



Home Office

HOME OFFICE

Home Office Security
Professional Standards Unit

A Home Office investigation into the circumstances surrounding an allegation that Mr. D1538 was assaulted by Detainee Custody Officers on 3 June 2017 and was subject to homophobic comments on 28 June 2017, at Brook House IRC.

IMG Ref:

IMG/17/1555/1557/20

Investigating Officer

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1. INTRODUCTION

- 1.1 On 21 August 2017 Mr **D1538**'s solicitors, Duncan Lewis, sent a letter of complaint to the complaints department at Brook House Immigration Removal Centre (IRC).
- 1.2 In the letter, two separate instances are alleged. On 3 June 2017 Mr **D1538** was subject to treatment amounting to assault by Detainee Custody Officers (DCOs). On 28 June 2017 Mr **D1538** was subject to homophobic comments by a DCO.
- 1.3 Brook House IRC initially conducted an internal investigation but subsequently referred the complaint to PSU on 28 November 2017.
- 1.4 Officers referred to in the complaint of 3 June 2017 have subsequently been identified as DCO Fiddy and DCO Instone-Brewer and in the complaint of 28 June 2017 as DCO Tomsett.
- 1.5 On 18 October 2017 Duncan Lewis solicitors sent a Letter Before Action to the Home Office at Harmondsworth IRC. This letter detailed events, relating to Mr **D1538** occurring at Harmondsworth IRC which, Duncan Lewis claimed, constituted an arguable breach of ECHR, Article 3. These claims are being considered under a separate investigation conducted by Detention Services and do not fall under the terms or reference of this investigation.
- 1.6 Duncan Lewis's letter of 18 October 2017 referenced the allegations referred to in their letter of 21 August 2017 but only in that they formed part of Mr **D1538**'s detention history. The letter of 18 October 2017 also acknowledges that Duncan Lewis had been informed that the complaint of 21 August 2017 had been forwarded to the Home Office for review. That review is the basis of this investigation.

2. TERMS OF REFERENCE

- 2.1 To investigate the allegations of assault and discrimination by G4S officers at Brook House IRC, including:
 - That Mr **D1538** was pushed, slapped and removed to Rule 40 on 3 June 2017 when he was denied use of the computer room.
 - That on 28 June 2017 a DCO made homophobic comments towards him.
- 2.2 To consider whether there were any organisational deficiencies which may have contributed to Mr **D1538**'s treatment, including but not limited to:
 - Supervision of officers or detainees; training of officers; suitability of complaints process for detainees and staff.
- 2.3 To consider and report on whether there is any learning for any individual G4S staff member, or organisational learning for the Home office or G4S, including whether any change in Home office or G4S policy or policy or practice would help to prevent

a recurrence of the incident investigated.

- 2.4 To consider and report on whether the incident highlights any good practice that should be disseminated.
- 2.5 To consider and report on whether any disciplinary offence may have been committed by any G4S staff member involved in the incident, and whether relevant local and national policies/guidelines were complied with.

3. POLICY & GUIDANCE

3.1 Detention Service Orders

- 3.1.1 03/2015 - Handling of Complaints: Detention services complaints guidance ensures that the investigation of complaints is dealt with effectively and efficiently. This investigation and report has been conducted in line with the formal investigation procedures set out in the Complaints Guidance.

- 3.1.2 01/2011 – Commissioning of Investigations: Detention services guidance setting out Detention Services obligation to commission investigations into incidents where Articles 2 and/or 3 of the European Convention on Human Rights (ECHR) may have been breached. This investigation and report has been conducted in line with the guidance.

- 3.2 The investigation has been conducted with reference to paragraph 2(3) of Schedule 11 to the Immigration and Asylum Act 1999 and the Detention Centre Rules 2001:

3.2.1 **Paragraph 2(3) of Schedule 11 to the Immigration and Asylum Act 1999**

Schedule 11 Detainee Custody Officers Powers and duties of detainee custody officers
2(3) As respects a detained person in relation to whom he is exercising custodial functions, it is the duty of a detainee custody officer—
(a) to prevent that person's escape from lawful custody;
(b) to prevent, or detect and report on, the commission or attempted commission by him of other unlawful acts;
(c) to ensure good order and discipline on his part; and
(d) to attend to his wellbeing.

3.2.2 **Detention Centre Rules 2001:**

Part III. Maintenance of Security and Safety
General Security and Safety

- 39. (1) Security shall be maintained, but with no more restriction than is required for safe custody and well ordered community life.
 - (2) A detained person shall not behave in any way which might endanger the health or personal safety of others.
 - (3) A detained person shall not behave in any way which is inconsistent with his responsibilities under the compact.
- Removal from Association

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40. (1) Where it appears necessary in the interests of security or safety that a detained person should not associate with other detained persons, either generally or for particular purposes, the Secretary of State (in the case of a contracted-out detention centre) or the manager (in the case of a directly managed detention centre) may arrange for the detained person's removal from association accordingly.
- (2) In cases of urgency, the manager of a contracted-out detention centre may assume the responsibility of the Secretary of State under paragraph (1) but shall notify the Secretary of State as soon as possible after making the necessary arrangements.
- (3) A detained person shall not be removed under this rule for a period of more than 24 hours without the authority of the Secretary of State.
- (4) An authority under paragraph (3) shall be for a period not exceeding 14 days.
- (5) Notice of removal from association under this rule shall be given without delay to a member of the visiting committee, the medical practitioner and the manager of religious affairs.
- (6) Where a detained person has been removed from association he shall be given written reasons for such removal within 2 hours of that removal.
- (7) The manager may arrange at his discretion for such a detained person as aforesaid to resume association with other detained persons, and shall do so if in any case the medical practitioner so advises on medical grounds.
- (8) Particulars of every case of removal from association shall be recorded by the manager in a manner to be directed by the Secretary of State.
- (9) The manager, the medical practitioner and (at a contracted-out detention centre) an officer of the Secretary of State shall visit all detained persons who have been removed from association at least once each day for so long as they remain so removed.

Use of Force

41. (1) A detainee custody officer dealing with a detained person shall not use force unnecessarily and, when the application of force to a detained person is necessary, no more force than is necessary shall be used.
- (2) No officer shall act deliberately in a manner calculated to provoke a detained person.
- (3) Particulars of every case of use of force shall be recorded by the manager in a manner to be directed by the Secretary of State, and shall be reported to the Secretary of State.

Part IV. Officers of Detention Centres
General duty of officers

45. (1) It shall be the duty of every officer to conform to these Rules and the rules and regulations of the detention centre, to assist and support the manager in their maintenance and to obey his lawful instructions.
- (2) An officer shall inform the manager and the Secretary of State promptly of any abuse or impropriety which comes to his knowledge.
- (3) Detainee custody officers exercising custodial functions shall pay special

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attention to their duty under paragraph 2(3)(d) of Schedule 11 to the Immigration and Asylum Act 1999 to attend to the well-being of detained persons.

(4) Detainee custody officers shall notify the health care team of any concern they have about the physical or mental health of a detainee.

(5) In managing detained persons, all officers shall seek by their own example and leadership to enlist their willing co-operation.

(6) At all times the treatment of detained persons shall be such as to encourage their self-respect, a sense of personal responsibility and tolerance towards others.

4. OFFICERS SUBJECT TO INVESTIGATION

4.1 3 June 2017 allegation, officers identified as DCO Fiddy and DCO Instone-Brewer.

4.2 28 June 2017 allegation, officer identified as DCO Tomsett.

