

INDIVIDUAL CLOSING STATEMENT
ON BEHALF OF D2077

Introduction

1. D2077 is a recognised refugee who fled Iran after multiple incidents of torture related to his Christianity. He suffers from PTSD and a history of serious self-harm. He was one of a cohort of people whose return to Germany had been rejected by the German authorities in 2016. This resulted in the UK later becoming the responsible member state for determining his asylum claim under the Dublin Regulations. Notwithstanding this, the German authorities were pressed again to accept responsibility and did so in January 2017.¹ D2077 was detained on reporting on 31 March 2017 and transferred to Brook House for the purpose of removal on a Charter Flight on 6 April 2017. At the time of his detention, the lawful timeframe for removing in to Germany under the Dublin Regulations had already expired and he was therefore detained unlawfully.
2. During this detention D2077 was degraded, denied his dignity and the victim of inhuman and degrading treatment and harm including exposure to conditions of detention that significantly worsened his mental ill- health including the self-harm and attempted suicide of other people in detention, unlawful segregation, extreme conditions, hostile environment and toxic, corrupt and institutionally racist culture.
3. This harm occurred notwithstanding the myriad policies and practices (such as the required authorisation by a Detention Gatekeeper) designed to prevent such harm and the repeated intervention of qualified third parties identifying and pressing that risk and those policies to

¹ It is believed that this was because Germany had reached its 'cap' on refugee numbers for 2016 and accepted the cohort in January 2017 when a new quota started however the actual reasons that have never been explained by the Home Office.

the Home Office.² Safeguards were at best ignored and at worst wilfully overridden resulting in harm to a vulnerable individual known to be vulnerable and who had previously experienced harm in detention and been released as a consequence.

4. The detention of D2077 either owing to individual acts or cumulatively, violated the systemic, operational and investigative obligations of Article 3 ECHR.
5. Despite his removal being deferred by order of the Court, his eventual release was only secured 13 days later following the listing of his case for bail by the High Court.
6. D2077 was hospitalised on two occasions as a consequence of his mental health breakdown and has not been able to fully recover his mental health. In large part that is owing to his detention and treatment in Brook House. He continues to experience flashback of when he was detained there imagining himself in the cell.³ D2077 expressed a strong wish to take part in this inquiry owing to his strong belief that it is important to expose what was happening and to ensure that others do not have the same damaging experience as he did.⁴

Overview of this individual closing statement

7. The Chair is referred to the Closing Statement on Behalf of all DL CPs 0 the “Group Closing Statement” - which includes submissions on the prolonged, unlimited extent and purposelessness of detention; clinical care failures; the poor conditions and regime; unlawful use of segregation; unlawful use of force; the failures in the safeguards such as Rule 34 and 35 (which were designed to identify vulnerable detainees like him); the inadequacy and lack of independence of the PSU; unlawful and excessive use of force; flaws in oversight mechanisms such as the IMB and HMIP; and the continued impunity of officers involved in the abuse and mistreatment of people detained at Brook House
8. This individual Closing Statement will develop the submission made on behalf of D2077 on 05 April 2022 and will deal with the following:
 - i) The decision to detain D2077, his pre-existing vulnerabilities and relevance of the charter flight process

² HOM0331740; DL0000196

³ DL0000226_0004

⁴ DL0000226_0004 [Para 14]

- ii) Failures in the Rule 34/35 process
- iii) Failures in healthcare
- iv) Failures in the detention review process
- v) D2077's experience of detention
- vi) The impact of detention at Brook House
- vii) Conclusions

9. D2077 invites the Chair to review the following key evidence alongside this individual closing statement:

- i) First Witness Statement of D2077
- ii) Summary of D2077's evidence, read in on 21 February 2022⁵
- iii) D2077 Rule 35 Report
- iv) Response to the Rule 35 report⁶
- v) The second witness statement of Karen Churcher⁷
- vi) The Detention reviews⁸
- vii) GCID notes recording attempted suicide⁹
- viii) GCID notes recording actions leading up to the decision to detain¹⁰
- ix) The report of Dr Rachel Thomas¹¹
- x) Confidential psychiatric report of Dr Ibrahim 20/04/17¹²

Decision to detain, pre-existing vulnerabilities and relevance of the charter flight process DL0000199

