IN THE BROOK HOUSE INQUIRY

INDIVIDUAL CLOSING STATEMENT ON BEHALF OF D1527

1. While D1527 was detained in Brook House between 4 April 2017 and 15 June 2017, he was subjected to treatment that was degrading; to treatment that was inhuman and to treatment that amounts to torture in breach of Article 3 ECHR as incorporated in schedule 1 the Human Rights Act 1998.

2. D1527 has had the courage to stay with legal processes of forcing the state to investigate and to hold to account those who are responsible for his mistreatment for well over four years. That has involved a judicial review to compel his release from detention; a two-year judicial review to compel this inquiry to be held; a judicial review to compel the Home Office to give him leave to remain; a civil claim for damages (stayed behind this inquiry); a judicial review of the composition of the inquiry team (the original counsel appointed to the inquiry was his opponent in the civil claim), a complaint to the PSU and the Prison and Probation Ombudsman, a police investigation, and a threatened judicial review of the CPS failure to prosecute the perpetrators of abuse.

3. D1527 invites the Chair to review all the evidence in his case, but highlights in particular the following alongside this closing statement:

    (1) D1527's witness statement,[1]
    (2) His rule 9 response[2] Video Evidence of incidents of 25 April and 4 May
    (3) The response of the PSU to D1527's individual complaints[3]
    (4) Medical Records[4]

[1] DL0000144
[2] DL0000209
[3] CJS001107_0020
[4] CJS001002_0

(5) Report of Dr Thomas dated 31 May 2017[5]

(6) The Reports of Dr Basu[6].

(7) The video evidence of events on 4th May and 25th April (referred to below).

Breach of Article 3 Procedural Duties: Anticipatory Duty

4. An important consequence of the absolute nature of the prohibition of human and degrading treatment is that the obligations imposed by Article 3 must be exercised in an anticipatory manner. In other words, action must be taken to prevent a breach of Article 3 occurring in the first place: *R (Bagdanavicius) v Secretary of State for the Home Department* [2005] 2 AC 66, Lord Brown at [19]: "Member states are under an absolute obligation not to take steps which would expose people to the risk of article 3 ill- treatment, a negative obligation". Similarly, the absolute nature of Article 3 was confirmed by the House of Lords in *R (Limbuela) v Secretary of State for Home Department* [2006] 1 AC 396, regardless of whether in a particular case the effect of Article 3 is to require a public authority to refrain from the active infliction of the prohibited treatment (such as in cases of torture) or (as here) to require it to take positive action to avoid the infliction of the prohibited treatment for which it is responsible. Thus, in *R (W) v Secretary of State for the Home Department (Project 17 intervening)* [2020] 1 WLR 4420; [2020] EWHC 1299 (Admin) at [42] the Divisional Court (Bean LJ and Chamberlain J) held at [42], applying Limbuela:

> "…section 6 of the 1998 Act imposes a duty to act not only when someone *is* enduring treatment contrary to article 3, but also when there is an "imminent prospect" of that occurring. In the latter case, the law imposes a duty to act prospectively to avoid the breach" (original emphasis).

5. Where, as in the present case, inhuman or degrading treatment under article 3 is liable to result from the positive act of a public authority, the obligation falls on the authority to avoid that breach at a systemic level by ensuring that there are adequate safeguards against a person being detained in breach of article 3. For reasons set out in the generic submissions

[5] HOM002997
[6] CPS000011

and manifest in the particular case of D11527, that did not happen. He was not in fact released pursuant to any safeguard or indeed by happenchance. There was accordingly a breach of the duty to anticipate article 3 breaches

Breach of Article 3 Procedural Duties: Investigative Duty

6. As well as the undoubted breaches of the substantive rights in article 3, his case is a clear breach of investigative duty. The article 3 investigative duty arises upon credible allegations of article 3 mistreatment. The Home Office has never disputed that there were credible allegations of article 3 mistreatment in his case. But in his case the Home Office position was that the investigation undertaken by the PSU investigation (alongside potential other investigations) were sufficient to discharge the investigative duty. Under the pressure of litigation, it conceded the need for bespoke investigation and established this inquiry as a bespoke PPO investigation. But in doing so, it refused to ensure that the PPO had the powers which the High Court later found were required to discharge the investigative duty. May J in the High Court accepted that the investigative duty had not been discharged in D1527's case in the following circumstances:

    a. No criminal prosecution is being pursued. From the outset D1527 actively pressed for police investigation and prosecution of all the perpetrators of the offences and the attempted cover up of them in letters dated 21 September 2017. Only one officer was interviewed under caution in respect of an assault (Paschali) and no other potential witness appear to have co-operated. D1527 twice sought victim review of the decision, but final confirmation was received from the Crown Prosecution Service ("CPS") on 20 March 2019 that it would not be pursuing any prosecution. He is complaining about the police delay and failure to pass the file to CPS so that even a prosecution for common assault was out of time and statute barred.
    b. The PSU concluded that only the allegations confirmed by the broadcast Panorama footage were substantiated; but failed to consider D1527's full complaints including as to incidents of abuse which were not caught on undercover film; allegations of poor clinical care and psychiatric treatment and of systemic failures unless directed

to do so by the Home Department from which it was supposed to be independent. Its investigation was conducted in private without compulsion and interviews. D1527 was not interviewed, and neither was DSO Paschali or DCO Tulley. DCOs Nathan Ring; and DCOs Francis and Fraser who were dismissed by G4S were all invited to participate but declined to respond. Its investigation was not independent[7] or effective.

c. D1527 appealed to the PPO in July 2018 but the PPO did not respond to his complaints for over two years by which point it regarded his complaint as subsumed into this inquiry (and so he has had to wait over five years).

d. Stephen Shaw conducted a high-level review to which D1527 duly made detailed representations (3/**J1**); **J9-J35)** but Mr Shaw said "it is not within my remit to investigate the circumstances of the specific incidents and allegations at Brook House. I understand these are the subject of other avenues of inquiry".

e. Her Majesty's Inspector of Prisons (HMI) said that it is unable to look into evidence of abuse at Brook House IRC and did not do so.

f. The Independent Monitoring Board did not undertake any investigation of D1527's case or wider systemic matters raised in relation to Brook House.

g. The G4S internal investigation conducted by Kate Lampard did not attempt to establish the facts and circumstances of allegations of article 3 mistreatment and D1527 was not interviewed **3/J86**. MA was not interviewed.

h. D1527's civil claim has not progressed beyond initial pleadings and will probably settle

In short therefore, there has been no determination of what happened to D1527. It is now five years since he was detained. That presents a clear breach of the investigative duty in article 3 to date. The report of the Inquiry has the capacity to ameliorate, but not to remediate that breach, but the inquiry itself was significantly delayed in large part as a result of the actions of the Home Department, the body responsible for abusing him.

7. The purpose of the investigative duty is to ascertain what happened (itself a vindicatory process); to identify the wrongdoing and to put it right. In short, the investigation is designed to serve a remedial function. In D1527's case, not only has there been no investigation, nor has there been any attempt by the Home Office or other wrongdoers to

[7] See DSO 01/2011 at (17).

attempt to remediate the breaches of article 3. Despite D1527's mistreatment the Home Office has refused to grant him anything other than a minimal and precarious form of leave: compliance (following repeated legal challenge) with the bare legal minimum to ensure he is not threatened with removal; not enough to concede any prospect of semi-permanence or a bio-metric residence permit on which he can seek work. Despite his mistreatment by the state and G4S, there has been no offer of compensation, nor even of offer of counselling or support. Generalised apologies were made by some witnesses. But despite the point being made in D1527's opening that nobody has ever directly apologised to D1527, not a single witness took the opportunity to do so and not a single participant in the Inquiry did so through its representatives. Nobody who wronged him has ever written to D1527 or his representatives or asked to meet with him to confirm to him that what happened was wrong or to express any regret or commitment to redress.

