IN THE BROOK HOUSE INQUIRY

INDIVIDUAL CLOSING STATEMENT ON BEHALF OF D1914

Introduction

1. D1914 is a Romanian national who was detained for four months in Brook House Immigration Removal Centre.

2. The Inquiry is asked to find that as a whole his detention in Brook House constituted inhuman treatment or degrading treatment; alternatively, that various incidents amounted to such treatment and that in his case too systemic duties to anticipate and prevent such treatment were breached, as were investigative duties in Article 3 ECHR thereafter.

Credibility of D1527's Evidence

3. D1527's history is set out more fully in the following documents to which the Inquiry is invited to have particular regard in the context of all the evidence:
    a. His witness statement[1]
    b. Annex to his witness statement[2]
    c. His rule 9 response[3]
    d. Use of Force Incident 27 May[4]
    e. Use of Force documentation[5]

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[1] DL0000229.
[2] DL0000230 (please note that this document has not yet been adduced to the Inquiry – we include it in the list of documents we request be adduced).
[3] DL0000229_0074-94.
[4] TRN0000014, KENCOV1025, V2017052700020.
[5] CJS005651.

f. Fitness to Fly documents[6]

g. Rule 35 report[7]

h. Dr Hard's report[8]

i. Mr Collier's Report[9]

In addition, a number of documents do not appear to have been specifically adduced and these are set out at the end of this document, with a request that they be so adduced.

4. D1914's witness statement was meticulously prepared and references a wealth of documentary records and video evidence which corroborate his account. His account is also consistent with testimony from other truthful witnesses including Callum Tulley.[10] There has been no substantial challenge to the veracity of his evidence from the Home Office or any other party. D1914 is a witness of truth and invites the Chair to accept his evidence as true in its entirety.

5. D1914's evidence is "*elaborate and consistent … mentioning the specific elements … credible and reasonably detailed*".[11] The evidence provided by D1914 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* [D1914's] *complaint*[s] *of mistreatment*" of high "*quality*". In relation to D1914'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*".[12]

6. 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.

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[6] HOM010972; CJS000990 (please note that this document has not yet been adduced to the Inquiry – we include it in the list of documents we request be adduced).
[7] CJS001024.
[8] INQ000075, paras 5.321-323.
[9] INQ000111.
[10] Callum Tulley, 2 December 2021, 66/5 – 77/1.
[11] 18e, CTI Note on Approach to Findings of Fact under Art 3 ECHR 250322.
[12] 18g, CTI Note on Approach to Findings of Fact under Art 3 ECHR 250322.

7. D1914 should never have been detained because before he was detained he succeeded in an appeal against extradition on the basis that it would breach his right to respect for his family life to deport him.[13] He is an EU national. At the time of his detention he had a partner in the UK, and a positive and involved relationship with his ex-wife and children in Romania - who he had planned to bring to the UK for their education prior to his extradition proceedings.[14] Yet, in defiance of the court's finding in his extradition case, the Home Office detained him on 28 March,[15] 13 days prior to even making the deportation order served on 11 April.[16]

8. The Home Office, at the time of the decision to detain, failed to take into consideration the outcome of his extradition case and the court's findings as to D1914's family life in the UK. The Detention Gatekeeper stated "*there is no evidence to suggest that D1914 has family life in the* UK", making no mention at all of his successful extradition case,[17] despite having been aware that he had been successful since at least 16 July 2016.[18]

9. When the Home Office appeared before the Immigration Tribunal to defend the decision, the representative was unable to offer any explanation as to why, on the appeal against the deportation order, the approach to article 8 family life rights should be any different to that taken by a Divisional Court of the High Court in relation to extradition. In the words of FTT Judge Buckwell, "*the reality is that Ms Lambert was not able to put forward any reasons why this Tribunal should take a different approach from the conclusions reached by the High Court in relation to the Appellant in terms of his human rights in relation to Article 8 ECHR*".[19] So his case is another one where the whole detention was unlawful, and a pointless exercise serving no immigration control purpose other than to ruin a man's life who was in any event unfit for detention throughout given his serious heart condition, the risk to his physical health, and vulnerability.

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[13] See DL0000229_0003, 0072.
[14] See DL0000229_0010-0011.
[15] HOM007159_0001 (please note that this document has not yet been adduced to the Inquiry – we include it in the list of documents we request be adduced).
[16] HOM010920_002 (please note that this document has not yet been adduced to the Inquiry – we include it in the list of documents we request be adduced).
[17] DL0000230_0028 (please note that this document has not yet been adduced to the Inquiry – we include it in the list of documents we request be adduced).
[18] HOM010971_0002 (please note that this document has not yet been adduced to the Inquiry – we include it in the list of documents we request be adduced).
[19] DL0000229_0072.

10. The Detention Gatekeeper Paperwork shows that the decision to detain was initially returned due to his heart condition for which he had recently been hospitalised, and he was identified as an Adult at Risk ("AAR") Level 2. The Detention Gatekeeper was subsequently provided with the same form with the same information, which was used to authorise D1914's detention – a form on which the sections on medical condition, medication, and AAR level, were blank.[20]

11. Once detained, had effective detention policy and safeguards been in place he should have been promptly released on medical grounds. He was not. The Home Office record of the decision to detain him described the pains in his chest - which were in fact associated with a serious heart condition - as "*feigned illness*".[21] This reflects the long standing institutional culture of hostility and disbelief in the Home Office. The fact that D1914 was three times hospitalised while in detention for his physical health and one time for his mental health, and was awaiting a heart procedure,[22] underscores the dangers and recklessness of this approach as well as its callous indifference to D1914's health and welfare.

