shall be for a period not exceeding 14 days.

(5) Notice of removal from association under this rule shall be given without delay to a member of the visiting committee, the medical practitioner and the manager of religious affairs.

(6) Where a detained person has been removed from association he shall be given written reasons for such removal within 2 hours of that removal.

(7) The manager may arrange at his discretion for such a detained person as aforesaid to resume association with other detained persons, and shall do so if in any case the medical practitioner so advises on medical grounds.

(8) Particulars of every case of removal from association shall be recorded by the manager in a manner to be directed by the Secretary of State.

(9) The manager, the medical practitioner and (at a contracted-out detention centre) an officer of the Secretary of State shall visit all detained persons who have been removed from association at least once each day for so long as they remain so removed.

The Defendant published a new DSO 02/2017, 'Rule 40 and Rule 42' on 18 July 2017. The Defendant's attention is drawn the following key extracts of this newly published policy:

- *'Rule 40 or Rule 42 accommodation must be used only to manage detainees who cannot be located securely and safely in normal accommodation i.e. its use must be necessary. It must be used as a measure of last resort, when all other options have been exhausted*[1]*, or have been assessed as likely to fail or to be insufficient as an effective response to the risk to safety or security presented by the individual detainee' (page 5)*

- *'...The decision to use Rule 40 must be based on a clear and rational basis. If the risk is assessed on the basis of intelligence or other indications of risk, they must be verifiable sources of information.' (page 9)*

- ***'Neither measure under Rule 40 or Rule 42 can be used as a punishment as stated expressly within the Rules'*** *(page 9)*(emphasis added*)*

- *'**Rule 40 or Rule 42 should not be used as a normal means to manage detainees with serious psychiatric illness or presenting with mental health problems**. These Rules should be used in relation to detainees with mental health problems only where justified on the basis of the risk presented in accordance with the terms of the relevant Rules. However, special care and caution is needed in relation to decisions to use Rule 40 or Rule 42 for such vulnerable detainees. **Specific account must be taken of any adverse effect that use of Rule 40 or 42 may have on the individuals in light of the circumstances and steps taken to mitigate any adverse effects.** In all the circumstances applicable to these cases the use of these Rules will be exceptional in practice. Particular care is needed to ensure that the general requirements that use of the Rules is for the shortest time possible and only as a last resort are met in these cases.'*

- *'Relocation to Rule 40 must take place only if the available information strongly indicates that relocation is deemed necessary in the interests of security and safety. Authorisation processes and review periods set out in this DSO must be observed in all cases. All relevant information from healthcare about any known risks should also be considered and that consideration recorded...Such a detainee must not be placed into Rule 40 accommodation unless all other steps have been taken to avoid or mitigate the risk posed.'* (page 13)

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[1] *Other options to considered might include transfer to another residential unit within the centre, transfer to another centre or closer supervision in normal accommodation.*

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- *'The notification to the detainee of the reason(s) for being located in Rule 40 or Rule 42 accommodation must be provided in writing and explained orally (see paragraph 54). The detainee must be provided* ***with sufficient information about the reason(s), and the evidence relied on, for seeking authority to remove them from normal association to enable them to understand the decisions (see paragraph 51).***'* (page 16)

- *'Detainees who are being managed under Rule 40 or Rule 42 must be monitored routinely throughout the day and night, to assess their safety and wellbeing and to inform consideration of whether the need for Rule 40 or Rule 42 remains...****Detainees being managed under Rule 40 must continue to be observed at least once every hour.****'* (page 19)

- *'Healthcare will be present for any planned relocation. In the event of an unplanned relocation, healthcare must attend without delay when called, including if a detainee has been non-compliant, sustained an injury or been involved in a fight or an assault (see paragraph 49). Additionally, healthcare should visit any detainee to complete a risk/health screening within 2 hours of any relocation under Rule 40 or Rule 42, unless that is not operationally possible – for example if there is no healthcare staff available or all healthcare staff are engaged on urgent work elsewhere. This screening should include considering any health causes for the detainee's behaviour and making any appropriate referrals.'* (page 24)

- ***'Healthcare staff must assess the physical, emotional and mental wellbeing of the detainee and whether any apparent clinical reasons advise against the continuation of separation.*** *DC Rule 40(7) requires the supplier/HMPPS manager to arrange for resumption of association in any case where the medical practitioner so advises on medical grounds.'* (page 25)

- *'An accurate written record of decisions and observations* ***must*** *be maintained where the initial decision was to place the detainee under Rule 40 or Rule 42 accommodation and updated appropriately for the entire duration of the detainee's management under either Rule.'* (page 26)

Furthermore, the test under Rule 40 requires that its use must be **"necessary in the interest of security or safety".** The test of necessity in relation to Rule 40 is a strict test and its importance was stressed by Holman J in the recent decision of *Muasa v SSHD (CO/6378/2016):*

> *"It is clear from s148(5)(a) of the 1999 Act and from the requirements of DCR Rule 40 generally that* ***removal from association of a detainee is a serious matter. In the case of immigration detention the threshold is one of necessity and no lesser test will suffice****. This is because as I recognise and wish to stress human beings are social creatures and any removal from association necessarily impacts on personal autonomy and may be deleterious and in some cases very deleterious to mental well-being."*

In light of the Home Office's own guidance and from our client's instructions, it is submitted that:

- **The test of necessity under Rule 40 was not met;**
- **The test of necessity should not have been used as a punishment as per the Home Office's own guidance;**
- **Our client's serious mental health conditions were not taken into consideration, nor was a full medical assessment conducted on his suitability for segregation;**
- **Our client was not allowed to make any formal representations;**
- **Our client was not provided with any oral or written explanation for being segregated;**

We trust that this letter will be treated as a complaint and therefore will be responded in full.

We also request the disclosure of the following:

1. All CCTV evidence of this incident
2. All detention records/contact log/GCID records regarding these incidents
3. All statements taken from officers regarding these incidents
4. The Rule 40 notice that should have been served on our client

If you have any queries please do not hesitate to contact Lottie Hume on DPA Please ensure you quote our reference number in all correspondence with this office.

Yours sincerely,
Duncan Lewis