5. CHRONOLOGY OF INVESTIGATION

5.1 On 21 August 2017 Duncan Lewis solicitors wrote a letter of complaint to Brook House IRC complaints department on behalf of Mr D1538

5.2 On 22 August 2017 the complaint was forwarded to Detention Operations (DO).

5.3 On 23 August 2017 DO incorrectly allocated the complaint for investigation by G4S instead of direct to PSU as required. G4S started an internal investigation.

5.4 Following the Panorama programme, aired 4 September 2017, relating to Brook House IRC, G4S queried whether they should be conducting the investigation.

5.5 On 25 September 2017 G4S wrote to Duncan Lewis apologising for the delay in reply.

5.6 On 27 September 2017 G4S informed Duncan Lewis the complaint had been referred back to the Home Office for review.

5.7 On 10 October 2017 Home Office staff at Brook House queried whether DO had seen the complaint.

5.8 On 18 October 2017 Duncan Lewis write to Harmondsworth IRC in a letter before action which contains reference to this complaint and that it is under Home Office review.

5.9 On 19 October 2017 the complaint was forwarded to PSU who queried the delay with DO.

5.10 On 25 October 2017 DO replied to PSU regarding the delay.

5.11 On 8 November 2017 PSU accepted the investigation which was formally commissioned by Detention Services on 17 November 2017.

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- 5.12 On 5 December 2017 documentary evidence was received from G4S including officers' statements.
- 5.13 On 14 December 2017 CCTV recording was received by PSU. Following review of the CCTV recording it was considered the DCO Use of Force and Incident reports were fully supported by the CCTV evidence. It was considered, therefore, unnecessary to interview the DCOs involved in the incident and accept their individual reports.
- 5.14 On 15 December 2017 Mr [D1538] was interviewed at Cardiff reporting centre.
- 5.15 On 20 December 2017 summary of interview and encrypted interview recording sent to Mr [D1538] via Duncan Lewis requesting agreement by 31 December 2017.
- 5.16 On 2 January 2018 Duncan Lewis acknowledged receipt of encrypted recording and requested extension of agreement date, PSU agreed extension to 5 January 2018.
- 5.17 On 2 January 2018 PSU requested information from Home Office, Brook House.
- 5.18 On 4 January 2018 information received from Home Office, Brook House.
- 5.19 On 12 January 2018 PSU placed a transfer of crime request to Sussex police.
- 5.20 On 13 January 2018 Sussex police acknowledged transfer of crime request under reference: [Sensitive/Irrelevant]
- 5.21 Between 12 January 2018 and 30 January 2018 G4S supplied further documentary evidence in response to PSU requests.

6. SUMMARY OF EVIDENCE

6.1 Evidence of Mr [D1538]

6.1.1 Mr [D1538]'s evidence is contained in:

- **Letter of complaint from Duncan Lewis 21 August 2017 (Appendix A1)**
- **Mr [D1538] summary of interview 15 December 2017 (Appendix A2)**

- 6.1.2 Mr [D1538] stated he was denied use of a computer, was pushed and slapped by officers, was sent to isolation for 24 hours and banned from the computer room for 7 days.
- 6.1.3 Mr [D1538] further stated he was subject to homophobic comments from an officer.
- 6.1.4 Mr [D1538] stated, of the incident in the computer room, he had asked the attendant officer for use of a computer but the officer did not speak to Mr [D1538] and did not give him access to a computer.
- 6.1.5 Mr [D1538] confirmed he did not get on a computer and further confirmed he never got on a computer on the day in question.

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- 6.1.6 Mr [D1538] stated he had not sat at a computer and further confirmed he had not sat down anywhere but that he had asked to use a computer.
- 6.1.7 Mr [D1538] stated it was not correct that the officer had said Mr [D1538] could use any available computer and re stated that he had asked to sit but the officer did not talk to him.
- 6.1.8 Mr [D1538] stated he had not said anything to the officers but had shown them his identification card and that he had done so many times.
- 6.1.9 Mr [D1538] stated that, following his attempts for a computer, he asked the officer why he did not talk to him and asked if the officer was racist or something.
- 6.1.10 Mr [D1538] stated there had been one officer in the computer room but that officer called his friend who pushed [D1538].
- 6.1.11 Mr [D1538] further stated the officer started shouting, pushed Mr [D1538] and called his friend who said do you want to try and fight with me.
- 6.1.12 Mr [D1538] stated there were two officers, one with blond hair and glasses and one with dark hair and it was the blond officer who did not give him a computer.
- 6.1.13 Mr [D1538] stated both officers had pushed him but the dark officer had done so first. Mr [D1538] further stated neither officer had said why they pushed him.
- 6.1.14 Mr [D1538] stated he did not stand up and walk over to the officers but he had stood and went over to the manager when he arrived. Mr [D1538] stated he did not walk over to the officers but repeated that they had both pushed him.
- 6.1.15 Mr [D1538] stated he never went closer than about one and a half meters to the officers but that they both came to him.
- 6.1.16 Mr [D1538] stated he could not remember getting hold of either officer and stated he did not shout at them.
- 6.1.17 Mr [D1538] stated he had not defended himself, did not push the officers and did not grab or hold them.
- 6.1.18 When informed that CCTV recordings did not agree with his version of events, Mr [D1538] stated he did not move to the officers (Mr [D1538] then stood and demonstrated slowly walking around with his hands in his pockets).
- 6.1.19 Mr [D1538] stated after the incident in the computer room he spoke to a manager who said he could not go to the computer room for two weeks and Mr [D1538] was taken to "the block".
- 6.1.20 Mr [D1538] recalled the manager said he had checked the camera and then took Mr [D1538] to the "block". Mr [D1538] stated it was maybe three hours later that he was taken to the block.

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- 6.1.21 Mr **D1538** stated he was not given a reason for his removal. When asked, Mr **D1538** further stated he had not been given a reason by anybody, including the Home Office or Healthcare.
- 6.1.22 With regard to events on 28 June 2017, Mr **D1538** confirmed he had only T-shirts and shorts like "boxers" to wear. Mr **D1538** further confirmed he had arrived in Brook House on 2 June 2017 and they were the only clothes he arrived with.
- 6.1.23 Mr **D1538** stated he had told other detainees he had few clothes and had told Home Office staff who had said it would take three to four days to get him some more clothing.
- 6.1.24 Mr **D1538** confirmed officers had helped fill in some papers in the office to ask for more clothes but none were ever supplied to him. Mr **D1538** confirmed he had no other clothes issued during the twenty six days he had been in Brook House.
- 6.1.25 Mr **D1538** recalled he was on E wing at the time and had met the detainee from C wing in the gym. Mr **D1538** stated the other detainee had offered to give Mr **D1538** some spare clothes if Mr **D1538** went to see him.
- 6.1.26 Mr **D1538** stated he did not know why he could not arrange for the clothes to be given to an officer to pass on to him.
- 6.1.27 Mr **D1538** stated he knew he was not allowed to go to C wing but further stated he had asked if it was alright to go. Mr **D1538** confirmed he had asked an officer on E wing who had said it was ok for Mr **D1538** to go to C wing and that the officer had called C wing to let them know Mr **D1538** was coming. Mr **D1538** stated it was the officer on C wing who had said Mr **D1538** was not allowed into C wing.
- 6.1.28 Mr **D1538** stated the officer on C wing pushed Mr **D1538** and told him to go out and was swearing at Mr **D1538**.
- 6.1.29 Mr **D1538** stated he could not remember what the officer had said as his memory was damaged and he could not always remember things.
- 6.1.30 Mr **D1538** recalled the officer said Mr **D1538** looked gay and pushed him out. Mr **D1538** stated he was pushed out and his head was put down. Mr **D1538** stated he was shouting why, why, why.
- 6.1.31 Mr **D1538** stated, because of the officer's comments, other detainees would be thinking he was gay. Mr **D1538** stated he had seen detainees given spice after they had slept with other detainees in their room. Mr **D1538** stated that was why he did not want other detainees coming to him.
- 6.1.32 Mr **D1538** confirmed he was worried other detainees **Sensitive/Irrelevant** because once detainees had given you spice they would come back every time to your room. Mr **D1538** further stated he had not told anybody **Sensitive/Irrelevant** other than his solicitors and Immigration.
- 6.1.33 Mr **D1538** stated he used to smoke spice, including whilst in Brook House, but did

not do so now.