12. The Inquiry has seen and read evidence from numerous experts and medical professionals that D1914 should never have been detained and that the systems and safeguards in place to prevent vulnerable detainees from being detained not only failed but were not fit for purpose, for example:

    a. Dr Bingham noted that D1914's medical and mental health conditions predated his detention and the risk of harm to him from detention was foreseeable. These factors should have been noted prior to his detention to avoid the risk of harm and distress caused to him by detention.[23] She explained in live evidence that his vulnerabilities should have been flagged very early on, and there were multiple indicators to flag up his risk in detention.[24]

[20] DL0000230_0029-0033 (please see footnote 5).
[21] DL0000230_0031 (please see footnote 5).
[22] DL0000230_0018 (please see footnote 5).
[23] BHM000033_0030, 0098.
[24] Dr Bingham, 14 March 2022, 45/14-19.

b. Theresa Schleicher gave live evidence that D1914 should never have been detained, as the information about his health and other vulnerabilities could have been (and was) available right from the outset. She noted he is one of many examples of a person about who there was evidence right from the beginning that they should not be detained and could not be removed. She stressed the need for a proactive detention review panel to screen people prior to detention.[25]

c. Dr Hard also found that D1914 was someone who should have been flagged by the Home Office at the outset as unsuitable to be in detention.[26]

13. Dr Bingham noted, consistent with the general flawed approach to the AAR policy, that medical practitioners appear to have waited until actual harm occurred to produce a Rule 35(1) report advising release, rather than exploring health vulnerabilities earlier, adopting a preventative approach and assessing the likelihood of harm occurring.[27] This is in breach of the purpose and wording of Rule 35, which, consistent with the obligations under Article 3 ECHR, is meant to pre-emptively protect vulnerable people from harm in detention. Dr Hard echoed this assessment, noting that the system appears to require the deterioration actually occurs, so in D1914's case his physical and mental vulnerabilities were considered far too late, and certainly not at the outset, despite knowing his medical history at the time of detention.[28]

14. It is now clear from the evidence of Mr Cheeseman that this was the deliberate intention behind the AAR policy,[29] contrary to both the law and the findings and recommendations of Stephen Shaw in his First Review and, at least in part, reflects the backdoor reintroduction of the discredited notion of "satisfactory management" rejected by Shaw.[30]

Detention Centre Rule 34

[25] Theresa Schleicher, 14 March 2022, 94/4-17.
[26] Dr Hard, 28 March 2022, 84/8-14.
[27] BHM000033_0098.
[28] Dr Hard, 28 March 2022, 93/11-24.
[29] Ian Cheeseman, 16 March 2022, 190/4 – 193/8.
[30] INQ000060_0195.

15. The Inquiry has heard extensive evidence about the failures in the screening process of Rule 34 designed to flag vulnerable detainees and route them out of the detention system – a process which failed in D1914's case. His heart condition was recorded in his initial medical screening,[31] as well as his appointment with Dr Chaudhary the following day,[32] but no detailed exploration of his mental and physical health was conducted, no Rule 35 report was completed at the time, nor was D1914 released. Sandra Calver revealed she did not understand Rule 34, stating it required that detainees are seen by a nurse within two hours and then by a GP.[33] She also revealed the appointments in 2017 were only five minutes long – and are now only ten minutes long, [34] acknowledging that this was not enough time to do conduct a full mental and physical health examination.[35] Dr Hard criticised these timeframes as not possibly long enough for a proper evaluation of someone's risks.[36]

16. Theresa Schleicher criticised the lack of proper process to screen people before they enter detention, or to identify the vulnerable as early as possible once they are in detention, with Rule 34 appointments acting instead as brief assessments to meet immediate health needs over an assessment of the impact on detention.[37] It was for this reason that Theresa Schleicher had called for a pre-detention screening coupled with effective clinical screening on a person's detention.[38] Dr Oozeerally agreed that pre detention medical screening would be a good idea.[39]

Fitness Assessments and Medic Ethics

17. In D1914's case the Home Office wrote to the detention centre doctor, Dr Chaudhary, shortly after he was detained, asking for that doctor to confirm he was fit to be detained and fit to fly.[40] In a breach of patient confidentiality, the doctor, without authority from the

[31] CJS000990_0001 (please note that this document has not yet been adduced to the Inquiry – we include it in the list of documents we request be adduced).
[32] CJS000990_0003 (please see footnote 19).
[33] Sandra Calver, 1 March 2022, 160/2-4.
[34] Sandra Calver, 1 March 2022, 207/4-11.
[35] Sandra Calver, 1 March 2022, 208/16-21.
[36] Dr Hard, 28 March 2022, 18/12-19/11.
[37] Theresa Schleicher, 14 March 2022, 62/20 - 63/12.
[38] Theresa Schleicher, 14 March 2022, 94/18-95/4.
[39] Dr Oozeerally, 11 March 2022, 16/3-14.
[40] CJS000990_0056 (please see footnote 19).

patient, informed the Home Office that he was indeed fit for both.[41] Dr Bingham gave evidence that this note was inconsistent with medical ethics and clinical guidance on the fitness to fly of patients with D1914's health profile.[42]

18. On 12 April Dr Oozeerally also asserted that D1914 was fit to fly and to be detained.[43] However he claimed during his live evidence that GPs did not in fact determine someone's fitness to fly because Aeromed would assess this on the flight[44] - despite the Home Office and custodial staff relying on these fitness to fly letters to justify attempted removal.