8. The absence of remorse sets a benchmark. It is a clear indication of the institutional recalcitrance of the Home Office. It indicates that the likelihood of any change that depends on voluntary or collaborative effort is nil. Vindication will result only from compulsion or political will. There should be no doubt that the Home Office will change only to the extent that it is compelled to do so at a legal or political level.

Inhuman and Degrading Treatment

9. In D1527's case, before this Inquiry started, the Professional Standards Unit (PSU) had already found in its 22 February 2018 report that D1527 was "degraded"[8], reflecting the language of "degrading treatment" in Article 3 ECHR and had made a number of findings that amount to inhuman treatment. It is abundantly clear on the evidence that he was subjected to inhuman and degrading treatment as well as to systems breaches of Article 3. Those breaches are intrinsically connected to the systems failure of the law, policy and safeguards which should have ensured that as a vulnerable young man he was not detained at all; or that he was released expeditiously once wrongly detained; and was cared for while in detention. D1527's case has always been that there was both a systemic and operational failure to identify, protect and monitor him as a vulnerable detainee in breach of the positive duties arising from Article 3 (see *R(HA) Nigeria v SSHD* [2012] EWHC 979 Admin at (70(f)) and that he was detained without ensuring his mental health; history of torture and

[8] CJS001107_0020

suicidality were properly assessed and considered. Such measures as were in place were not used effectively to diagnose and appropriately care and treat his medical condition and its severe deterioration as a result of during the detention. (see *R (MD) v SSHD* [2014] EWHC 2249 (Admin) at [142]).

10. It must be emphasised that this inquiry's Article 3 investigative duty must extend to consideration of the full extent and the gravity of the cumulative effect on D1527 of the whole of the treatment in detention: "The severity of the treatment is a relative question and must be assessed on the individual facts:

> "it depends on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim" (**Kalashnikov** at [95])[9]

11. Even leaving aside the incidents of physical abuse and mistreatment, D1527's treatment as a whole throughout detention was inhuman and degrading. That is obvious having regard to the seven cases in the High Court and Court of Appeal between 2014 and 2016[10] in which it was found that the Home Office's practices in immigration detention breached Article 3 ECHR had been about the way in which the mentally ill are treated.

Credibility of D1527's Evidence

12. D1527's history is set out more fully in his witness statement,[11] his rule 9 response[12] and in the medical reports on his behalf. These are all fully corroborated by documentary records; expert reports; video evidence and testimony from other truthful witnesses including Callum Tulley. He has been careful to express the limits of his personal recollections, conceding for example that he cannot remember the incident of Mr Sanders banging his head on a table despite a finding by the PSU already that that happened and "degraded" him. There has been no substantial challenge to the veracity of his evidence

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[9] *R(S) v SSHD* [2011] EWHC 2120 at [194].
[10] *R(S) v SSHD* [2011] EWHC 2120, *R(BA) v SSHD* [2011] EWHC 2748, *R(HA (Nigeria)) v SSHD* [2012] EWHC 979, *R(D) v SSHD* [2012] EWHC 2501, *R(MD) v SSHD* [2014] EWHC 2249 and *R (Arif) v SSHD* [2014]. In one case *VC v SSHD* the Home Office conceded in 2020 the appeal to the Supreme Court on the basis that the facts disclosed an Article 3 breach.
[11] DL0000144
[12] DL0000209

from the Home Office or any other party. D1527 is a witness of truth and invites the Chair to accept his evidence as true in its entirety.

13. D1527's evidence is "*elaborate and consistent … mentioning the specific elements … credible and reasonably detailed*".[13] The evidence provided by D1527 is very "*clear and detailed*", "*other similar unrebutted facts have been established*", his "*account of mistreatment* [is] *consistent with other account*[s]… [he] *has given* [and] *with other evidence independent of his account*". There is wide-ranging "*evidence… to support* [D1527's] *complaint*[s] *of mistreatment*" of high "*quality*". In relation to D1527's evidence, there are instances where "*rebuttal evidence ought to have existed and does not*" and he invites the Chair to draw appropriate "*inferences… from their absence*".[14]

14. The following key facts are emphasised for the purpose of assessing the Article 3 mistreatment and impact of detention in the inhumane environment at Brook House.

Medication

15. D1527's psychiatric medication was not brought with him on transfer and was thereafter not prescribed for the first 6 days. D1527's psychiatric medication did not arrive following transfer for six days.[15] He repeatedly asked for it. His solicitors asked for it.

Self-harm

16. In the meantime, D1527 having arrived in Brook House on suicide watch, without his medication, without any examination of his mental state, without any consideration of release, and obviously without any qualified doctor making a plan to manage his condition, began to self-harm and attempt suicide. The first record of this appears on 9th April,[16] four days after arrival when he was treated for a cut on his wrist. Self-harm and suicide attempts persisted throughout the detention with Dr Thomas reporting that by the end of May they were near-daily[17]. Methods included D1527 banging his head against walls to the extent that he dented his forehead; cutting himself repeatedly; tearing up bedding or clothes and tying ligatures around his neck. As Dr Basu comments at paragraph 16.9.4 of his report,

[13] 18e, CTI Note on Approach to Findings of Fact under Art 3 ECHR 250322.
[14] 18g, CTI Note on Approach to Findings of Fact under Art 3 ECHR 250322.
[15] CJS001002_0030-0032
[16] Ibid
[17] HOM002997_0064

there was no engagement at Brook House with the reasons for self-harm. The response of the detention centre staff was to try and remove the means of self-harm.[18]. Dr Basu tells us that when that happened he resorted to food refusal as a means of self-harm.

17. It is to be recalled that in *Pretty v. UK* (2002) 35 EHRR 1the ECtHR held at [52] that "The suffering which flows from naturally occurring illness, physical or mental, may be covered by Article 3, where it is, or risks being, exacerbated by treatment, whether flowing from conditions of detention, expulsion or other measures, for which the authorities can be held responsible."

Food and fluid refusal

18. D1527 refused food on multiple days throughout his detention. The first recorded episode began on 19 April 2017 and ran to 27 April (8 days)[19], the second episode began on 30 April and ran through to 7 May (8 days)[20]. A new episode was then recorded again starting on 11 May through to 27 May[21], a total of 17 days. Records of the food refusal make no observation on the cumulative effect of these: that in total he refused food on 33 days in a 38-day stretch.

Physical and verbal abuse and victimisation

19. It is also clear that self-harm was the occasion for mistreatment and abuse by staff which in turn was the occasion for further self-harm. Detention Custody Officer Kalvin Sanders was on observations /suicide watch on D1527 on 24 April 2017 and the DCO later boasted to other officers that he bent back his fingers and banged his head up and down "*on the bounce*"[22]. He says *"It was funny" "Your attention seeking aren't you, you little prick"*[23].

20. The strangulation incident on 25 April at the hands of DCO Paschali similarly was occasioned by his attempts to self-harm with a ligature and then to swallow the battery.

21. Similarly, in the incident on 4 May 2017 where D1527 found himself on the netting he had been refusing food for 5 straight days beforehand and over most of the time since 19 April.