6.2 Evidence of DCO Fiddy

6.2.1 DCO Fiddy's evidence is contained in:

- **DCO Fiddy use of force report 136/17 - 3 June 2017 (Appendix B)**

6.2.2 DCO Fiddy stated, as he entered the IT suite DCO Instone-Brewer was standing behind his desk being verbally abused by Mr [D1538] calling him "A *racist Motherfucker*".

6.2.3 DCO Fiddy stated the abuse became worse with Mr [D1538] saying he "was going to *come over there and fuck him up*" and to *fucking deck him*" or words to that effect".

6.2.4 DCO Fiddy stated he "stayed to the side of the desk as the tension was getting worse and I was worried for my colleague in case thing escalated to a physical level".

6.2.5 DCO Fiddy stated Mr [D1538] stood up and marched toward DCO Instone-Brewer in an aggressive manner.

6.2.6 DCO Fiddy stated Mr [D1538] entered DCO Fiddy's personal space. DCO Fiddy further stated "this is when I told him to step away and back off" as "I was afraid of getting assaulted at this point trying to protect my colleague".

6.2.7 DCO Fiddy stated he adopted a defensive stance and made a defensive push against Mr [D1538]. DCO Fiddy also stated he told Mr [D1538] to stay back and not approach DCO Instone-Brewer and himself.

6.2.8 DCO Fiddy stated he again stood in front of DCO Instone-Brewer as Mr [D1538] moved into DCO Fiddy's personal space. DCO Fiddy stated he again pushed Mr [D1538] away and that Mr [D1538] simultaneously grabbed the back of DCO Fiddy's neck and pulled him closer.

6.2.9 DCO Fiddy stated "this is when I pushed him harder for him to stop assaulting me".

6.2.10 DCO Fiddy stated he then called for a manager using the desk telephone.

6.2.11 DCO Fiddy stated there were several detainee witnesses to the event who were also present before he entered the IT suite.

6.3 Evidence of DCO Instone-Brewer

6.3.1 DCO Instone-Brewer's evidence is contained in:

- **DCO Instone-Brewer incident report 388/17 - 3 June 2017 (Appendix C)**

6.3.2 DCO Instone-Brewer stated Mr [D1538] requested use of a computer and DCO Instone-Brewer said to Mr [D1538] "not a problem please help yourself to any of the

computers available”.

- 6.3.3 DCO Instone-Brewer stated Mr [D1538] then said “Fuck you” and sat at a computer.
- 6.3.4 DCO Instone-Brewer stated he enquired of Mr [D1538] “excuse me, what did you say?” to which Mr [D1538] responded “all you officers are racist, you are fucking racist fuck you” in an aggressive tone.
- 6.3.5 DCO Instone-Brewer stated he enquired as to any misunderstanding to which Mr [D1538] responded “you racist motherfucker”.
- 6.3.6 DCO Instone-Brewer stated another detainee stood up and and spoke to Mr [D1538] saying “the officer was being polite to you and provider you a computer he has done nothing racists brother please calm”.
- 6.3.7 DCO Instone-Brewer stated DCO Fiddy entered the room and, seeing Mr [D1538]’s aggression, stood in front of DCO Instone-Brewer as a barrier between himself and Mr [D1538]
- 6.3.8 DCO Instone-Brewer stated DCO Fiddy asked Mr [D1538] to calm down but Mr [D1538] came close and pushed his head close to DCO Fiddy’s head.
- 6.3.9 DCO Instone-Brewer stated DCO Fiddy told Mr [D1538] to “get back” and “stay back” several times, Mr [D1538] continued to approach DCO Fiddy who then pushed Mr [D1538] away.
- 6.3.10 DCO Instone-Brewer stated Mr [D1538] “launched at DCO E.Fiddy and grabbed him by the throat to which at a short struggle DCO E.Fiddy managed to push him away”.

6.4 Evidence of CCTV recording.

6.4.1 CCTV evidence is contained in:

- **Summary of CCTV (Appendix D)**

- 6.4.2 10:19:46 – Several detainees in view, all sitting down. Mr [D1538] ([D1538]) is visible sitting in lower left corner of image, he appears to be working at a computer although the unit is not actually visible. DCO desk edge just visible at middle left side of image. Two detainees sitting in centre of image appear to be looking toward DCO desk.
- 6.4.3 10:19:49 – 10:19:56 – [D1538] raises right hand to his face then extends and raises his arm toward DCO desk, leans forward slightly. Appears to be talking and gesturing toward DCO desk [D1538] lowers arm but appears to still be talking toward DCO desk, swings round in chair so body is facing toward DCO desk.
- 6.4.4 10:19:56 – 10:19:59 - DCO Fiddy (OF) enters room carrying what appears to be a mug in his left hand. [D1538] leans further forward, head just goes out of image. OF walks into room, appears to be looking toward [D1538] sits upright and turns head toward [D1538] OF halfway across room still looking toward [D1538] turned slightly back

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toward computer looking toward DCO desk. OF continues walking toward DCO desk but now not looking at [D1538] continues looking toward DCO desk.

- 6.4.5 10:20:04 – 10:20:19 [D1538] stands up and strides toward DCO desk, arms swinging at his sides. OF still standing at DCO desk. [D1538] very close to OF. OF turned toward [D1538] but face not in image. [D1538] standing close to DCO desk edge and OF [D1538] turns to his right and starts to walk away from DCO desk.
- 6.4.6 10:20:21 – 10:20:06 – Two other detainees get up and talk to [D1538] raises his arm several times pointing toward DCO desk, appears to be in discussion with the other detainees. Both other detainees appear, at different times, to gently restrain [D1538] and move him away from DCO desk. [D1538] moves back to his seat and sits down.
- 6.4.7 10:21:10 – 10:21:12 [D1538] stands up and strides toward DCO desk, his arms are not raised. [D1538] stood in front of OF at side of DCO desk.
- 6.4.8 10:21:13 – [D1538] steps closer to OF stood at side of DCO desk. OF raises his left arm to [D1538] chest. [D1538] stood close to OF but appears to be looking toward DCO desk, not directly at OF who is stood to side of desk.
- 6.4.9 10:21:14 – OF appears to have pushed [D1538] away with his right hand, open palm. [D1538] steps backward away from OF.
- 6.4.10 10:21:15 – OF has his right arm raised to shoulder level finger pointing at [D1538] has his left arm raised, appears to be pointing toward DCO desk. [D1538] appears to be talking to OF.
- 6.4.11 10:21:15 – [D1538] steps toward OF, both visible looking at each other, arms are in same position, both raised. OF has open palm.
- 6.4.12 10:21:16 – [D1538] steps toward OF again, OF pushes [D1538] away again with his right hand, palm open. [D1538] takes a step backwards away from OF. [D1538] appears to hold OF's right arm with his left hand and pull OF forward.
- 6.4.13 20:21:17 – OF and [D1538] close together. [D1538] appears to have his right arm raised over OF's left shoulder and is leaning toward him. OF has a defensive posture and has his right arm raised between himself and [D1538] at chest level [D1538] and OF now face to face. [D1538] has his right arm raised over OF's left shoulder. OF has his right hand visible at [D1538]'s left shoulder, palm appears to be open.
- 6.4.14 10:21:18.24 – OF appears to be pushing [D1538] away with his right arm to [D1538] left shoulder area. [D1538] appears to have his right hand at OF's left neck area. Second DCO appears in image from behind DCO desk.
- 6.4.15 10:21:18.74 – OF has pushed [D1538] away, [D1538] stepped backward away from OF. DCO Instone-Brewer (OIB) now fully in image stood next to OF.
- 6.4.16 10:21:19 – 10:21:22 – [D1538] steps forward toward OIB but looking at OF. [D1538] continues toward OIB. OF moves to his right and stands between [D1538] and OIB. OF appears to raise his right arm between himself and [D1538] raises both his arms to shoulder

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level between himself and OF. Another detainee approaches the group and stands between [D1538] and the two DCOs.