19. In live evidence, Dr Oozeerally revealed he considered such letters did not fall within the remit of doctor/patient confidentiality.[45] He admitted he did not seek consent for such letters.[46] He sought to justify the practice by reference to his duty to protect a patient's best interests[47] – despite such a letter not being in D1914's best interests given the medical risks posed by attempted removal. In her live evidence, Dr Bingham raised the issue of consent for information sharing, criticising the practice of sharing information with the Home Office without discussing this with D1914, and stressing the need for consent.[48]

20. The Inquiry is invited to accept the evidence of Dr Bingham and reject that of Dr Oozeerally regarding the propriety of such a practice and to urge that clear guidance is urgently issued to clarify the role of medical practitioners.

21. The Inquiry has evidence that at no point throughout his detention was D1914 fit to fly. Dr Bingham for example noted that his pre-existing medical and mental health conditions predating detention were known at the outset and he should not have been considered fit to fly given he had an ongoing cardiac condition awaiting surgical intervention.[49] He should have been identified early on as someone who had a cardiac condition which contraindicated fitness to fly.[50] Dr Hard criticised the GPs' failure to consider the risks

[41] CJS000990_0054 (please see footnote 19).
[42] BHM000033_0096.
[43] DL0000229_0024-25.
[44] Dr Oozeerally, 11 March 2022, 124/7-16.
[45] Dr Oozeerally, 11 March 2022, 125/23-24.
[46] Dr Oozeerally, 11 March 2022, 125/16-19.
[47] Dr Oozeerally, 11 March 2022, 126/1-13.
[48] Dr Bingham, 14 March 2022, 47/21 – 48/4.
[49] BHM000033_0098.
[50] Dr Bingham, 14 March 2022, 45/1-10.

posed to D1914 as some with an ongoing heart condition combined with the overlying stress of attempted removal.[51]

22. The Inquiry also heard evidence that D1914 was not fit for detention, despite the Brook House GP notes to the contrary. Dr Oozeerally explained he received no particular training at all to enable him to make such assessments, nor are there guidelines to review (as there are, for example, in fitness to fly assessments).[52] Dr Hard criticised the apparent failure of the doctors to link D1914's health conditions and the impact of the detention environment on those health conditions in their assessment of his fitness for detention.[53]

23. Despite legal representations as to his health, he remained in detention. This Inquiry has seen an example of the monthly detention reviews conducted by the Home Office, which made only passing mention to D1914's physical health vulnerabilities and justified continuing detention in part on the basis of the medical assessment of him as fit for detention and for travel.[54] This callous and inadequate approach was echoed in the witness statement of D1914's caseworker Paul Benson, provided to this Inquiry, who displayed no regret or concern about his repeated decisions to detain such an unwell individual, and who makes no mention of D1914's health condition, only focusing on his past criminal convictions - which did not themselves justify exercise of the power to remove or to detain.[55] It is, however, indicative of the hostile mind-set and institutional culture of disbelief and indifference to the rights and welfare of those subject to enforcement action which pervades Home Office decision making.

24. On 27 May 2017 Dr Oozeerally again compromised medical ethics and deemed that D1914 was fit to fly and to be detained adding this time that he was happy for control and restraint to be used.[56] Dr Oozeerally rejected in his live evidence that these certifications of use of force breached his primary duty to his patient, despite accepting that it is never in a patient's best interests to have force used against them other than to immediately save their life.[57]

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[51] Dr Hard, 22 March 2022, 88/2-16.
[52] Dr Oozeerally, 11 March 2022, 121/9-18.
[53] Dr Hard, 22 March 2022, 83/15 – 89/22.
[54] HOM006566_0004.
[55] HOM0332158_0004-5.
[56] CJS001160.
[57] Dr Oozeerally, 11 March 2022, 134/17 – 135/11.