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[18] CPS000011 at 16.9.4
[19] CJS001002_0036-0039
[20] CJS001002_0040-0044
[21] CJS001002_0046-0052
[22] KENCOV1012, V2017050400028, TRN0000096_0002
[23] KENCOV1014 V2017050800017, TRN0000097_0002

He says he felt like there was no point in eating because there was no hope left for him[24]. The 4 May 2017 incident was ultimately de-escalated successfully, only for a full team of DCOs to raid the cell in which he was recovering and to drag him forcefully back to E-wing. This incident is addressed in detail in "Contributory factor 7" in the general submissions.

22. According to the evidence of the psychiatrist, Dr Basu, the assaults and other abusive treatment were followed in each case by exacerbations in D1527's suicidality, self-harm and mental health problems. This cycle of harm is addressed in detail by Dr Paterson in his witness statement at [146-149].[25]

The double binds

23. D1527 describes in his evidence his feeling that he was treated worse than an animal in a zoo.[26] He wanted to die. On 21 April Nurse Karen Churcher told him (entirely incorrectly) because he was self-harming he would stay in Brook House for longer[27]. This is what psychiatrists used to identify as a "double-bind". D1527 describes in his evidence that that made him feel there was no way out. He had no hope and later that day he tried to kill himself.[28]

Suicidality

24. Dr Thomas described how by the time of her visit and assessment on 20th May his suicidality was "severe and acute"[29]. She advised in her report dated 31 May 2017 that in her view the likelihood of a successful suicide attempt in the following three months (she was told that was the likely minimum before he was removed) was high to very high[30]. Her opinion was that failing that, there was a real possibility of a psychotic breakdown[31], as indeed D1527 had predicted himself. The report was sent to the SSHD on 13th May 2017 who paid no heed to it. The only way D1527 was going to make it out was by order of the High Court. When his matter came before the court, the judge looking at his claim for

[24] Paragraph 69, DL0000144_0025
[25] Witness Statement of Dr Brodie Paterson, BHM000045_0035-0037
[26] Paragraph 40, DL0000144_0013
[27] CJS001002_0036
[28] Paragraph 41, DL0000144_0013-0014
[29] Paragraph 207, HOM002997_0073
[30] Paragraph 163, HOM002997_0058
[31] Paragraph 187, HOM002997_0065

judicial review realised immediately how serious it was. He was given an oral hearing within a week and another judge directed his release immediately[32]. The Secretary of State opposed his release on 13th May having still not considered the medical report some two weeks later and asked for another week to read it and to obtain an alternative medical opinion.

Detention of Torture Victims

25. Following persistence by his solicitors in requesting a rule 35 report, D1527 was seen by Dr Oozeerally on 13th April who completed a rule 35(3) report[33]. He noted that D1527 had tried to kill himself a few weeks prior; that he did not regret it, that he had repeated his intention to kill himself to mental health nurses and that he was again on suicide watch (in which he remained until at least 18th April). There was still no rule 35(2) report on his suicidality to the manager and no rule 35(4) report to the Secretary of State. Nonetheless, the rule 35(3) report did accept that he gave a credible account of torture and that he had scarring consistent with his account. The report was sent to the Secretary of State. The Secretary of State concluded that D1527's needs could be managed effectively by the healthcare team in detention[34]. That conclusion was not based on a clinical assessment: there was no psychiatric advice that D1527 was being managed in detention: quite the contrary, there was no assessment of his psychiatric state and no plan for his management at all. The Secretary of State's assumption that his fragile psychology could be managed was also at odds with the whole purpose of the system designed to safeguard torture victims and the wealth of clinical evidence to the contrary.[35] They are recognised as intrinsically vulnerable to re-traumatisation: that should be the principle underpinning of the Secretary of State's statutory Adults at Risk guidance, but it is certainly not applied that way.

Racism and Dehumanisation

26. D1527 was subjected to racism from officers involving denigration of his Islamic faith and denial of a right to visit the mosque. While isolated he was denied his requests for a shower, until eventually, when he was allowed to shower, DCO Paschali opened the shower door and interrupted him when showering.

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[32] HOM000348
[33] CJS001123
[34] HOM000644
[35] See e.g., Witness Statement of Professor Cornelius Katona dated 3 February 2022 at paras 86-87, BHM000030_0040-0041

27. D1527 was subjected to dehumanising insults and treatment. He was sworn at and called derogatory names and we have seen demeaning references made to him acting like "a baby" and sucking on "a dummy" and called a "cock"[36]. We witnessed that after being chillingly threatened that he would be "put to sleep" and throttled by DCO Paschali, he was then demeaned as he fell into a state of terror and panic being called *"you are fucking piece of shit";* and when he does not stop gasping for air he is asked *"are you a man or a mouse?"*[37];

28. The inquiry has heard already how detainee D1618 said he was "treated like an animal", but D1527 says in his statement to this inquiry suggests he was treated worse than an animal:

> "The staff would say to me that I was just playing, that I was just self-harming for attention. The staff at HMP Belmarsh had said the same thing to me when I had self-harmed. This made me feel that no one would take me seriously, like they didn't care whether I lived or died. I felt like animals at a zoo were treated better than I was."[38]

29. The Inquiry has seen in the footage where D1527 is self-harming, just before he is strangled and demeaned, that the officers are taking turns to peer in at him, through the window to the cell and joke about his predicament with "Duracell bunny"[39] jibes. We have heard how on his arrival at Brook House DCO Tulley witnessed another bizarre humiliation ritual where a detainee was standing naked as officers and managers stood around laughing. The man stood shaking, scared and distressed, before being put in a van and taken away to be deported clothed only in boxer shorts as he screamed and kicked at the side of the van.[40]

30. We have seen that when D1527 was on the suicide netting on 4th May, a large part of the population of the detention centre- staff and detainees alike - stand around watching him undergoing a psychotic episode. For many this is entertainment, and they taunt him, one detainee relentlessly singing "I believe I can fly", perhaps goading him to jump. Officers are dismissive, laughing at him for "expressing his feelings". We hear DCO Clayton Fraser

[36] KENCOV1007 – V2017042500020 – TRN0000001_0006
[37] KENCOV1007 – V2017042500021, TRN000002_0007-0010
[38] Paragraph 40, DL0000144_0013
[39] KENCOV1007 – V2017042500020, TRN0000001_0012
[40] Witness Statement of Callum Tulley dated 15 November 2021, INQ000052_0011-0013

laughs that the best way to deal with him is "what Yan did". No doubt a reference to the 25 April incident. It is not so much redolent of a zoo as of the Bethlem lunatic asylum in the seventeenth century.

Removal from Association

31. D1527 says simply that he hated E-wing.[41] He was very frightened of the isolation and the screaming of other detainees, particularly because it left him more vulnerable to abuse by officers. When he asked officers to have a shower, he was denied the right. When he did shower, DCO Paschali came in and interrupt him. When he asked to go to the mosque they responded, "why do you want to go to the fucking mosque[42]". Officers would lock him in his room. On one occasion he was locked in for two days. There was no kettle or television or workshops or diversion of any kind on E-wing and when he asked for a cup of tea he was told "I don't work for you"[43]. When he banged his head on a table, DCO Saunders caught it on the bounce and banged it some more. His fear of E-wing seems to have infected his whole time in detention. He would try and hide the symptoms of self-harm and suicide so as not to be taken there. He would resist when he was taken there and so he would be forcibly dragged there. Each occasion he was taken there was unlawful (see the section of generic submissions on rule 40 and 42).