- 6.4.17 10:21:23 – 10:21:57 [D1538] remains standing and appears to continue to try and approach the DCOs, appears to be particularly interested in OIB. Other detainees appear to keep [D1538] away from the two DCOs. DCOs make no attempt to approach [D1538] but remain by the DCO desk.
- 6.4.18 10:21:59 – 10:24:30 [D1538] sits in his original seat, occasionally looking toward DCO desk and DCOs. Other detainees move generally between [D1538] and DCOs and continue to talk to [D1538] and DCOs. [D1538] appears to occasionally type at computer, DCOs remain near DCO desk.
- 6.4.19 10:24:30 – 10:24:39 - OIB moves from behind DCO desk into centre of room. Door opens and DCM stood in doorway. OIB appears to be talking to DCM about [D1538] still sat but looking toward OIB.
- 6.4.20 10:24:50 – DCM and OIB moved out of room, [D1538] sat in chair now swung round to face door. OF stood at side of DCO desk facing room.
- 6.4.21 10:25:10 – 10:25:50 [D1538] sat at computer, stands and moves toward OF, appears to be talking to him. [D1538] goes back and sits down then stands and, again, moves toward OF and appears to be talking to him. Door opens and OIB appears to request [D1538] who moves toward door and exits room.
- 6.4.22 10:25:50 – 10:30:04 – Other than OF briefly leaving room and re-entering, no relevant activity.

6.5 Evidence of use of Rule 40.

6.5.1 Rule 40 evidence is contained in:

- **The Detention Centre Rules 2001, Rule 39 and Rule 40 (Appendix E1)**
- **Extracts from Care and Separation – DCF1, BH/249/17 (Appendix E2)**
- **Removal from Association Initial Health Assessment (Appendix E3)**
- **Extract from Record of Actions and Observations (Appendix E4)**
- **Email from Home Office regarding Rule 40 decision (Appendix E5)**

6.5.2 The Detention Centre Rules 2001 (DCR) state at Rule 39(2) “A detained person shall not behave in any way which might endanger the health or personal safety of others”.

6.5.3 DCR Rule 40(1) states “Where it appears necessary in the interests of security or safety that a detained person should not associate with other detained persons, either generally or for particular purposes, the Secretary of State (in the case of a contracted-out detention centre) or the manager (in the case of a directly managed detention centre) may arrange for the detained person’s removal from association accordingly”.

6.5.4 DCR Rule 40(2) states “In cases of urgency, the manager of a contracted-out

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detention centre may assume the responsibility of the Secretary of State under paragraph (1) but shall notify the Secretary of State as soon as possible after making the necessary arrangements”.

- 6.5.5 DCR Rule 40(3) states “A detained person shall not be removed under this rule for a period of more than 24 hours without the authority of the Secretary of State”.
- 6.5.6 DCR Rule 40(6) states “Where a detained person has been removed from association he shall be given written reasons for such removal within 2 hours of that removal”.
- 6.5.7 DCR Rule 40(9) States “The manager, the medical practitioner and (at a contracted-out detention centre) an officer of the Secretary of State shall visit all detained persons who have been removed from association at least once each day for so long as they remain so removed”.
- 6.5.8 DCF-1, BH/249/17 shows “Date Located into R 40 03/06/17” and “Time Located into R40 14:30”. Authority for initial 24 hours RFA (Cases of Urgency) shows removal was authorised by Detainee Custody Manager, A Lyden on 3/6/17 at 14:00.
- 6.5.9 DCF-1, BH/249/17 shows all relevant parties notified between 12:00 and 14:20 with the exception of Medical where no time is entered. Entries show who was notified and by whom.
- 6.5.10 DCF-1, BH/249/17 states reasons for removal from association was “invading an officers personal space”, “detainee came towards officer again and tried to grab him around the neck” and “Duty Director consulted and at this present time the use of rule 40 is required to maintain the safety and security of the centre”.
- 6.5.11 DCF-1, BH/249/17 shows Mr [D1538] was removed from Rule 40 on 4/6/17 at 10:00. All closing notifications were recorded between 09:30 and 10:30 including names of persons contacted.
- 6.5.12 DCF-1, BH/249/17 records the decision to ban Mr [D1538] from the IT suite for one week.
- 6.5.13 DCF-1, BH/249/17 records documentation was copied to all relevant parties on 03/06/17 at 14:50. It is recorded that the Detainee copy was “Given by hand”.
- 6.5.14 Removal from Association Initial Health Assessment was completed on 3/6/17 at 14:45 by Edward Omoraka and records no clinical reason to advise against removal from separation.
- 6.5.15 Record of Actions and Observations, regarding Mr [D1538], records at Page 1 line 1: 3/6/17, 14:30, “Arrived on CSU Rule 40 searched into room by DCM A Lyden”.
- 6.5.16 Record of Actions and Observations, regarding Mr [D1538], records at Page 1, line 3: 3/6/17, 15:20, “Given Rule 40 Paperwork”.
- 6.5.17 Record of Actions and Observations, regarding Mr [D1538], records at Page 2, line 1:

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04/06/17, 09:25 "Seen and spoken to by the H.O."

- 6.5.18 Extract of email from Officer Patel includes, "As the detainee displayed quite aggressive, abusive and threatening behaviour towards the centre staff, i would not be involved in the decision to place him on R40. It is a dynamic situation and the decision would have been made by the G4S Oscar 1 to de escalate the situation".
- 6.5.19 Extract of email from Officer Patel includes a copy of a CID note following review on 4 June 2017 when Mr **D1538** was taken off Rule 40, "*Sub seen in CSU as he has been placed in Rule 40 for invading an officers personal space*".
- 6.6 Evidence of clothing.
- 6.6.1 Clothing evidence is contained in:
- **Screen print of induction record (Appendix F1)**
 - **Confirmation email of contents of "Destitute Clothing" (Appendix F2)**
 - **Copy of room clearance contents 3 June 2017 (Appendix F3)**
- 6.6.2 Induction record for 01/06/17 records Mr **D1538** was issued "Full set of destitute clothing".
- 6.6.3 Email from Peter Corrigan, G4S dated 16 January 2017 confirms "Destitute clothing" comprises jogging bottoms, jumper, 2xt-shirts, 2xunderpants, 2xsocks and training shoes if no appropriate footwear.
- 6.6.4 Room clearance record dated 03/06/17 includes: 1x light blue jeans, 1x dark blue Tshirt, 1x dark stripe top, 1x green jacket, 1x grey jumper, 1x green jumper.
- 6.7 Evidence of G4S letters.
- 6.7.1 Evidence from G4S draft internal investigation and notification of suspension from use of IT services letters is contained in:
- **G4S draft response letter dated 14 September 2017 (Appendix G1)**
 - **G4S Notification Of Suspension from use of IT services 5 June 2017 (Appendix G2)**
- 6.7.2 Draft response confirms Mr **D1538** was given a warning for entering C-wing without authorisation and verbally abusing the officer who challenged why he was on a wing other than his own.
- 6.7.3 Draft response supports G4S internal investigation questioned DCM Tomsett identified as being concerned in the second of Mr **D1538**'s allegations.
- 6.7.4 Draft response supports that DCM Tomsett explained to the G4S investigation that "he did not make any reference to Mr **D1538** clothes and if anything he would have told him to put a request if he had been told he was there to pick up clothes from someone because we issue clothes to individuals who do not have anything other

than what they are wearing”.