25. Expert and medical practitioners provided evidence to the Inquiry that this note breached a doctor's duty to his patient and overstepped the clinical role of a medical practitioner in detention:

    a. Dr Oozeerally himself hinted at the fundamental conflict between his duties as a medic and a subcontractor to the Home Office when he acknowledged that medics would not sanction force, and "*don't want people to be detained*".[58]
    b. Dr Bingham stressed that the role of medics is never to sanction the use of force, but only to raise concerns and contraindications to it. Dr Oozeerally's note involved the GP in the decision making around force in a way directly contradicting his duty of primary care.[59] Further, he not only inappropriately sanctioned force, but failed to raise the serious medical conditions which meant D1914 may not have been fit to fly.[60] Dr Oozeerally was in possession of information from early on in D1914's detention that he had serious cardiac disease which had not been fully stabilised, which would be a contraindication against restraint and flight.[61]
    c. Dr Hard deemed this note "*100 per cent inappropriate*" and in breach of Dr Oozeerally's safeguarding role.[62] Dr Hard linked the potentially life threatening ill treatment of D1914 with a systemic healthcare problem whereby doctors sanction force.[63]
    d. Dr Bromley of PPG acknowledged such a letter was "*completely inappropriate*" and a "*serious concern*".[64]
    e. Dr Bingham and Dr Hard concluded that Dr Oozeerally should have raised both the physical and mental vulnerabilities of D1914 as contraindications for the use of force,[65] with Dr Hard warning that failure to relay such information could have led to a fatality[66] - rather than sanctioning it. There was a complete failure to consider the significant physiological impact on patients like D1914 whilst they are being restrained – something which Dr Hard stressed should have been

[58] Dr Oozeerally, 11 March 2022, 121/9 – 19.
[59] BHM000033_0051.
[60] BHM000033_0098.
[61] Dr Bingham, 14 March 2022, 44/14 – 45/6.
[62] Dr Hard, 22 March 2022, 89/15 – 24.
[63] Dr Hard, 22 March 2022, 99/12-100/3.
[64] Dr Bromley, 1 April 2022, 208/7 – 14.
[65] Dr Hard, 22 March 2022, 92/2 – 12.
[66] Dr Hard, 22 March 2022, 92/13 – 18.

raised at the time.[67] In fact, Dr Oozeerally included no details of D1914's health condition in the note, something he attempted to justify by reference to patient confidentiality in his live evidence.[68]

f. Sandra Calver stated she was "*very concerned*" by the note, because it is not for healthcare to decide on the force being used.[69]

g. Mr Collier noted that the role of medics in a use of force is to care for the person rather than authorise force.[70]

26. This time Dr Oozeerally's brief note had a crucial bearing because it has been seen in footage[71] and other evidence[72] that officers regarded this as a "medical disclaimer" meaning to one DCO, "*if he dies, he dies*".[73] It was a licence to use inappropriate and unlawful force against a man with a serious heart condition. In his live evidence DCO Dan Lake alarmingly revealed that such comments arose from the "*culture*" of Brook House.[74]

27. Dr Hard in his live evidence explained the dangerous consequences of such a note on the behaviour of detention officers:

> "*Q. … This appears to be DCOs expressly relying on Dr Oozeerally's approval of a use of force, doesn't it? Would you agree?*
>
> *A. I think the issue here, as I said earlier, it's the relaying of the risk, isn't it, to the parties that are going to be undertaking the use of force? And here, in a way, what they're saying is that Dr Oozeerally is taking that risk on his shoulders –*
>
> *Q. Yes.*
>
> *A. -- by saying he's approving for that use of force. But clearly, even, essentially, the lay people, the non-medical people, are aware that this is a concern, and that's wrong in a number of ways. They shouldn't be (a) defending their own actions or the consequences of those actions by simply having a disclaimer, because they have a duty*

[67] Dr Hard, 28 March 2022, 95/3-19.
[68] Dr Oozeerally, 11 March 2022, 139/10-11.
[69] Sandra Calver, 1 March 2022, 247/11-21.
[70] John Collier, 30 March 2022, 129/3-15.
[71] e.g. TRN0000087, KENCOV1025, V2017052700014 / V201705270012 / V201705270020.
[72] e.g. Steve Dix, SER000437_0007-0008; Dave Webb, 3 March 2022, 146/15 – 147/6.
[73] Ben Saunders, 22 March 2022, 185/13 – 187/10.
[74] Daniel Lake, 1 March 2022, 42/22.

of care also, but they certainly are, in a way, also misusing the information that's been provided to them in a way which is unacceptable.

Q. Yes. Again, a significant concern?

A. A significant concern, yes. Again, it doesn't really -- neither of them take any view of the detained person's perspective in this, which I think is also quite sad.

Q. A DCO later says in relation to D1914, and the planned use of force, "If he dies, he dies", a now rather famous quote from Rocky IV. Dave Webb also demonstrates incorrectly the use of a shield to Callum Tulley, who is going to be the one using the shield. This "disclaimer", as they put it, seems to have put Dr Oozeerally's patient in harm's way, doesn't it?

A. Yes, absolutely"[75]

28. Indeed, several officers explained that they themselves had concerns about use of force given D1914's health concerns, but pressed ahead as a result of the doctor's note, including Steve Dix who led the use of force –

"I knew him, we had a relatively good rapport, and obviously, based on the fact that he did have those medical complications, I was concerned

Q. Were you concerned about that before the use of force incident, then?

A. Yes.

Q. What were you worried about if use of force was used against him?

A. Just because I knew he had his medical conditions, so obviously just in case anything happened to him while it was happening.

Q. What steps did you take to mitigate that risk, given you knew of his heart condition?

A. So I spoke to the duty director and I believe we spoke to the healthcare department to clarify his health, and obviously if he was fit to have force used on him and to be restrained. Q. What was the answer that you got?