Denial of Dignity and Religious Rights

32. D1527 was denied his right to go to the Mosque, seemingly in Ramadan. He was subjected to excessive and unlawful use of lock-down procedures in conditions of detention that were degrading and which the High Court has found were incompatible with human dignity and which subjected him to discriminatory treatment in breach of Article 9 and 14 ECHR and the Equality Act 2010[44].

The absence of any fulfilment of duty by any DCO or medical officer

33. Rule 45(2) of the Detention Centre rules imposes a statutory duty on every officer to inform not only the manager but also the Secretary of State promptly of any abuse or impropriety which comes to his knowledge. There is no evidence that any officer in the employ of G4S

[41] DL0000144_0016
[42] Paragraph 92, DL0000144_0039
[43] Paragraph 93, DL000144_0039
[44] *R. (on the application of Hussein) v Secretary of State for the Home Department* [2018] EWHC 213 (Admin)

has ever fulfilled that duty. They certainly did not in D1527's case. Yet let us recall the Home Office commends G4S.

34. This is without a doubt evidence of treatment that is blatantly inhuman and degrading in breach of Article 3 ECHR as either as multiple incidents of mistreatment and/or cumulatively.

Determining whether the treatment as a whole amounted to torture

35. D1527's treatment amounts cumulatively to torture. Paragraph 20 of CTI's note to the Inquiry states that in order to make a finding of torture "it must be deliberate inhuman treatment causing very serious and cruel suffering". That is accepted. However, the gloss at paragraph 21 of the CTI note that torture involves "A very high degree of physical suffering" is too narrow. Acts causing severe *mental* suffering that cause no physical injury can amount to torture: see *Ireland v UK* (2018} 67 E.H.R.R. SE1 and *El-Masri v Macedonia* (2013) 57 E.H.R.R. 25 at [202][45] and *a fortiori* where the mistreatment involves both physical and mental suffering and too a high degree.

36. Ascertaining whether D1527 has been tortured in line with the definition in the Torture Convention involves asking the following six questions:

    a. Should the Chair consider each individual act of abuse in isolation to determine whether it amounts to torture, or consider the combination of abuse over the whole ten-week detention?
    b. Was the pain and suffering inflicted intentionally?
    c. Was there infliction of severe pain or suffering: physical and/or mental?

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[45] The Court held:
"It is true that while he was kept in the hotel, no physical force was used against the applicant. However, the Court reiterates that art.3 does not refer exclusively to the infliction of physical pain but also of mental suffering, which is caused by creating a state of anguish and stress by means other than bodily assault.
104 There is no doubt that the applicant's solitary incarceration in the hotel intimidated him on account of his apprehension as to what would happen to him next and must have caused him emotional and psychological distress. The applicant's prolonged confinement in the hotel left him entirely vulnerable. He undeniably lived in a permanent state of anxiety, owing to his uncertainty about his fate during the interrogation sessions to which he was subjected."

d. Was pain or suffering inflicted for the purpose of intimidating or coercing him or was it based on discrimination of any kind?

e. Was pain or suffering inflicted by a public official?

f. Was the pain and suffering inherent in or incidental to a lawful sanction?

(a) Acts in isolation or as a whole?

37. Assessing whether a detainee was subject to torture (like inhuman or degrading) treatment involves assessing the treatment in detention as a whole: in this case over the full ten weeks detention. Whether treatment amounted to torture cannot be properly answered on consideration of a series of discrete acts artificially dislocated from one another and likely to omit consideration of the cumulative effects. This approach is supported by legal authority. In *Selmouni v France* (2000} 29 E.H.R.R. 403 the allegation was of torture in circumstances in which Mr Selmouni was subjected to a *series* of assaults and victimised in a *series* of bullying acts by police (see [103]). At [104] the ECtHR noted that the events were not confined to any one period of police custody and held at [105] "the Court is satisfied that the physical and mental violence, ***considered as a whole***, committed against the applicant's person caused "severe" pain and suffering and was particularly serious and cruel. Such conduct must be regarded as acts of torture for the purposes of Article 3 of the Convention." Similarly, in *Ireland v UK* (2018} 67 E.H.R.R. SE1 the ECtHR considered whether five disorientation techniques used by the Royal Ulster Constabulary in interrogations consisting of wall-standing, hooding, exposure to noise, sleep deprivation and deprivation of food and drink amounted to torture. The Commission's opinion is recorded at paragraph 133 of the Court's determination as being that considered *separately* acts such as deprivation of sleep or restrictions on diet might not as such be regarded as treatment contravening Article 3, but that in combination the practices amounted to a breach of Article 3. The Court conducted its inquiry on the basis of the *in-combination* effects and the *overall impact* of being detained. Consideration of in-combination impacts can also be seen in the Court's assessment of whether the 3-day extraordinary rendition in *Hajrulahu v Macedonia* (2018) 67 E.H.R.R. 23 at [100]-[103] amounted to torture.

38. That said, turning to D1527's case, the Chair *is* asked to determine that the incidents on 25th April 2017 and 4th May against the background of his inhuman treatment, amounted to torture even when taken in isolation. Professor Katona's evidence (is that "*On viewing the strangulation incident involving D1527... the mistreatment and threat to kill appears to*

have had a profound emotional reaction and psychological consequences for D1527 that induced an intensity of suffering sufficient from the footage of it, to cross the very high threshold to constitute torture[46]". He explains that

> "*The Istanbul Protocol [at 235] identifies a number of factors that are relevant to the assessment of the psychological impact of deliberate ill-treatment that are taken into account when documenting torture. These include whether its aim was to reduce an individual to a position of extreme helplessness and distress leading to a deterioration of cognitive, emotional and behavioural functions. It is action which strives not only to incapacitate a victim physically, but also psychologically, to dehumanise and break the will of the person."*[47]

Prof Katona's observations, based as they are on viewing the footage, which was available to him, can be read across to the 4th May as well (in relation to which more detailed evidence is available to the inquiry). It is clear, for the reasons set out below, that the other components of torture are also encompassed in each act and when assessed by reference to his acute vulnerability and the gravity of the impact upon him.

39. However, if, contrary to D1527's primary position, the Chair considers that taken alone those incidents of mistreatment do not amount to torture, it falls to consider whether the cumulative and in-combination effects of the whole detention amount to torture, just as in the cases of *Ireland, Selmouni* and *El-Masri* cited above. D1527's experience of torture involved a combination of both acts of deliberate violent physical mistreatment and deliberate psychological abuse on the one hand but also highly relevant non-intentional factors. Those included being falsely imprisoned; in inhumane conditions of detention which were inappropriate to and unable to provide appropriate care and adequate treatment for his mental illness and vulnerability which severally deteriorated; his self-harm, food and fluid refusal; and his suicidality. Instead, he was "managed" by wholly inappropriate and inadequate prison-based methods of ACDT repeated segregation occasioned by use of excessive force which only served to further exacerbate his mental illness. Those factors

[46] First Witness Statement of Professor Cornelius Katona dated 3 February 2022, BHM000030_0025 at paragraph 50
[47] Ibid

set the context for and aggravate the severity and impact of the individual acts of deliberate violence.

(b) Was there an act or acts which were intentionally inflicted[48]?

40. The primary act in question is the detention as a whole. The detention as a whole was undoubtedly a deliberate act by the state and the simple answer to the first question posed by the definition of torture is "yes, the detention was intentionally inflicted" throughout.