- 6.7.5 Notification letter to Mr [D1538] of 5 June 2017 supports Mr [D1538] was made aware of the reasons for the suspension and the limits and conditions of that suspension. The letter supports that Mr [D1538] was not suspended from all access to IT and that access was available, under conditions, to material and legal representation relevant to his Immigration case.

6.8 Evidence of G4S training regime.

- 6.8.1 Evidence of G4S training regime is contained in:

- **Interview with G4S, D Houghton 25 January 2018 (Appendix H)**

- 6.8.2 DCOs are required to complete an eight week Initial training Course (ITC) prior to deployment within an IRC. Within the syllabus are certain subjects that G4S are contractually required to cover by the Home Office including: Safeguarding, Safer Custody, Control and Restraint, Security, First Aid and Health and Safety and an introduction to Mental Health.
- 6.8.3 G4S have recently reviewed all their custody training and have updated in line with HMPPS (POLETS), which led to some changes in the ITC including Interpersonal skills, Security and Acting inclusively (Equality).
- 6.8.4 There is no formal training programme that suppliers are supposed to follow, bar those areas that they are contractually required to cover. Similarly there is no oversight or external assessment /or verification of the quality of the training and G4S self audit by ensuring the training meets contractual requirements.
- 6.8.5 DCOs are contractually required to attend a yearly C&R refresher, they also receive a day's refresher training, including safer detention, Safe guarding Security.

7. CONSIDERATION OF EVIDENCE AND CONCLUSIONS

- 7.1 **Allegation:** That on 3 June 2017 Mr [D1538] was pushed, slapped and removed to Rule 40 and he was denied use of the computer room. That on 28 June 2017 a DCO made homophobic comments towards him.

7.2 Consideration of evidence

- 7.2.1 Mr [D1538] stated he was denied use of a computer, was pushed and slapped by officers, was sent to isolation for 24 hours and banned from the computer room for 7 days. Mr [D1538] further stated he was subject to homophobic comments from an officer.
- 7.2.2 Mr [D1538] stated he had asked the attendant officer for use of a computer but the officer did not speak to Mr [D1538] and did not give him access to a computer.
- 7.2.3 Mr [D1538] confirmed he did not get on a computer and further confirmed he never got on a computer on the day in question.

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- 7.2.4 Mr [D1538] stated he had not sat at a computer and further confirmed he had not sat down anywhere but that he had asked to use a computer.
- 7.2.5 Mr [D1538] stated that, following his attempts for a computer, he asked the officer why he did not talk to him and asked if the officer was racist or something.
- 7.2.6 Mr [D1538] stated there had been one officer in the computer room but that officer called his friend who pushed Mr [D1538]. Mr [D1538] further stated the officer started shouting, pushed Mr [D1538] and called his friend who said do you want to try and fight with me.
- 7.2.7 Mr [D1538] stated both officers had pushed him but the dark officer had done so first. Mr [D1538] further stated neither officer had said why they pushed him.
- 7.2.8 Mr [D1538] stated he did not stand up and walk over to the officers but he had stood and went over to the manager when he arrived. Mr [D1538] stated he did not walk over to the officers but repeated that they had both pushed him.
- 7.2.9 Mr [D1538] stated he never went closer than about one and a half meters to the officers but that they both came to him.
- 7.2.10 Mr [D1538] stated he had not defended himself, did not push the officers and did not grab or hold them.
- 7.2.11 Mr [D1538] recalled the manager said he had checked the camera and then took Mr [D1538] to the "block". Mr [D1538] stated it was maybe three hours later that he was taken to the block.
- 7.2.12 Mr [D1538] stated he was not given a reason for his removal. When asked, Mr [D1538] further stated he had not been given a reason by anybody, including the Home Office or Healthcare.
- 7.2.13 Mr [D1538] confirmed he had only T-shirts and shorts like "boxers" to wear. Mr [D1538] further confirmed he had arrived in Brook House on 2 June 2017 and they were the only clothes he arrived with.
- 7.2.14 Mr [D1538] stated he had told other detainees he had few clothes and had told Home Office staff who had said it would take three to four days to get him some more clothing. Mr [D1538] confirmed officers had helped fill in some papers in the office to ask for more clothes but none were ever supplied to him. Mr [D1538] confirmed he had no other clothes issued during the twenty six days he had been in Brook House.
- 7.2.15 Mr [D1538] stated he knew he was not allowed to go to C wing but further stated he had asked if it was alright to go. Mr [D1538] confirmed he had asked an officer on E wing who had said it was ok for Mr [D1538] to go to C wing and that the officer had called C wing to let them know Mr [D1538] was coming. Mr [D1538] stated it was the officer on C wing who had said Mr [D1538] was not allowed into C wing.
- 7.2.16 Mr [D1538] recalled the officer said Mr [D1538] looked gay and pushed him out. Mr [D1538]

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[D1538] stated he was pushed out and his head was put down. Mr [D1538] stated he was shouting why, why, why.

- 7.2.17 Mr [D1538] stated he could not remember what the officer had said as his memory was damaged and he could not always remember things. Mr [D1538] stated he used to smoke spice, including whilst in Brook House, but did not do so now.
- 7.2.18 Mr [D1538] stated, because of the officer's comments, other detainees would be thinking he was gay. Mr [D1538] stated he had seen detainees given spice after they had slept with other detainees in their room. Mr [D1538] confirmed he was worried other detainees [Sensitive/Irrelevant] because once detainees had given you spice they would come back every time to your room.
- 7.2.19 DCO Fiddy stated, as he entered the IT suite, DCO Instone-Brewer was standing behind his desk being verbally abused by Mr [D1538] who called him "A racist Motherfucker" and he "was going to *come over there and fuck him up*" and to "fucking deck him" or words to that effect".
- 7.2.20 DCO Fiddy stated he "stayed to the side of the desk as the tension was getting worse and I was worried for my colleague in case thing escalated to a physical level" and that Mr [D1538] stood up and marched toward DCO Instone-Brewer in an aggressive manner.
- 7.2.21 DCO Fiddy stated Mr [D1538] entered DCO Fiddy's personal space. DCO Fiddy further stated "this is when I told him to step away and back off" as "I was afraid of getting assaulted at this point trying to protect my colleague". DCO Fiddy stated he adopted a defensive stance and made a defensive push against Mr [D1538] DCO Fiddy also stated he told Mr [D1538] to stay back and not approach DCO Instone-Brewer and himself.
- 7.2.22 DCO Fiddy stated he again stood in front of DCO Instone-Brewer as Mr [D1538] moved into DCO Fiddy's personal space. DCO Fiddy stated he again pushed Mr [D1538] away and that Mr [D1538] simultaneously grabbed the back of DCO Fiddy's neck and pulled him closer. DCO Fiddy stated "this is when I pushed him harder for him to stop assaulting me".
- 7.2.23 DCO Instone-Brewer stated Mr [D1538] requested use of a computer and DCO Instone-Brewer said to Mr [D1538] "not a problem please help yourself to any of the computers available" to which Mr [D1538] then said "Fuck you" and sat at a computer.
- 7.2.24 DCO Instone-Brewer stated he enquired of Mr [D1538] "excuse me, what did you say?" to which Mr [D1538] responded "all you officers are racist, you are fucking racist fuck you" in an aggressive tone. DCO Instone-Brewer stated he enquired as to any misunderstanding to which Mr [D1538] responded "you racist motherfucker".
- 7.2.25 DCO Instone-Brewer stated DCO Fiddy entered the room and, seeing Mr [D1538] aggression, stood in front of DCO Instone-Brewer as a barrier between himself and Mr [D1538] DCO Instone-Brewer stated DCO Fiddy asked Mr [D1538] to calm down but Mr [D1538] came close and pushed his head close to DCO Fiddy's head.