A. I believe it was a yes. I believe there was a doctor's note provided"[76]

29. Hereto the Inquiry is invited to urge that clear guidance is urgently issued to clarify the role of medical practitioners in decisions to authorise force.

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[75] Dr Hard, 28 March 2022, 97/18-98/22.
[76] Steve Dix, 9 March 2022, 76/5 – 77/4.

30. The treatment of D1914 by the medics in detention, including their notes on his fitness for detention, force and travel, was a further symptom of the culture of disbelief and contempt towards the health concerns of those in detention – see as another example DCO Dan Lake, who admitted in his live evidence that he had a general belief that detainees might fake health problems.[77] His assertion that his belief D1914 may feign a heart attack did not have an impact on the removal belies the callous treatment of D1914 during the attempted removal.[78] Another example of this reckless disbelief of D1914 was the healthcare assessments dated 15 and 17 May 2017, which noted no medical objection to the use of restraints, despite the forms noting that any pre-existing respiratory conditions that can become exacerbated with the use of restraints needed to be flagged at the earliest opportunity, a decision, not surprisingly, criticised by Dr Bingham.[79]

The Use of Force

31. On 27 May, D1914 was subjected to use of force by multiple officers in full PPE orchestrated by Steve Dix[80] and pursuant to a blatant misuse of Rule 40 to secure his translocation to E-Wing prior to removal the following day.[81] Not only was there no proper authority for this removal from association in that it was not authorised by the Secretary of State,[82] it was also not for a purpose legitimised by Rule 40 itself. Dr Hard criticised this use of force, apparently undertaken for the convenience of custodial staff rather than in consideration of D1914's case.[83]

32. The severity of the psychological impact of this unlawful violence against him is expressed at paragraph 151 of his statement: "*It felt like they were climbing all over me -- on my arms, my back, on my head. I was shouting and howling in pain. I was struggling to breathe. I*

[77] Daniel Lake, 1 March 2022, 39/12 – 40/11.
[78] BDP000002_0017.
[79] BHM000033_0093-94.
[80] CJS005651 for the Use of Force documentation; see clip KENCOV1025, V2017052700020 for footage of this incident.
[81] CJS001768 for Rule 40 decision (please note that this document has not yet been adduced to the Inquiry – we include it in the list of documents we request be adduced); CJS005651_0008 sets out the reason for the use of force.
[82] CJS001768_0002 (please see footnote 69).
[83] Dr Hard, 22 March 2022, 87/2 – 87/8.

thought I might be dying. The pain in my chest was very severe. At that moment, I felt I was looking at death." He was taken in handcuffs to E-Wing half naked and groaning from his medical conditions. There he was duly humiliated by a strip search and made to sit in plastic pants. He recalls that he felt like he would rather die than go on like this.[84]

33. Mr Collier gave evidence as to the dangerous practices deployed in the use of the shields on this occasion, [85] the techniques being deployed including a risk of fatality:

> "*Q. In fact, he said the knee and the throat. What would happen if that edge was caught nearer the throat?*
> *A. It could range from -- anything to the most extreme.*
> *Q. Extreme, you mean a fatality?*
> *A. Potentially, yes. A direct blow to the throat area, yes*"[86]

34. Dave Webb unconvincingly explained his dangerous and incorrect description of the use of the shield as a matter of "*grammar*" being "*poor*" or "*inappropriate*" in live evidence.[87]

35. Having viewed the CCTV footage Mr Collier decried the fact D1914 was partially undressed in the removal from association; and concluded that handcuffs and use of PPE were unnecessary as there was no physical threat to staff. He concluded that the use of force was neither necessary nor suitable[88], and that D1914 did not offer a level of threat to staff to justify their actions[89]. He said:

> *"Is this another example of where PPE should not have been used?*
> *A. Yes, I don't think it should have been used any time during that incident. It's clear there was no physical threat at the time. The staff -- it was really evident later on that he offered no threat towards the staff as far as violence towards the staff. It was only about him feeling unwell at that time. So, again, it's one of those that, if an assessment, a proper assessment, had taken place beforehand, there would have been an assessment*

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[84] DL000229_0042 – 44.
[85] John Collier, 30 March 2022, 123/5 – 124/24.
[86] John Collier, 30 March 2022, 124/7-12.
[87] Dave Webb, 3 March 2022, 138/16-24.
[88] INQ000158_0055.
[89] INQ000111_0033.

made. The decision then should have been that staff just go in and try and explain what's happening and assist move again

Q. Again, you have said that handcuffs were unnecessary. Like the other incident we have just spoken about as well. Again, is that because of the level of threat that the detained person posed?