41. There were also a series of individual deliberate acts. There were at least three deliberate acts of unlawful physical violence against him on 24th April 25th April and 4th May.

    a. As already found by the Professional Standards Unit (paragraph 7.20), on 24th April Kalvin Sanders was likely to have "degraded"[49] D1527 in that, while watching D1527 who had attempted suicide and was on constant watch observed him banging his own head against a table, "obviously went out to make sure no one was watching" and caught his head "on the bounce" banged it on the table, held it there, and smashed it back into the table. He also boasted of bending his fingers back. In fact, he bragged about his abuse of "the attention seeking… little prick"[50] on two separate occasions, contributing to the culture of "common gossip" as DCO Fraser called it around the victimisation of D1527[51].

    b. The following day, again, as found by the PSU, on 25th April, the use of force filmed by Mr Tulley involving him, Mr Paschali, Clayton Fraser, Charlie Francis and Jo Buss breached article 3. The so-called 'choke hold' was evidently intentional, and that has never been denied. Indeed, it was accompanied by threats such as "I'm going to put you to sleep you fucking piece of shit" and other insults by onlookers such as "are you a man or a mouse"; or mocking him for being a child or a baby as Nathan Ring did[52]. Mr Paschali described his use of the choke hold as a response to being "frustrated" by D1527's behaviour. Even the concocted explanation by Mr

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[48] The principal difference between a finding of torture and one of inhuman treatment or degrading treatment is that the particular stigma of that finding attaches only to deliberate mistreatment causing very serious and cruel suffering. There is a purposive element in torture- it requires according to the definition in the Torture Convention that there be "intimidation" or "discrimination" which is not applicable to a finding of "inhuman treatment"[48].

[49] CJS001107_0020
[50] KENCOV1014 V2017050800017, TRN0000097_0002
[51] Clayton Fraser 28 February 2022, 100/5
[52] Nathan Ring- 25 February 2022, 81

Paschali that he was seeking to "gain compliance"- is itself an admission of intentionally using an unauthorised restraint technique[53]. There is no doubt that the acts were intentional. Mr Collier's view was properly that Mr Paschali's actions were deliberate[54]. That experience was then followed by maintaining him unlawfully and deliberately in isolation.

c. On 4th May D1527 had endured a psychotic episode on the suicide netting in which he was mocked and taunted by officers and detainees alike. Half an hour later, he had calmed down and DCM Dix came to the room with DCOs Shaukat, Yates Bromley where D1527 was sitting. The records show[55] that the intention was clearly a pre-meditated one to remove him from association and was clearly unlawful "I spoke to D1527 about his behaviour and the consequences of his actions"[56]. In the terms of the UOF report:

"*Upon arrival I saw detainee D1527 on the first-floor netting ... I explained* ***due to his behaviour*** *he would* ***need to comply*** *and go to the CSU on rule 40 he said "No" I explained if he refused then potentially as a consequence of his actions force could be used...*"[57]

Mr Dix's oral evidence was

"*At the time, obviously when someone is on the netting, then obviously the procedure was to get them to go to rule 40... I'm not sure if it was a policy. It was, you know due to the fact of the level of disruption caused on the netting and the wing.*[58]". The process of physically removing him to E Wing involved significant levels of violence. It was obviously deliberate and as explained in generic submissions, was clearly unlawful.

d. On arrival on E-Wing, D1527 was then subjected to further deliberate mistreatment. He was subjected to a full strip search which in and of itself breached G4S policy (a full search was reserved only for cases where evidence or intelligence that a detainee may be attempting to hide an illicit item). UOF 114.17 BWC B captures

[53] Yan Paschali 24 February 2022, 88
[54] Jon Collier report to Sussex Police dated 6 February 2018, paragraph 12, SXP000133_0004
[55] CJS001026
[56] HOM000251_0002
[57] CJS005530_0008
[58] Steve Dix 9 March 2022, 56/1-12

footage at the point D1527 has already been relocated to E Wing and is in his cell pending a full search. DCM (Dix) is then heard to state:

"*When we leave the room someone's going to watch you, ok. If we leave this room and you start self-harming like you've done before and obviously like you do then obviously that, your behaviour dictates what happens in your future, ok? No one wants that, ok. If you stay calm, [inaudible], but I told you, the way you've gone about things, jumping on the netting, is not the right way, you should've spoken to a manager, but your problem is that you go from ok to [lose the plot] in 2 or 3 seconds and that's what has landed you in trouble.*"

He then asks for D1527's trousers – they tell him they will give them to him outside. "*Listen, once I'm happy you're not going to use your cord of your trousers to self-harm, you can have your trousers back, ok*?" In the A footage we see officers guiding him down the stairs cuffed. Again, an officer says:

"*You'll do what I tell you to do, ok, and then we will let go of everything, ok. If you start to do what you did last time, [I hear about you] self-harming, [the old] constant, then obviously your [behaviour] will dictate how long you stay there for, makes sense*?".

42. There is no doubt that this outlawry on 4th May under the guise of rule 40 was planned and intentional. Mr Dix admitted as much in his written report and oral evidence.[59] The footage confirms the intention is to punish or impose some perverted sense of discipline on him for his self-harming activities.[60]

43. He was also subject to deliberate use of removal from association. It is apparent from the Home Office correspondence of 28 March 2022[61] and G4S correspondence of 22 March 2022[62] that this was also unlawful (see further below).

44. D1527 was also the subject of numerous recorded deliberate insults, mocking and humiliation through names and verbal abuse. Those that were recorded have been oft

[59] E.g., see Steve Dix 9 March 2022, 64/16-18 and 65/16-17 where accepts he should have turned on BWC as force was foreseeable and was thus a planned incident
[60] UOF 114.17 BWC B
[61] HOM0332161
[62] CJS0074121

explored and don't need to be repeated. It is an obvious inference that there would have been much more verbal abuse than that which happened to be caught on camera: DCO Tulley was not following D1527 around for ten weeks.

45. He was subject to deliberate psychological torment for example in Mr Dix telling him the extent of time in isolation depended on his behaviour; Nurse Karen Churcher tormenting him by telling him he was being detained longer because he was self-harming[63]; Racist insults and denial of religious rights and deliberate acts of concealment of the events in the paperwork for all three known physical acts of violence.

(c) Did the acts inflict (a) severe pain or (b) severe suffering whether physical or mental?

46. The assessment of the level of severity is relative: it depends on all the circumstances of the case in combination such as the duration of the treatment, its physical or mental effects and the age and mental health of the victim *Ireland v UK (*2018) E.H.R.R. SE1 at [162][64].

47. The effect of the accumulation of suffering in making an assessment whether it meets the "severe" threshold is critical. For example, D1527 does not suggest that taken in isolation the events of 21st April or 24th April amount to torture, albeit they amount to inhuman and degrading treatment. He gives evidence as to how Nurse Karen Churcher telling him- wholly without justification- on 21 April that his self-harming behaviour would lead to him being detained longer had made him feel there was no hope and later that day he tried to kill himself. Three days later, on 24th April he had by then been refusing food for 5 days. The medical evidence says that may have been a means of self-harm when other means were denied him.