- 7.2.26 DCO Instone-Brewer stated DCO Fiddy told Mr [D1538] to “get back” and “stay back” several times but Mr [D1538] continued to approach DCO Fiddy who then pushed Mr [D1538] away. DCO Instone-Brewer stated Mr [D1538] “launched at DCO E.Fiddy and grabbed him by the throat to which at a short struggle DCO E.Fiddy managed to push him away”.
- 7.2.27 CCTV shows Mr [D1538] sitting and he appears to be working at a computer although the unit is not actually visible. Mr [D1538] appears to be directing conversation toward the DCO desk and gesturing in that direction.
- 7.2.28 CCTV shows DCO Fiddy enter the room, carrying what appears to be a mug in his left hand, and walk to the DCO desk. DCO Fiddy’s attention appears to be drawn toward Mr [D1538]
- 7.2.29 CCTV shows Mr [D1538] stand and move close to DCO Fiddy before returning to his seat. Two other detainees are seen standing and talking to Mr [D1538] and appear to gently move him away from the DCO desk.
- 7.2.30 CCTV shows Mr [D1538] again stand and stride close to DCO Fiddy who raises his arm and pushes Mr [D1538] away with an open palm.
- 7.2.31 CCTV shows Mr [D1538] again move close to DCO Fiddy who again pushes him away with open palm. Mr [D1538] then appears to hold DCO Fiddy’s arm and draw him closer whilst appearing to hold DCO Fiddy by the back of his neck. DCO Fiddy again pushes Mr [D1538] away with open palms.
- 7.2.32 CCTV shows Mr [D1538] to appear agitated in his manner and he appears to have a desire to move back toward the DCOs. Other detainees are seen coming between Mr [D1538] and the DCOs and to restrain Mr [D1538]
- 7.2.33 CCTV does not show any approach toward Mr [D1538] by either DCO before or during these incidents.
- 7.2.34 Written records support copies of Rule 40 paperwork were issued for, and given by hand to, Mr [D1538] within 2 hours of his being placed on Rule 40. Records support Mr [D1538] was in Rule 40 for less than 24 hours and all necessary parties were informed of his removal. Records support Mr [D1538] was assessed by Healthcare prior to his being placed on Rule 40. Records support Mr [D1538] was seen by the Home Office within 24 hours of being placed on Rule 40. Records show the reason for placing Mr [D1538] on Rule 40. Email evidence supports the Home Office would not be involved in the decision to place Mr [D1538] onto Rule 40.
- 7.2.35 Written records support Mr [D1538] was issued clothing on 1 June 2017. Evidence supports that clothing issue included jogging bottoms and a jumper. CCTV shows Mr [D1538] was wearing calf length leg wear on 3 June 2017. Evidence further supports Mr [D1538] had, in his room, on 3 June 2017 clothing other than solely T shirts and “boxer” type shorts.
- 7.2.36 Evidence supports G4S initiated an internal investigation into Mr [D1538]’s complaints, including his allegation of homophobic comments.

- 7.2.37 Evidence supports Mr [D1538] was notified of the suspension of IT services, the reasons for the suspension, the appeals process and that the suspension was not absolute and allowed conditional access relevant to his Immigration case.

7.3 Conclusions

- 7.3.1 Mr [D1538] alleges DCOs in the IT suite launched an unprovoked attack and during that attack used excessive force amounting to assault. Mr [D1538] further alleges, on a separate occasion, he was the subject of homophobic abuse.
- 7.3.2 Consideration of the first allegation focused the investigation on whether any DCO used force on Mr [D1538] if used whether any use of force was unprovoked or justified and, again if used, the level of any force.
- 7.3.3 In consideration of whether any DCO used force on Mr [D1538] this aspect is not disputed and evidence, including his own, supports that DCO Fiddy used force on Mr [D1538]
- 7.3.4 In consideration of whether the force used was unprovoked or justified, evidence supports that Mr [D1538] moved close to DCO Fiddy on several occasions. CCTV evidence supports Mr [D1538] moved in an apparently aggressive manner toward the DCO. Evidence, including CCTV recording, supports Mr [D1538] moved very close to DCO Fiddy and, on the final occasion, appears to grab DCO Fiddy around the back of the neck. Officer's evidence supports that DCO Fiddy felt a threat of imminent assault to both himself and DCO Instone-Brewer. No evidence was found to support Mr [D1538]'s version of events that a DCO called other DCOs who pushed and tried to slap him. It is considered, therefore, that the use of force was not unprovoked. It is further considered that DCO Fiddy's use of force to move Mr [D1538] away from himself was justified under the circumstances presented at the time. Officer's evidence supports Mr [D1538] was verbally abusing DCO Instone-Brewer both before and following DCO Fiddy's entry into the IT room.
- 7.3.5 In consideration of the level of force used, evidence supports that DCO Fiddy used open palmed hands to push Mr [D1538] away from him on several occasions. On each of those occasions Mr [D1538] had moved very close to DCO Fiddy and, on the final occasion, appears to have grabbed the DCO around the back of the neck. Evidence supports that Mr [D1538] moved toward DCO Fiddy in an apparently aggressive manner and it is considered reasonable to assume DCO Fiddy was justified in feeling under threat if imminent assault, especially considering Mr [D1538] approached in the same manner several times. Officer's evidence also supports verbal de-escalation was attempted to calm Mr [D1538] It is considered, therefore, that the level of force used to respond to the situation presented at the time was within reasonable and necessary levels proportionate to achieving the required outcome of moving Mr [D1538] out of DCO Fiddy's personal space.
- 7.3.6 In wider consideration of events, Mr [D1538] alleges he requested use of a computer but was ignored by the DCO in the IT suite at the time. Mr [D1538] confirmed he was not given use of a computer and did not sit at a computer nor sit at all. Mr [D1538] alleges the DCO's approached him and started pushing him without giving any reason. CCTV evidence shows Mr [D1538] sat down in a computer type chair on

several occasions. CCTV evidence shows Mr [D1538] apparently working at a computer on several occasions. CCTV evidence shows Mr [D1538] gesturing, and apparently shouting, toward the DCO desk before DCO Fiddy enters the room. CCTV evidence shows Mr [D1538] being apparently pacified and gently restrained by other detainees in the IT room. It is considered, therefore, that sufficient evidence was found to support the version of events as reported by the DCO's on their use of force and incident reports. It is further considered that sufficient evidence was found to cast doubt on the veracity of Mr [D1538]'s version of events. It is accepted that Mr [D1538] was, or became, agitated whilst in the IT suite however no evidence was found as to the cause of that agitation. Evidence does, however, support that the alleged non allocation of a computer was not the cause. Evidence supports that Mr [D1538] was primarily directing his aggression toward DCO Instone-Brewer and that DCO Fiddy placed himself in a position to protect his colleague. That positioning resulted in the invasion of DCO Fiddy's personal space by Mr [D1538] and the resultant proportionate use of force.