A. Yes, and I think the staff just needed to help him along rather than, as I say, use the cuffs as an extra measure 2 of control."[90]

"Q. Ought there to be a specific policy or procedure in place, given the frequency in which it occurs and the consequence for the detained person, humiliation, if no action is taken? A. Because of the frequency of these type of events, there should be something like locally-agreed protocols. Everyone is aware of the decency agenda. Any searching, full searching, of a detained person or in a prison environment will only be by two staff of the same sex, so anything above that is starting then to encroach on that policy alone. Although it is not a search, but it's -- the basis of that is the person shouldn't have multiple people around them whilst being in a state of undress. Q. The same principles could apply to a separate policy about use of force against naked or undressed detained persons? A. Yes"[91]

"My only surprise is that after observing D1914s health condition that it was not a consideration to locate him in the healthcare unit, especially if a constant observation was necessary. I am not aware of the availability of constant observations within the healthcare unit at Brook House but generally they have the facility to carry them out. There was no information that I was provided that indicated D1914 offered a threat to the Good Order or discipline. The only possible concern was over the risk of him self-harming. This would be a removal under DCR 43 (1)."[92]

36. Mr Collier decried the lack of consideration for D1914, who appeared unwell and unlikely to present a safety risk towards staff.[93]

[90] John Collier, 30 March 2022, 127/5-128/2.
[91] John Collier, 30 March 2022, 73/7 – 74/8.
[92] INQ000158_0092.
[93] John Collier, 30 March 2022, 129/16 – 127/5.

37. The use of force was also inadequately monitored by healthcare staff. Dr Bingham criticised the failure of healthcare staff to raise concerns about D1914 during the course of the use of force, given that he had symptoms during the incident, as well as the failure to include details of these symptoms in the F213 form or accompanying medical records.[94]

Removal from Association under Detention Centre Rule 40

38. The Rule 40 was as set out above itself unlawful. The paperwork in D1914's case justified the action "*to maintain good order and discipline of the centre*", and because he "*refused to move to E-Wing*". DCM Nick London authorised the use of Rule 40.[95] The Inquiry heard evidence from a range of witnesses which revealed systematic failures in complying with the rules governing who could authorise Rule 40, including Ian Castle, who incorrectly thought that he was responsible for authorising extensions of Rule 40,[96] and Ben Saunders who suggested DCMs could authorise Rule 40 in urgent cases.[97] This issue is addressed in more detail in the generic submissions but this is a clear example of a misuse of the segregation power which was systemic and routine. It is notable here that even DCO Yan Paschali stated to the Inquiry that he felt the use of Rule 40 in this case was unnecessary – D1914 was not being violent, aggressive or obstructive.[98]

39. The evidence of Dr Hard as to the impact of isolation being to worsen feelings of self-harm and suicidality is expressed clearly in this unlawful and unnecessary use of isolation by the outlaws that operated as officers in Brook House. As Dr Hard explained:

> "*Q. That's particularly of concern because, as we have touched upon previously, segregation and isolation are factors that exacerbate mental health problems in some cases?*
>
> *A. In some cases, definitely.*
>
> *Q. They can cause deterioration in many mental health conditions, including those that we see as prevalent in IRCs, such as PTSD, depression, anxiety?*
>
> *A. Yes.*

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[94] BHM00033_0052.
[95] CJS001768_002 (please see footnote 69).
[96] Ian Castle, 15 March 2022, 33/19 – 37/19.
[97] Ben Saunders 22 March 2022, 185/17-18
[98] IPA000002_0010.

Q. Is that right?

A. Yes.

Q. They are associated, that is, segregation and isolation are factors associated with increased thoughts of self-harm and thoughts of suicide related to an environment that's socially isolating. Would you agree with that?

A. Yes, and devoid of stimulation.

Q. So what is being carried out as a response to those types of underlying conditions and incidents of self-harm actually exacerbates that behaviour; is that your understanding?

A. I would feel there is a high level of risk of that, yes, absolutely"[99]

28 May

40. As it transpired, D1914 was not removed from the UK on 28 May, a sensible pilot standing between the Home Office and its attempts to cause further harm to D1914.[100] On his return to detention, his wrists were bruised from handcuffs,[101] the DCOs were incensed.[102] Some of the footage we have seen shows officers referring to him by racist epithets such as "*traveller*".[103] Dan Lake stigmatises him on the basis of a misunderstanding of criminal records saying "*He doesn't rape kids, he kills em*".[104] Lake revealed that it was possible for guards to look up the criminal history of detainees without any process or safeguards in place – they could do it "*just to be nosey*" – another breach of D1914's rights to confidentiality and privacy.[105]

Detention Centre Rule 35 Failures

41. D1914 was hospitalised three times due to his physical ill health while in detention.[106] On 5 July 2017 he was refused bail and he describes at paragraph 190 of his witness statement that at that point he no longer wanted to live and although never having tried to harm

[99] Dr Hard, 28 March 2022, 165/1-23.
[100] DL000229_0048.
[101] DL000229_0042.
[102] TRN0000078_0008-0011 (KENCOV1026, V2017052800010 clips 1 and 2).
[103] TRN0000090, KENCOV1032, V2017060900004.
[104] TRN0000078, KENCOV1026, V2017052800011.
[105] Daniel Lake, 1 March 2022, 43/1 – 44/17.
[106] CJS000990_0091 (18 April 2017), CJS000990_0012, CJS001111_0001, _0005, (17/18 May 2017), HOM010912 (10 July 2017) (please see footnote 19).

himself before, he attempted to take his own life taking 57 tablets and severely cutting himself with a razor.[107] DCO Tulley described the shocking amount of blood in the cell as a result of this attempt.[108] No Rule 35(2) report was completed following this incident. Dr Chaudhary explained this by reference to resource constraints.[109]