48. On 24 April he attempted suicide using a ligature[65]. Following that, he was removed from association without proper legal authority and was put on constant watch where his head was banged against a table by the officer responsible for constant watch (DCO Calvin Sanders). As Dr Hard explained in evidence being put in isolation would then have

[63] CJS001002_0036
[64] *Ireland v UK (*2018) E.H.R.R. SE1 at [162]
[65] CJS005538

exacerbated and increased any detainee's thoughts of self-harm and suicide, particularly where accompanied by abuse of this kind.[66]

49. While all of what happened on 21st or 24th April amounted taken alone to inhuman treatment, it is accepted that they did not amount to torture.

50. However, those experiences on 21st and 24th April are highly relevant to assessing whether his treatment cumulatively and in-combination amounted to torture. The suicide attempts he made on 25th April were not some random isolated event, they followed at least two preceding suicide attempts and were triggered by and consequent upon the E-Wing isolation which had exacerbated his suicidality. On this day, the same pattern followed. Further verbal abuse; then extreme physical abuse; and then further humiliation and isolation in E-wing, further exacerbating his suicidality and sense of powerlessness. His only recourse at this point was food refusal, which he deployed.

51. By the end of the day on 25th April 2017, D1527 had been detained for 20 days in circumstances which cumulatively and as a whole was of a severity in its content and impact amounted to torture.

52. By 4th May, when Mr Dix inflicted the unlawful punishment for self-harming and jumping on netting "his behaviour" by violently removing him to E-wing, the patterns of terrorisation had been laid in place. It can be seen that to understand the severity of suffering for D1527 it is artificial to treat this incident in isolation. Being abused on previous occasions in E-Wing was obviously forefront in the mind of D1527. Indeed, it was his terror of officers dragging him there after an altercation where he was refused permission to eat which led him to jump on the netting. The Inquiry will recall that he had on 2nd May 2017 been diagnosed within the detention centre with PTSD[67]- perhaps unsurprisingly in light of what we now know was being done to him. By 4 May he had been on food refusal for days; he had been jeered at and taunted on the suicide netting. It was in this context that he was then violently removed to isolation. He was gratuitously subjected to what Mr Collier confirmed were unlawful and unjustified pain-inducing techniques and he was put in

[66] Dr Jake Hard 28 March 2022, 165/1-23
[67] CJS001002_0042

isolation and strip searched[68]. He also observed that in deploying those techniques no proper account was taken of his mental health. All of that is obviously horrendous and capable of amounting to torture on its own, but what marks the severity of the physical and mental suffering apart is that the incidents on the 4th May came hard on the heels of the preceding 30 days of mistreatment in which the terror of the arbitrary power of the DCOs and his inability to escape it had been established. The 4th May was enacted as a living flashback, a reiteration and repeat of the abuse of previous weeks. It could not have been better designed to terrorise him, to exacerbate his suicidality, self-harm and PTSD.

53. The repeated nature and duration of the psychological terrorisation cannot be ignored in assessing the severity of the impact on D1527 and whether it amounted to torture. Indeed, on the late disclosed footage an Mr Dix is heard to say to D1527 as he is taken to E-Wing that "*obviously your [behaviour] will dictate how long you stay there for, makes sense*?[69]" it is impossible not to hear the echo of the double-bind Karen Churcher had imposed on him two weeks earlier on 21 April in telling him his own self harm would cause him to be detained longer. It makes plain that segregation was being used impermissibly as punishment. The cycle of despair where self-harm occasioned abuse that occasioned more self-harm was both tortuous and torturous.

54. So, in assessing whether the severity of harm was such as to amount to torture, the Inquiry looks to his subjective experience and that involves looking at the totality of the treatment as a whole.

55. The <u>physical</u> suffering of the head banging, the food refusal; the multiple attempts at self-harm and suicide; being pinned to the ground; choked with terrifying restriction of breathing; repeated forced removals from association. The mental suffering included the terror witnessed in his panic on video that he might die, engendered by a threat to put him to sleep and the physical terror of being unable to breathe; the humiliation of being called a "piece of shit" "a baby" a mouse" etc.; the humiliation and terror of being removed from association at the hands of officers who could abuse him with impunity once he was on E-wing and who were willing to lawlessly conspire to obscure their actions. He was denied

[68] <u>Jon Collier 30 March 2022, 135/ 10-25</u>
[69] UOF 114.17 BWC A/B

the right to go the mosque; the right to shower; he was stigmatised by staff as a sex offender by staff. He was bullied and humiliated: victimisation of him became part of the staff culture as Clayton Fraser and Kalvin Sanders testified. To add to that was a total lack of care, treatment and competence by medical staff. And an apparent disregard of any sound legal process to safeguard him. He was young; spoke little English, of low mental capability to understand and defend himself and with prior experiences of trauma. Ass the footage shows he was acutely vulnerable.

56. By 25th April and a fortiori by 4th May he had been subject to torture.

57. The Inquiry must also have regard to what happened in the following five weeks. By the time he was seen by Dr Thomas on 21 May, she described in her report of 31 May near-daily attempts at suicide with what she regarded as a high likelihood of success[70]. He continued to refuse food. His sense of powerlessness multiplied when even confronted with this evidence the Home Office refused to release him and resisted High Court proceedings, drawing out the mistreatment for another two weeks.

58. It is necessary to have regard the whole of detention and the system failure involved because his suffering has to be understood in the context overall of a failure to treat him as a vulnerable detainee who should not have been detained at all.

(d) Was the mistreatment inflicted for the purpose of intimidating or coercing him or was it based on discrimination of any kind?

59. The unlawful detention was designed to coerce him to leave the country. The acts of violence once detained were obviously inflicted to intimidate or coerce D1527. The use of the threat "I am going to fucking put you to sleep you fucking piece of shit" was designed to intimidate D1527. The intimidatory impact it had in inducing a severe and prolonged panic attack can be witnessed on the footage. Mr Paschali's own defence, that he adopted the choke hold- an unlawful restraint to "gain compliance" is – even on his account, intimidatory.

[70] HOM002997_0064

60. There was also coercion: it was designed to "gain compliance" to stop him being "a baby" and from being "a mouse": that is to say it was the officers' way of trying to coerce him into not behaving in a self-harming and suicidal way emanating from his mental illness.

61. Similarly, as set out already, the use of removal from association on 4th May can be seen to be riddled with the language of officers, particularly DCM Dix setting up their own ad hoc laws with which he was told he must comply. He was told that unless he would stop self-harming or behaving aberrantly he would spend longer in isolation. All of these threats and exertions of force were evidently being used as forms of coercion and intimidation.

62. Of particular significance is the deliberate infliction of pain as a purported authorised method of control and restraint but which was unlawful and inflicted as part of intimidating and controlling D1527. The use of a pain-inducing technique by officers in the transfer of D1527 to E-wing on 4 May 2017 was found to be entirely unjustified and disproportionate by Jon Collier in his live evidence on 30 March 2022.[71] Dr Paterson has addressed the inappropriate use of pain inducing techniques generally but specifically in respect of vulnerable people at [36-37].[72]

(e) Was the treatment inflicted by public officials?

63. There is no issue of the impact of detainees on D1527: all of the wrongs were from Home Office; medical and G4S officials all of whom were public officials.

(f) Was the pain and suffering inherent or incidental to a lawful sanction?

64. No. The evidence is clear there was no lawful sanction for any of this. D1527 was not lawfully detained (and as to the relevance of that see for example *R (S) v SSHD (supra)* at para 209(iii)). He should not have been detained at all. Once detained he should have been released within 48 hours pursuant to the proper operation of the rule 34 and 35 safeguard, but the complete failure of that system meant he was not. The Inquiry does not have to speculate that properly applying the law he should have been released: that was precisely the view to which the High Court came on 13 June 2017 even on the limited evidence available to it.