- 7.3.7 It is accepted that, as a consequence of Mr [D1538]'s actions and behaviour, he was placed into Rule 40 and suspended from use of IT services for a period of seven days. With regard to the suspension of IT services, evidence supports Mr [D1538] was notified of the reasons for the suspension and that he retained a right to appeal the decision and of the process to do so. No evidence was found to suggest he lodged such an appeal. Evidence further supports the suspension was not absolute and that Mr [D1538] could, conditionally, access IT services relevant to his Immigration case. It is, therefore considered the suspension was reasonable in response to Mr [D1538]'s attitude and behaviour in the IT suite and was not a punitive blanket ban as the allegation implies. With regard to Mr [D1538] being placed into Rule 40, this aspect of the allegation is considered in greater depth later in this report.
- 7.3.8 Consideration of the second allegation focused the investigation on whether a DCO made homophobic comments to Mr [D1538]
- 7.3.9 No definitive evidence was found to support homophobic comments were or were not made to Mr [D1538]. Consideration was therefore given, on the balance of probability, to the likelihood of such comments being made by a DCO to a detainee and to the circumstances under which they are alleged to have been made.
- 7.3.10 It is accepted that Mr [D1538] was attempting to enter onto C wing, it is further accepted that C wing was not Mr [D1538] accommodation wing. It is also accepted that Mr [D1538] was given a warning as a consequence of events.
- 7.3.11 Evidence supports Mr [D1538] knew he should not enter accommodation wings other than his own.
- 7.3.12 Mr [D1538] stated he was attempting to enter C wing in order to obtain additional clothing from another detainee. Mr [D1538] further stated this was necessary as he had no clothing beyond "boxer" type shorts and t-shirts despite being in Brook House in excess of 20 days and having requested issue clothing. Mr [D1538] also stated no clothing had been issued to him.

- 7.3.13 Evidence supports Mr [D1538] was issued "destitute clothing" on 1 June 2016 during his admission to Brook House. Evidence further supports this would include jogging bottoms and a jumper. CCTV recording shows Mr [D1538] wearing calve length leg wear on 3 June 2017. Evidence supports Mr [D1538] had, in his room on 3 June 2017, items of clothing other than t-shirts and "boxer" type shorts. It is, therefore, accepted that Mr [D1538] did have clothing other than that which he states, "boxer" type shorts and t-shirt, as being his sole possessions. This casts doubt on the veracity of Mr [D1538]'s statement and, therefore, his stated reason for wishing to gain entry to C wing.
- 7.3.14 Evidence from the G4S internal investigation states the DCO concerned, by then a DCM, disputes the allegations and states he did not make any reference to Mr [D1538] clothing. Evidence also states Mr [D1538] was verbally abusive to the officer when challenged as to why he was on C wing.
- 7.3.15 Mr [D1538] states he was pushed out of C wing and his head was put down. Under Detention Centre Rules such actions would have constituted use of force and, as such, would have been recorded in line with Rule 41(3). No evidence of any such record was found.
- 7.3.16 It is accepted that Mr [D1538] attempted to gain entry to a wing other than his own despite knowing such entry was not allowed. His stated reason for wanting to enter C wing is thrown into doubt as evidence supports Mr [D1538] had been issued clothing other than shorts and t-shirts. It is considered reasonable to assume that, being frustrated in his attempt to enter C wing, Mr [D1538] became agitated and verbally abused the officer preventing his entry.
- 7.3.17 Whilst it is accepted that the question of homophobic comments being made to Mr [D1538] cannot be resolved beyond any doubt, it is considered on the balance of probability that such comments were probably not made and that Mr [D1538] became frustrated due to his attempt to enter C wing being challenged and denied.
- 7.3.18 In a wider context, Mr [D1538]'s evidence supports that he was, during his time in Brook House, using psychoactive substances which may have affected his mental health. Mr [D1538] states he has problems in his head from smoking spice, his memory was damaged and he could not always remember things. Mr [D1538] stated he was concerned other detainees would [Sensitive/Irrelevant] Mr [D1538] stated detainees were given spice for sleeping with other detainees and stated he did not want detainees coming to him.
- 7.3.19 In consideration of all available evidence it is considered that Mr [D1538]'s first allegation is found to be unsubstantiated.
- 7.3.20 In consideration of all available evidence it is considered, on the balance of probability, that Mr [D1538]'s second allegation is found to be unsubstantiated.

8. Rule 40 and wider Organisational considerations

- 8.1 Whilst it is accepted that Mr [D1538] was placed into Rule 40 following the incident on 3 June 2017 in the IT suite of Brook House, consideration was given to the

appropriateness of the use of that rule.

- 8.2 As considered earlier in this report, evidence supports that Mr [D1538] conducted himself in such a manner as to necessitate the use of force by a DCO to defend himself, and a colleague, against a perceived threat of assault.
- 8.3 Evidence supports that other detainees became directly involved in the incident and that it affected their behaviour and disrupted their activity.
- 8.4 Rule 40(1) allows for the Removal from Association (RFA) of a detainee where it appears necessary in the interests of security or safety.
- 8.5 Rule 40(2) allows, in cases of urgency, for a contracted-out detention centre manager to authorise use of Rule 40 but, when so doing, requires the Secretary of State to be informed as soon as possible.
- 8.6 Appropriateness of the use of Rule 40, therefore, hinges on the apparent necessity for the RFA of a detainee based on the interests of security or safety.
- 8.7 As above, it is accepted that Mr [D1538] conduct and actions were perceived by the DCO's involved as a threat to their safety and wellbeing.
- 8.8 Where Rule 40 is invoked it is often, of necessity, a subjective decision based on circumstances pertaining at the time and how events are perceived by those affected.
- 8.9 Consideration was therefore necessarily given to the decision to place Mr [D1538] into Rule 40 and the timings of that decision.
- 8.10 DCF-1 BH/249/17 records authority to place Mr [D1538] into Rule 40 was given by DCM Lyden at 14:00 on 3 June 2017, the DCF-1 also records Mr [D1538] was located into Rule 40 at 14:30.
- 8.11 Mr [D1538] stated the DCOs told the DCM that Mr [D1538] had caused trouble and, following viewing the CCTV recording, the DCM placed Mr [D1538] into Rule 40 approximately three hours later. It is reasonable to assume, therefore that DCM Lyden started his decision making process at approximately 10:25 and that the final decision was not solely based on the DCO's verbal accounts.
- 8.12 DCO Fiddy's use of force report is timed at 14:00 and DCO Instone-Brewer's incident report is timed at 12:30, therefore DCM Lyden had access to the full, written reports of both DCOs immediately before he finalised his decision.
- 8.13 DCF-1 BH/249/17 records the Duty Director, J Williams, was notified at 12:00, the DCF-1 also records that the Duty Director was consulted with regard to the reason for Mr [D1538]'s RFA. It is reasonable to assume that the consultation took place at 12:00 when the Duty Director was notified.
- 8.14 DCF-1 BH/249/17 records that the Home Office and Independent Monitoring Board (IMB) were notified at 14:00 and Religious Affairs at 14:20. Healthcare is recorded

as being notified but no time is recorded.