42. In fact, no Rule 35(2) report was completed for any person detained at Brook House between 2013 and 2017.[110] The Home Office did not and has not since raised any concerns with Dr Chaudhary about the lack of Rule 35(1) and (2) reports emanating from Brook House.[111] Witnesses including Nathan Ward voiced their confusion that no such reports were produced, despite the high numbers of self-harm, regularity of ACDTs, and number of attempted suicides.[112] There was a complete systemic failure in the operation of this safeguard at the time in the context of self-evidently life threatening scenarios of suicide risk - failure which continues to this day.[113] Jerry Petherick admitted in oral evidence that he was not aware of a process by which self-harm incidents such as this lead to consideration as to whether there was failure in the laid-down procedures for the safety of detainees, and he dismissed the suggestion it would be reasonable to review every self-harm incident in light of the length of the contract.[114]

43. No Rule 35 report was completed after any of these hospitalisations, despite each constituting evidence of a deterioration in his physical or mental health, demonstrating a pattern identified by Dr Hard in his live evidence of failures of Rule 35 to be undertaken despite apparent deteriorations in the patient's condition.[115] Dr Bingham criticised the repeated failures to conduct Rule 35 reports despite clear events which should have triggered them throughout D1914's detention, and the total failure to consider the interplay between his mental and physical health and the impact of detention on his health until four months into his detention.[116] Knowledge of the planned procedure, descriptions of his

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[107] DL000239_0044-45.
[108] DL000239_0055.
[109] Dr Chaudhary, 11 March 2022, 240/18 – 241/7.
[110] LIB000003 (please note that this document has not yet been adduced to the Inquiry – we include it in the list of documents we request be adduced).
[111] Dr Chaudhary, 11 March 2022, 242/11-14.
[112] DL0000141_0070.
[113] E.g. see page 20 of the IMB 2020 report into Brook House - Brook-House-AR-2020-for-circulation.pdf.
[114] Jerry Petherick, 21 March 2022, 113/1 – 115/13.
[115] Dr Hard, 28 March 2022, 59/4-11.
[116] BHM000033_0029.

agitated behaviour, and complaints of chest pain were all present very early on in his medical records, but were not explored in detail. Had they been explored earlier, it is likely the Rule 35 report could have been produced earlier, and prior to the harm actually occurring.[117]

44. In addition to the failures to conduct Rule 35 assessments in light of D1914's deteriorating health, the Inquiry heard how D1914, like many other detainees, was characterised as "refractory" or noncompliant, rather than his behaviour being identified as a symptom of his mental illness and distress.[118] Theresa Schleicher criticised this approach, whereby staff perceived non-compliance as deliberate misbehaviour rather than a manifestation of an underlying vulnerability.[119] One example of this was D1914's failure to comply with officers' instructions to stand up during the use of force on 27 May, a failure that they attributed to non-compliance, or in Dave Webb's words, "*fighting*",[120] but D1914 explained flowed from his ill health and acute distress.[121] Dr Bingham also criticised the characterisation of D1914 as non-compliant rather than vulnerable, without consideration of his presentation in the context of his known vulnerabilities.[122] Instead of treating D1914 as a patient in distress and who was unwell, he was treated as non-compliant and subject to restrictive punitive prison based measures such as segregation and use of force.

45. Both Dr Chaudhary and Dr Oozeerally sought to defend the medical ethics of disclosing his medical data, but there is no justification for their conduct. It led directly to dangerous and unlawful physical mistreatment on 27 May. His case also exhibits the dangerous practice about which both those doctors openly boasted of replacing the Rule 35 system, mandated by law and for which official channels are designed, with their own system of sending Part C forms to a different branch of the Home Office apparatus:

> "*Please summarise what is involved if an individual was deemed to be vulnerable? They would be assessed and a Part C would be communicated to the Home Office*"[123]

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[117] BHM000033_0029.
[118] Dr Hard, 28 March 2022, 100/4-101/2.
[119] Theresa Schleicher, 14 March 2022, 48/18 – 50/4.
[120] Dave Webb, 3 March 2022, 150/17.
[121] DL000229_0041-42.
[122] BHM000033_0056.
[123] DRC00001_0012.

"*Another caveat to that, so we would do the Part Cs, the communications, with the Home Office. So if I felt, for example, that, you know, a patient may not necessarily -- might not be able to do the form, for whatever reason, you know, I would communicate using the Part C, which I found to be as effective as rule 35s, and sometimes, depending on how you use the Part Cs, communication with the Home Office, more effective than rule 35s in actually getting patients to be released from detention*"[124]

"*THE CHAIR: Thank you, Dr Chaudhary. Just one question. Were you actively encouraged to use Part Cs as an alternative to rule 35?*
A. It was just -- I wouldn't say I was encouraged. I think I found the process to be more reactive. I understand from rule 35s that about 90 per cent of rule 35s are rejected. That was my understanding at the time. So only 10 per cent were accepted, and that's very -- well, you know, you're talking about numbness, institutionalism, and things of that nature. You know, if you're receiving rule 35s that year -- you know, maybe at the other end, they're just looking at the rule 35s and going, "Oh, there's another one", you know, "That's another one". So it wasn't effective in what it was trying to achieve... So we had people on food and fluid refusal, for example, that I was imminently worried. I wouldn't do a rule 35(1) or (2); I would do a Part C, and the patient would be released that same day because of what I had mentioned in there. That, to me, is effective, you know, and so I would always go with what is effective. Like I said, the rule 35 responses can be two days or three days, or even longer. So, you know, from my opinion, we weren't actively encouraged. However, it was the process that I felt got the results that we wanted. You know, we are the patients' advocates, we want the best for the patients."[125]