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[71] Jonathan Collier 30 March 2022, 135/2-25, 136/1-8
[72] BHM000045_0008-0008

65. That absence of lawful authority for the trespass to the person in detention means that none of the imprisonment, none of the use of force was incidental to a lawful sanction. Further, as result of Home Office correspondence of 28 March 2022[73] and G4S of 22 March 2022[74] on the subject of rule 40 removal from association it is clear that quite apart from the lawfulness of any of the detention, the repeated use of rule 40- a feature which D1527 describes as of particular horror to him- was also not lawfully authorised. The correspondence confirms and clarifies that rule 40 and 42 could be authorised:
    a. by the Secretary of State including her delegate (Paul Gasson).
    b. By the manager: Ben Saunders.

66. Dr Hard was in any event of the view that quite apart from the lack of personal authority for removal from association, it was routinely not used for the purposes for which it could legitimately be deployed either saying "*it seems to be done for the convenience of the staff and not for the benefit of the detained person.*[75]" He goes on to note: "*it didn't appear to have a finite or understood purpose to me*"[76]

67. The lack of proper authority- indeed the outright misuse of removal from association on 4th May and the humiliation of the subsequent strip search is set out in the generic submission in Causal Factor 3 (Misuse of Rule 40) in further detail.

68. Not surprisingly Mr Collier has found that the use of force on 24th and 25th April were not lawful but were flagrantly unlawful.[77]

Conclusion on Article 3 in D1527's Case

69. For these reasons, the Inquiry is invited to find that individual incidents and the treatment as a whole met the severity and the conditions for a finding that D1527 was tortured. Alternatively, he was subject to gravest forms of inhuman and degrading treatment in breach of Article 3 ECHR. He was also subject to breach of the investigative duty under article 3 and to a breach of the duty to obviate and anticipate harm.

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[73] HOM0332160
[74] CJS0074121
[75] Dr Jake Hard 28 March 2022, 66/13-15
[76] Ibid, 77/3-7
[77] Jonathan Collier 30 March 2022, 19/7- 29/15

The Causes of Mistreatment of D1527

70. Each of the Generic Causes of the mistreatment and inhumanity seen in Brook House is at work in D1527's case.

Institutional Causes- Failure of Detention Policy – not Removable

71. D1527 should not have found himself being detained. The institutional reason he ended up in detention was that he had been held on remand (he served no sentence) and that the Home Office almost automatically maintains detention for immigration purposes in the case of those foreigners who end up in prison: that is part of the hostile environment. He has described in evidence how difficult he found it in prison, and his solicitors sought to have him moved to immigration detention.

72. There was no prospect of D1527 being removed in a reasonable period of time: At no point in his detention was a travel document prepared for his removal to another country. Yet he was detained for three months in total, two of them at Brook House. The detention was a pointless exercise that achieved nothing in terms of maintaining effective immigration control.

Failures to Identify Vulnerable Detainees; And Failures in Clinical Care

73. Almost all of what happened to D1527 could and would have been avoided if the legal requirements of the DCR 2001, particularly rules 34, 35 and the Adults At Risk policy had been observed because they would have ensured he was released.

74. Over the two decades of large-scale immigration detention there have been literally dozens of occasions when the failure of the Home Office to comply with the law- particularly rules 34 and 35 DCR 2001 and Article 3 ECHR have been emphasised by the courts both in individual cases and on a systemic level. A list of all the relevant cases, with a summary of the findings, has previously been submitted to the Inquiry and is attached as an appendix to this Closing Statement. Criticisms of institutional failing in the system began in the High Court and Court of Appeal in 2006 in the case of *R (DK) v SSHD* (sometimes called *HK Turkey*) and has been reiterated many times since. The evidence of Home Office institutional deafness, indifference and recalcitrance was embodied in the evidence of

Philip Schoenenberger who, despite being named and shamed by the High Court as specifically responsible for callous indifference in a High Court case finding Article 3 breaches, in evidence wore an expression of astonishment, and claimed to have had no knowledge of the judgment or memory of the cases.[78]

75. If the Home Office had operated the immigration detention system as it is legally required to do, then D1527 would not have been detained. Having been transferred to Brook House if the system had operated properly, he would have been medically examined and a report identifying him as someone for whom detention was likely to be injurious on grounds of vulnerability, particularly mental illness; suicide risk; and as a torture victim[79]. would have made its way to the Secretary of State within a day of him being detained. The Secretary of State- if she had properly operated a system for releasing vulnerable detainees and applied her policies- would have released him. It is these systemic failure and disdain for the rule of law of the Home Office and its contractors that allowed these events to happen.

76. As to the failures in clinical care, the evidence generally and in D1527's case in this regard is nothing short of extraordinary. The evidence given by Dr Chaudhary[80] and Dr Oozeerally[81] stands out for its arrogance and insouciant disregard of the laws and policies which directs their practice. The evidence of Karen Churcher stands out for its deep concessions as to D1527's treatment.[82] In short, from the day he was detained until the day he was released there was cause for concern and the need to prepare reports under rules 35(1); (2) or (3) and every day he should have been referred for expeditious consideration of release.

77. Before he was detained in Brook House D1527 had a history of mental health problems including having been hospitalised after a suicide attempt. Immediately before he was detained by the Home Office he had been held on remand in HMP Belmarsh which was also a very difficult experience. The National Offender Management Service had undertaken an assessment which recognised him as a vulnerable young man (at the time he

[78] Philip Schoenenberger 23 March 2022, 65/9-25, 66/1-22
[79] See Dr Basu CPS000011 at 5.1.2
[80] Dr Saaed Chaudhary 11 March 2022
[81] E.g. disregard of Rule 35 and wrongful claim that Part C was an adequate substitute- Dr Hussein Oozeerally 11 March 2022, 32/8-25
[82] Karen Churcher 10 March 2022, 15-35

was 17 by his account, though deemed to be 19 by the Home Office). NOMS assessed his likelihood of reoffending as low. When the charges came to trial he was advised to plead guilty to two minor offences because his lawyers foresaw he would not receive a custodial sentence. He duly pleaded as advised and on 9 March 2017 was sentenced to a community punishment. He believed he would be released from HMP Belmarsh at that moment.

78. However, instead, the Secretary of State directed he should remain in prison, detained indefinitely under immigration powers. D1527 fell into despair. He found the experience very difficult to deal with and his solicitors advocated to the Secretary of State that he should be transferred to what should have been the more relaxed and sensitive regime of an immigration removal centre. After four weeks in Belmarsh he was transferred to Brook House - it would appear late at night on 4th April, treated as 5th April in some of his admission documentation.

79. Given that upon transfer to Brook House D1527 was already on ACCT (suicide watch), what should, according to the law have happened was:

    (i) A physical and mental examination within 24 hours (rule 34(1)).
    (ii) A report by a general practitioner to the Manager on D1527's suicidality (rule 35(2)). In fact had an examination been undertaken, a report would also have been required under rule 35(3) in his case (torture victim).
    (iii) A report by the Manager to the Secretary of State (rule 35(4)).
    (iv) Consideration within two days, applying the criteria in the Adults at Risk policy of whether to maintain detention in light of a GP's assessment of his suicide risk (and in this case his history of torture), the likely duration of detention and all other factors.
    (v) Release.