10. The key feature of his case is that he had been detained at Tinsley House in 2016 where a rule 35(3) report¹³ confirmed he had mental and physical symptoms consistent with an account of torture, including being whipped in detention in Iran and it was recorded that he was suffering flashbacks to that torture in detention and as a consequence on 21 June 2016 the Home Office agreed to release him from Tinsley House.¹⁴

⁵ [Reading in on behalf of D2077 21 February 2022](#)

⁶ DL0000226_0008

⁷ DWF000022 §§54-55

⁸ DL0000195

⁹ DL0000197

¹⁰ DL0000198, DL0000199

¹¹ HOM0331740

¹² HOM0331741

¹³ DL0000226_0006

¹⁴ DL0000197

11. In November 2016 he attempted suicide, partly in fear of being detained again. Following a short stay in hospital Home Office records show he was treated as being AAR level 3.¹⁵ At this point his mental health was under the care of his GP and consisted of significant input by her and a volunteer community organisation. He was prescribed medication and was given other therapeutic support¹⁶.
12. Transfer time limits under the Dublin Regulations expired on 30 December 2016 however Germany accepted a request from the Home Office to take responsibility for D2077 on 13 January 2017 and he was placed in the 'German Charter project' [DSCB105]
13. On 23 January 2017 a decision was taken to refuse D2077's asylum claim on third country grounds but this was not served on him or his representatives. On 6 February 2017 he was served with a notice of liability for removal and a removal window notice but not the underlying decisions. His solicitors wrote on numerous occasions requesting relevant documentation to be able to advise and, if necessary bring a challenge to the decision on which removal was based, without success.
14. On 10 February 2017 a letter before action was sent asserting that the removal window notice was unlawful on the grounds that D2077 was a victim of torture.
15. He continued to be viewed as an AAR level 3 throughout February 2017. Authorisation to detain was refused on this basis by the Detention Gatekeeper on 12 February 2017. On 15 February 2017 it was recorded again that authorisation for detention had been refused by the Detention Gatekeeper twice.¹⁷
16. This is unsurprising because the Defendant's policy in respect of justifying the detention of those categorised as Level 3 Adults at Risk enabled detention to be undertaken only in very limited circumstances and in particular required: i) the removal date to have been set, ii) no barriers to removal, iii) escorts to have been arranged if required and iv) that the individual

¹⁵ DL0000199

¹⁶ DL0000226_0047

¹⁷ DL0000198, DL0000199
DL0000198, DL0000199

must not have complied with voluntary return. These criteria were not satisfied. He could only be detained if he was recategorized as an Adult at Risk Level 2.

17. On 3 March 2017 the detention gatekeeper again refused authorisation for his detention on the grounds that it was not appropriate from a safeguarding perspective although this time listing him as AAR level 2 on special conditions.¹⁸

18. On 8 March 2017 it was recorded that as an adult at risk he was not suitable for removal without notice.¹⁹

19. On 28 March 2017 a detention gatekeeper, A Begum, sought advice from senior officers to see if the categorisation of D2077 could be reduced from level 3 to level 2 to enable him to be authorised for detention on the grounds that removal directions were due to be set on 31 March 2017. A Begum correctly identified that D2077 was:

- i) the subject of a previous release on Rule 35 grounds;
- ii) had health issues including suffering from depression and anxiety;
- iii) was a victim of torture;
- iv) self-harmed and
- v) had relatively recently attempted suicide.²⁰

20. His case was then discussed at high level between the Detention Gatekeeper Senior Executive Officer D Leggett and E Bear. The note following the requests for review and authorisation at level 2 notes that DGK SEO D Leggett and E Bear discussed on 'DOR' and DGK SEO Leggett agreed that the 'rule 35 medical report does not state that detention would be injurious to the subject's health.'²¹ A second SEO Duty Detention Gatekeeper replied to A Begum stating that AR2 detention was approved because: '*There was no evidence to show that detention would be harmful to his health*'.

21. Even if the Rule 35 from June 2016 which stated explicitly '*Due to being in detention he is having flash back and when he sees the officers here his fears return*' could be interpreted as 'no evidence to show that detention would be harmful to his health' a proper consideration of the other

¹⁸ DL0000198_0006

¹⁹ DL0000198_0007

²⁰ DL0000198_0009

²¹ DL0000199_0012

evidence demonstrated that there was a very significant likelihood of harm and deterioration in his mental health if detained.

22. The impression is given that this was a deliberate decision to recategorize the risk of harm to D2077 solely to enable his detention because of the pressing imperative of a charter flight.