"*3 Q. In fact, we know that in 2017, there were no rule 35(2) reports completed at Brook House. Why is that?*
A. I think because the mechanism of communication would have been through the Part C."[126]

[124] Dr Chaudhary, 11 March 2022, 195/17 – 196/1.
[125] Dr Chaudhary, 11 March 2022, 245/11 – 246/16.
[126] Dr Oozeerally, 11 March 2022, 48/3-6.

"A. So the point I'm trying to make -- I'm not disputing the fact that the rule 35 -- it says -- but the process is informing the manager who then will report to the Home Office, in the form of that documentation. But I'm just making the point that the pathway, although the document hasn't been completed -- and I'm not disputing that, because you've got the evidence to say that, but the manager is already aware, and then the manager can communicate that through a Part C too. Now, I'm not disputing that there weren't enough..."[127]

46. In D1914's case no less than nine Part Cs were issued on 11 April, 19 April, 27 May, 28 May, 3 June, 5 July, 6 July, 7 July and 13 July.[128] Notably, no Rule 35 report was completed on 13 July, despite the Part C of the same date expressing Dr Chaudhary's concern of the risk of D1914's condition deteriorating an omission criticised by Dr Hard.[129]

47. When he belatedly and finally managed to obtain a Rule 35 appointment on 17 July 2017- nearly four months after being detained, Dr Oozeerally finally completed a Rule 35(1) report[130] and although it still took a very long time to process it was that document which led to his release - just in time for his heart procedure in August 2017.

48. Even then that Rule 35(1) report was itself deficient in that it stated that D1914 had no mental health issues, despite his suicide attempt a month prior.[131] This omission made the report completely inadequate, both in its contents and its timing, according to Dr Hard.[132] Dr Bingham flagged the multiple indicators in D1914's medical notes of mental health issues of concern and that further exploration of his mental health was required.[133]

Article 3 Mistreatment

49. In D1914's case he was subjected to inhuman and degrading treatment over the course of detention the severity of which is marked by the impact it had in causing deterioration in

[127] Dr Oozeerally, 11 March 2022, 50/9-18.
[128] HOM007159_0002, 0004, 00012 (please see footnote 3).
[129] Dr Hard, 28 March 2022, 82/25 – 86/13.
[130] CJS001024.
[131] CJS001024.
[132] Dr Hard, 100/4/-101/2.
[133] Dr Bingham, 14 March 2022, 45/14-19.

his mental health to the point that it rendered him actively suicidal. Indeed, he very nearly managed to kill himself through an extreme act of self- harm as a direct result of the impact of unlawful detention where, as a result of the breakdown of systems designed to protect vulnerable detainees from detention, he was not promptly released. He was instead subject to prolonged detention in an inhumane environment, subject to physical and mental mistreatment and humiliation. He describes how Brook House has had a lasting impact on his mental health, that he continues to be adversely affected.[134]

50. Particular causal factors in his Article 3 ECHR mistreatment were:

a. Systemic failure of the detention decision making, policy and safeguards.
b. The absence of any effective pre-screening mechanism to ensure that relevant factors were taken into account about his health and indeed immigration position before detaining him.
c. The medical malpractice of Dr Chaudhary and Dr Oozeerally in deeming him fit to be detained and fit to fly, and in the systemic failure of the clinical safeguards in Rules 34 and 35.
d. Prolonged detention of four months in an inhumane environment.
e. The infliction of physical mistreatment through unlawful use of prison methods of use of force without any proper regard to the risks to his fragile physical health and vulnerability which was dangerous and humiliating.
f. The routine unlawful use of removal from association by officers, particularly Steve Dix again who neither enjoyed authority for such matters nor used it for a lawful purpose.
g. The severe deterioration in mental health and the absence of any appropriate medical care or adequate medical treatment throughout detention.
h. Treatment by staff whose attitudes which were desensitised, dehumanised, callously indifferent to his suffering and racist.

51. The Inquiry is invited to find that he was subjected to inhuman and degrading treatment both within the individual incidents and in his overall detention. There was a systemic

[134] DL000229_0073.

and operational failure to protect D1914 as a vulnerable detainee in breach of the duties arising under Article 3 ECHR.

Documents to be adduced:

HOM007159 – D1914 detention history

HOM010920 – Email from Paul Benson to Daniel Dyer re D1914

DL000230 – Selection of key documents to be read alongside D1914 statement, comprising primarily of medical documents

HOM010971 – Email between EEA command re D1914

CJS000990 – Medical records of D1914 during the Relevant Period in Brook House

CJS001768 – Rule 40 decision for D1914 dated 27 May 2017

LIB000003 – Letter disclosing response to FOI re number of Rule 35(2)s