- 8.15 Removal from Association Initial Health Assessment is timed at 14:45 and records no clinical reasons to advise against RFA. It is reasonable to assume, therefore, that Healthcare were notified of the RFA at the same time as the Home Office, IMB and Religious affairs, 14:00 to 14:20, as at 8.14.
- 8.16 DCF-1 BH/249/17 records the reason for removing Mr [D1538] from association as due to his "invading an officers personal space, the officer had to push [D1538] away from him before detainee came towards officer again and tried to grab him around the neck. Duty Director consulted and at this present time the use of rule 40 is required to maintain the safety and security of the centre". It is accepted that this conforms to the requirements under Rule 40(1) in that it appeared necessary in the interests of security or safety.
- 8.17 DCF-1 BH/249/17 records copies of documentation were sent to all necessary parties at 14:50 including to the Detainee by hand.
- 8.18 Record of Actions and Observations relating to Mr [D1538] Page 1 line 3 records 3/6/17, 15:20 "Given Rule 40 paperwork". Discrepancies in timings are accepted as acceptable due to physical movement through the Centre. It is accepted that this conforms to the requirements under Rule 40(6).
- 8.19 DCF-1 BH/249/17 Records Mr [D1538] was removed from Rule 40 at 10:00 on 4/6/17 and all relevant parties were notified between 09:30 and 10:30. Record of Actions and Observations Page 2 line 1 records 04/-6/17, 09:25 "Seen & spoken to by the H.O.". It is accepted that this conforms to the requirements under Rule 40(3) and (9). It is noted that although Rule 40(9) states "at least once each day for so long as they remain so removed" a "day" is not defined, it is accepted that a "day" may reasonably be taken as a 24 hour period.
- 8.20 In consideration of the application of Rule 40, it is considered that sufficient evidence was found to support that policy and procedure were followed to an acceptable standard and the requirements of Rule 40 were followed in the Removal from Association of Mr [D1538]
- 8.21 In consideration of the appropriateness of the use of Rule 40, it is accepted that DCM Lyden took sufficient steps to secure as much evidence as was available to him at the time in order to authorise RFA of Mr [D1538] including consultation with the Duty Director. With regard to the time taken to place Mr [D1538] into Rule 40, it is accepted that there may be an argument to suggest Mr [D1538] had, by that time, ceased to be a concern to the security and safety of the centre. It is, however, accepted that the reason given for the removal was due, in part, to the attempt to physical grab an officer. It is also accepted that, although not specifically mentioned on DCF-1 BH/249/17, Mr [D1538]'s actions in the IT suite did appear to involve and disrupt other detainees. It is accepted that Mr [D1538]'s actions were contrary to Rule 39(2). It is therefore considered reasonable to accept the appropriateness of the use of Rule 40 as circumstances and evidence presented themselves to DCM Lyden at the time.

- 8.22 With regard to wider Organisational considerations, with specific reference to Terms of Reference at 2.2, it is noted that the general conditions, training and service levels pertaining within Brook House at the time are subject to a separate review.
- 8.23 Consideration was, however, also given to any underlying organisational deficiencies which may have contributed to Mr [D1538]'s treatment in this specific case. Mr [D1538]'s two allegations were again considered separately.
- 8.24 In regard of the first allegation, it is considered that no evidence was found, beyond Mr [D1538]'s allegation, that DCO supervision of the IT suite was deficient or that DCO's were negligent in their duties. On the contrary, evidence was found to support that an identified problem, with data speed, was being addressed. It is considered that sufficient evidence was found to support that the use of force employed was in line with policy and officers training and no training deficiencies or requirements were indicated.
- 8.25 In regard of the second allegation, it is considered that no evidence was found, beyond Mr [D1538]'s allegation, that the DCO acted in any way other than in accordance with policy and procedure. Whilst no definitive evidence was found to prove either stance, it is considered reasonable to assume that the officer acted in accordance with training and procedure for the reasons discussed earlier in this report.
- 8.26 In regard of both allegations, it was noted during the investigation that there was an accessible, suitable and published complaints procedure available to Detainees within Brook House at the time of the incidents. That Mr [D1538] did not use this procedure and chose to make his allegations known on 21 August 2017 after he had moved to Harmondsworth IRC is not considered to be as a consequence of a failed complaints procedure. It is accepted that, following the eventual submission of Mr [D1538]'s allegations, the process of handling the complaint broke down and did not follow the correct pathway to investigation. It is further noted, however, that once identified as being mis-handled the complaint was forwarded through the proper channels.
- 8.27 It is, therefore, considered that no organisational deficiencies were identified which would have contributed to Mr [D1538]'s treatment during either of the incidents.

9. Recommendations

- 9.1 It is noted that an argument may exist to suggest the decision to place Mr [D1538] into Rule 40 should have devolved to the Home Office as it is arguable no "case of urgency" existed in this instance. Home Office evidence supports that "*As the detainee displayed quite aggressive, abusive and threatening behaviour towards the centre staff, i would not be involved in the decision to place him on R40*". This is questionable and it is considered worthy of further exploration as to the policy guidance in such circumstances. This is considered pertinent as the ultimate responsibility for the centre lies with the Secretary of State through devolved authority to the Home Office.
- 9.2 Whilst it may not necessarily have impacted on the decision to appropriately place

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Mr [D1538] into Rule 40 based on his behaviour and actions, it is considered that sufficient time existed to allow input into that decision by the Home Office.

9.3 National – Policy and procedure

9.3.1 Rule 40(2) states centre managers “may assume the responsibility of the Secretary of State” which implies the Secretary of State is the proper body to authorise Rule 40. Such assumption of responsibility is only devolved in “cases of urgency”. As stated at 9.1 and 9.2, it is considered there was sufficient, suitable time for the Home Office to be consulted prior to Rule 40 being implemented. It is noted there was sufficient time to notify the Home Office, thus fulfilling that obligation under Rule 40(2).

9.3.2 It is, therefore, recommended that consideration be given to clarification of what constitutes “cases of urgency” and reinforcing where the prime authority lies for authorising Rule 40. It is noted that, since events described herein, DSO 2/2017, July 2017 has been issued. DSO 2/2017, paragraph 31, details the Home Office as the prime decision maker in authorising the use of Rule 40. Paragraph 32 and footnote 4 detail authority can be devolved in cases of urgency. Paragraph 30 details the requirement to document all alternatives considered and discounted before Rule 40 is authorised and engaged. It is also noted, however, that evidence was supplied to the investigation, post July 2017, to support that Home Office officers appear to be unsure of their responsibility to act as prime authority in authorising Rule 40 in all circumstances where time allows. It is considered this may have a serious impact on future cases where justification of and authority for the use of Rule 40 is questioned.

9.4 Action Point 1

9.4.1 Detention Services give consideration to reinforcing DSO 2/2017 as to where prime authority lies for implementing Rule 40 and clarifying what constitute “cases of urgency” and issuing such clarification as necessary.

Name: J N Adamson	Name: T Lennon
Grade: HEO	Grade: SIO
Signed:	Signed:
Date: 30 January 2018	Date: 30 January 2018

Appendix list:

- Letter of complaint from Duncan Lewis 21 August 2017(Appendix A1)
- Mr [D1538] summary of interview 15 December 2017(Appendix A2)
- DCO Fiddy use of force report 136/17 - 3 June 2017(Appendix B)
- DCO Instone-Brewer incident report 388/17 - 3 June 2017(Appendix C)
- Summary of CCTV(Appendix D)
- The Detention Centre Rules 2001, Rule 39 and Rule 40 (Appendix E1)
- Extracts from Care and Separation – DCF1, BH/249/17 (Appendix E2)
- Removal from Association Initial Health Assessment (Appendix E3)
- Extract from Record of Actions and Observations (Appendix E4)
- Email from Home Office regarding Rule 40 decision (Appendix E5)
- Screen print of induction record (Appendix F1)
- Confirmation email of contents of “Destitute Clothing” (Appendix F2)
- Copy of room clearance contents 3 June 2017 (Appendix F3)
- G4S draft response dated 14 September 2017 (Appendix G1)
- G4S Notification Of Suspension from use of IT services 5 June 2017 (Appendix G2)
- Interview with G4S, D Haughton 25 January 2018 (Appendix H)