23. The Home Office also had other medical reports detailing this risk:

- i) 13 October 2016 letter from Julia Burne, a retired GP who writes medical reports for Freedom from Torture asserting that the claimant has a major depressive illness combined with Post Traumatic Stress Disorder and that ‘detention with a view to deportation to Germany, would be detrimental to his mental state and could well trigger a suicide attempt’²²
- ii) The Claimant’s suicide attempt on 30.11.16. Note records: ‘Compass report of an incident of overdose and self-harm at accommodation on 23/11/16. A friend discovered him and raised the alarm. Hospitalised overnight and released with booked GP appointments for follow up. Appears to suffer heightened anxiety before reporting time due to worries about being detained and returned to Germany. A request to have his reporting regime changed, backed by medical evidence was refused because it is an outstanding TCU case (Germany have refused but their decision has been challenged according to notes)...Safeguarding raised to Level 3 and Leeds Safeguarding Team alerted to update GP information etc. E-mail to TCU for an update on the likelihood of his removal. It is also noted that a Medical Foundation Appt was scheduled for 07/09/16 but there is no further news of the outcome’²³
- iii) The follow up visit recorded on 8 December 2016 during which information had been provided by [redacted] as to the events surrounding the overdose. The C had been found unconscious having taken an overdose and caused superficial damages to his wrists and head...The C ‘advised that on the run up to his reporting date and his actual reporting date he feels very anxious & depressed at the thought of being detained/returned to Germany’²⁴
- iv) 11 January 2017 letter from diagnoses worsening PTSD

²² DL0000226_0048

²³ DL0000197_0004

²⁴ DL0000197_0004

24. His case demonstrates that even where a person falls squarely within the categories of persons that should not be detained owing to the risk of harm, administrative convenience and removal practices, particularly where Charter Flights are used, take precedence. The result being actual harm caused by the act of detention and the presence of acutely vulnerable individuals in the detention estate.

Failure in R34/35 processes

25. A R35 had been arranged at Campsfield House but he was moved to Brook House on the day it was supposed to happen. Following transfer to Brook House, a familiar pattern of failure in the rule 35 process ensued.
26. Despite his requests (see e.g. medical notes at 427 ‘Would like to see doctor regarding rule 35’) and those of his solicitors and doctors no subsequent R35 examination was prepared²⁵. On 12 April 2017 Dr Oozerally asked for his detention to be reviewed on the grounds of the previous R35 however this note was not received until 19 April 2017.²⁶
27. D2077 began refusing to eat, in his case by way of hunger strike, before shortly afterwards sewing his lips together. This then entailed his removal from association for five days. No rule 35 assessment followed. One of his stated concerns was, despite having obtained the injunction, the Home Office would not in fact release him. This turned out to be a valid concern.

Failures in healthcare

28. D2077 details his difficulties obtaining healthcare as including having difficulties accessing both staff and his medication, not being taken seriously and being laughed at.²⁷
29. D2077 found isolation whilst under ACDT particularly traumatising and was very uncomfortable when being observed. The Chair is asked to consider the evidence of Karen Churcher in respect of D2077 that *‘to have kept him under constant observation would have meant keeping him in a room on his own for a lot of time, which may have caused him more harm than good’*²⁸

Detention Reviews DL0000195

²⁵ DL0000226_0034

²⁶ DL0000226_0040

²⁷ Statement 135-157

²⁸ DWF000022 §56

30. The Detention reviews were woefully inadequate. As happens all too often he went from being a person who should not be detained to a person who would not be released.

31. At the point of detention the following was noted:

'AAR detention approved.

RDS is for 11th April (not for disclosure). Sub would be detained for 12 days before RDS take place. There is no evidence to show that detention would be harmful to health.

Case discussed on DOR with DGK SEO Legett who agreed the subject's detention as the rule 35 medical report does not state that detention would be injurious to the subject's health.

32. On 3 April 2017 the Defendant was provided with the first pre-action letter and a significant amount of medical evidence.²⁹ Detention was not reviewed in light of this evidence. This included medical evidence from October 2016 (previously sent to Defendant) from a GP stating:

'I am of the opinion that detention with a view to deportation to Germany would be detrimental to his mental state and could well trigger a suicide attempt'

33. The 7-day review is contradictory on its face and does not consider the content of the representations of 3 April 2017 or the attached evidence including the clear evidence that detention would be damaging to the Claimant's health.