80. That legal requirement that there be a physical and mental examination within 24 hours has applied to the detention of every detainee in detention centres over the past 20 years. An examination of the litigation history and of the various independent reports of people such as Stephen Shaw will show the Inquiry that the Home Office has repeatedly failed to make adequate provision, resources and to enforce it. Its contractors have more often than not

been blind to its existence and deaf to criticism of its failure to implement the system (see the attached table of rule 35 case law).

81. Although a physical and mental medical examination by a GP should have been automatic on admission, aware that the Home Office has never regarded that law as a priority (in fact the evidence shows the position was far worse than that), D1527's solicitors wrote to the Secretary of State on 5th April[83] – the day D1527 was admitted to Brook House - requesting that there be a medical examination under Rule 34 DCR 2001.

82. Yet despite the Rule 34 obligation, despite the correspondence from D1527's solicitors, and despite – even more alarmingly- the fact that when D1527 arrived in detention he was on suicide and self-harm watch[84], D1527's physical and mental health was not examined by a medical practitioner within 24 hours or at all. On the contrary, the Secretary of State, apparently in complete ignorance of her legal duties, wrote back to D1527's solicitors on 5 April 2017[85] turning down the entreaty to conduct a medical examination and telling them that the onus was on their client to raise any concerns he had with staff at the detention centre. That notion seems to have been an enduring one because it was an argument made by the Home Office but and rejected by Mr Justice Davis in 2006 in the case *(HK Turkey) v SSHD* [2006] EWHC 980 (Admin) at paragraph 53.

83. The very next day- 6th April - his solicitors wrote again[86] pointing out to the Secretary of State her obligations under the Adults at Risk policy and enclosing a report from a psychotherapist[87] who had previously treated D1527 in the community and which explained that D1527 was a very vulnerable young man immensely troubled by mental health issues. His solicitors again requested that a medical assessment be undertaken of D1527's vulnerability. Still no examination was undertaken.

84. On that day, 6th April, the Secretary of State reviewed the detention of D1527[88]. It was decided to maintain detention. In taking that decision no proper consideration was given to

[83] HOM000101_0005
[84] CJS000961
[85] HOM000101_0002
[86] HOM000345
[87] HOM000345_0006-0007
[88] HOM000572

the evidence of his vulnerability, his mental health issues, his suicidality or his history of torture.

85. The legal safeguards under rules 33 to 35 of the Detention Centre rules were designed to ensure that the suicidal, the mentally ill and the victims of torture should not ordinarily be detained. They were ignored. There is no suggestion in the files that their full effect was even understood by medical staff or the Secretary of State.

86. Thereafter, in the two months D1527 was detained, and despite multiple suicide attempts and many periods on suicide watch, the rule 35 DCR 2001 process was never fulfilled. In fact, in 2017 as a whole there were only 10 reports pursuant to rule 35(2)) across the whole detention estate- see *IS Bangladesh v SSHD* [2019] EWHC 2700 (Admin) at para 194 and the freedom of information requests referred to therein. Furthermore, there was not a single rule 35(2) report prepared at Brook House in 2017 and indeed right up to 2021.[89] Because there was never a GP's report, the Manager never wrote to the Secretary of State, the Secretary of State never took any such report into account in deciding to maintain detention. Even when D1527's solicitors engaged an expert to produce a detailed psychiatric report, that was not considered in connection with authorising detention either.

87. If these Rules had been observed along with the requirements of the operating standards, then the likelihood is that, considering D1527's detention against the Adults at Risk policy it would have been apparent that he met the definition of an "Adult at Risk" (AAR) within the meaning of the Statutory Guidance issued under s 59 of the Immigration Act 2016 and the SSHD's policy in Chapter 55B of the Enforcement Instructions and Guidance. He would not have been detained beyond an initial 48-hour period: 24 hours to examine him and ascertain that he was suicidal and credibly a torture victim, and a further 24 hours to feed that back to the Secretary of State, for the Secretary of State to take that into account[90].

88. So, there is a simple point that if the system had operated as it should in the first 48 hours as parliament intended when it established the rules, we would not be here. However, it may also be said that if at <u>any</u> point during his detention, the system had operated as it

[89] Annex 12 to Nathan Ward's witness statement and starts at DL0000140_0156 and specifically up to 2021 at DL0000140_0156, 0175-0180.
[90] See *HK (Turkey) [2006] 980 (Admin)* and *B v SSHD* 2008 EWHC 364 (Admin)- Kenneth Parker

should, the safeguard of the Adults At Risk policy and the safeguards of the Rules should have ensured his prompt release.

89. What ensued instead of the release of D1527 is a lesson in why the safeguard of rule 34(1) was prescribed by parliament. It is also a lesson in how egregious it is that the Home Office by 2017 had still not secured compliance with the DCRs.

90. A year before D1527 was detained, Stephen Shaw had in his January 2016 report looked at the Rule 34 and Rule 35 procedures and noted that they were intended to be a 'key' safeguard in ensuring that vulnerabilities were identified in detainees[91] but that it was 'abundantly clear' that Rule 35 was not fit for purpose and was failing 'to protect vulnerable people who find themselves in detention', in large part because the Home Office themselves did not have sufficient faith in the system[92]. One of the 64 recommendations that Mr Shaw made to the SSHD to improve the protection of vulnerable detainees was to immediately consider replacing the Rule 35 mechanism and to consider the use of doctors who are independent of the IRC system[93].

91. But it was not just Stephen Shaw who had warned of the dysfunctionality of the Rule 34 and 35 safeguard. There had been multiple warnings. This is set out in the evidence of Medical Justice[94], in **Annex 4** to the Duncan Lewis closing submissions which contains a history of court judgments, and independent reviews of the detention system.

92. That he was not released despite ceaseless effort by his lawyers to draw his situation to the attention of the Home Office; and to the medical services within detention; and despite a comprehensive medical report from Dr Thomas[95] detailing the state of his plight and despite a judicial review claim in the High Court being threatened then issued and even going to a hearing in court, demonstrates the level of institutional failure which this inquiry is tasked to remediate.

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[91] Page 100, Paragraph 4.92 of the Report – INQ000060_0102
[92] Page 106, Paragraph 4.118 ibid. – INQ000060_0108
[93] Recommendation 21, page 194. – INQ000060_0196
[94] See First Witness Statement of Theresa Schleicher at paras 45-71, BHM000032_0014-0022
[95] HOM002997

93. D1527 therefore emphasises the following requests:

    a. The Inquiry needs to make interim recommendations urgently. As the Chair has observed there are people in detention now subject to the same system failures and neglect of the key safeguards in the DCR 2001 with which this inquiry is concerned.

    b. On this, the fifth 'anniversary' of his detention in Brook House, there has been no direct apology; no compensation and no formal recognition of wrongdoing by any wrongdoer to D1527. The Chair is asked to recommend the Secretary of State personally apologise. That might offer some form of psychological restorative.

    c. The Chair is asked to acknowledge to D1527 that he is not a "piece of shit", but a human being entitled to dignity as such. That he was subject to torture is a stigma which should lie against the Home Department as a spur for reform.

94. D1527 has borne with these processes in formidably difficult personal circumstances and with a significant toll on both his mental health and on his ability to progress with his life. The inquiry should be in no doubt as to how hard it has been for D1527. He expresses his hope that in turn this Inquiry too will be courageous and take in its report what Professor Bosworth describes at paragraph 2.27 of her report as this opportunity for a "bold response".[96]

3 May 2022

[96] Dr Mary Bosworth, INQ000064_0011 Paras 2.27