34. The injunction preventing removal was granted on 7 April 2017 and detention was not reviewed.

35. By 12 April 2017 he was again regarded as a safeguarding level 3 in a note that further states RA not raised (assumed 'removal action').³⁰

36. The detention review of 13 April 2017 does not refer to this categorisation or the implications for detention (14 Day detention review refers to Claimant as AAR L2).³¹ The basis of recommending continued detention was stated to be because, in part, removal was imminent. Following the injunction granted on 7 April 2017 it was not.

²⁹ DL0000226_0017

³⁰ DL0000226_0021

³¹ DL0000226_0053

37. The safeguard that should be provided by review of detention had clearly become a tick box exercise that was operated to justify keeping a detainee in detention rather than releasing them where the risk of harm arose. In D2077's case he had and was continuing to experience harm and this was not taken into account at all.
38. After much work by his lawyers and the intervention of a medical report by a Medical Justice doctor as well as an upcoming bail hearing in the High Court he was released on 21 April.

D2077's experience of detention

39. D2077's experience of detention was traumatising, degrading and dehumanising. He felt 'worthless' whilst detained [§139 statement]³² and that the only concern of the guards. He has described in detail his difficulty in obtaining his medications, the noise, smells and sights he was subjected to and the visceral impact of this on him. As a victim of torture with consequential mental ill health, he was exposed not only to the fresh harms perpetrated by this environment but to relive his former experiences in the form of flashbacks.
40. His perception of the environment at Brook House was that the guards spoke to you 'full of hate'. He also gives evidence of the noise of the screams as detainees self-harmed, of seeing blood in a cell and the hallway, of others banging on their doors over and over again echoing around the centre and the terror that charter flights would cause in the centre. [statement 94-97]³³. He experienced being locked in as suffocating and a near death experience.
41. He eventually lost all trust in the Home Office to follow the rules. After the Court granted an injunction but he was still not released he became convinced that the Home Office had 'so much power they could ignore what the Courts had to say and do whatever they want to me'³⁴. He became increasingly paranoid.
42. Once placed in segregation, he found constant watch and isolation particularly humiliating as he was watched, even whilst on the toilet, had a torch flashed in his face and regular intervals and became scared that if he slept he would be tied up and taken away.³⁵

³² DL0000226_0035

³³ DL0000226_0025

³⁴ DL0000226_0026

³⁵ DL0000226_0032

43. He describes the environment at Brook House as far more oppressive and far harsher than the other detention centres that he was kept in. He describes it as ‘completely toxic and oppressive’. He believes that in Brook House, detainees were treated with a complete lack of respect and dignity. He was alarmed by the frequency of self-harm and suicide attempts.
44. He particularly notes that in Brook House he was locked up by himself for many hours and made to queue up ‘like animals’ for disgusting food. He also notes that at other detention facilities you were able to go outside when you wanted to and get some fresh air. He states that at Brook House you would only have a short period outside to get some air. This meant that detainees had nothing to distract them and would be stuck inside all day.
45. He describes the centre as ‘generally filthy’ and the lack of ventilation in the cells meant that they smelt bad.
46. Medical evidence obtained post release details various factors leading to a deterioration of his mental health and he has been hospitalised on two occasions in June and July 2018 because he ‘couldn’t go on anymore’.³⁶
47. He has held on to some hope that this inquiry will result in real changes being made so that what happened to him does not happen to anyone else and that real changes are made. [§175-178].³⁷

Conclusion

48. His is a case in which following the first detention he had been identified and recorded as a torture victim as level 3 and the Detention Gatekeeper refused to allow him to be detained. There is a glimpse of how a system of screening vulnerable detainees could- operate so as to prevent the heinous detention of vulnerable people. Had those safeguards been respected and not sacrificed to the imperative to remove him on a charter flight, the harm he experienced would not have occurred.

³⁶ DL0000226_0042

³⁷ DL0000226_0043

49. In truth, the integrity of the AAR policy and the system around it was compromised and his is another case of how the mere existence of the AAR policy, and the Detention Centre Rules is no guarantee the Home Department will comply with the law.
50. D2077 asks that the Inquiry find that there was a clear breach of the procedural duties to anticipate and to safeguard against article 3 mistreatment, and is a case in which the system failures led to an horrendous experience in detention of a vulnerable torture victim who should never have been detained: it was inhuman and degrading treatment and the Inquiry is asked to so find.

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