

6. In 2016 updated guidance on Rule 40 and Rule 42 was developed and went through a review with key internal and external stakeholders before finalisation and publication. On 24 June 2016, a targeted consultation on the draft DSO was undertaken with a range of detention-related NGOs (including Medical Justice), HM Inspectorate of Prisons (HMIP), IRC Independent Monitoring Board (IMB) chairs, and the Prisons and Probation Ombudsman. The consultation closed at the end of July 2016.
7. All responses were carefully considered and informed the development of a further draft DSO. On 17 March 2017 a targeted consultation on the revised draft DSO was undertaken and closed on 7 April 2017. Pending finalisation and the publication of the new DSO, an interim instruction (HOM0332163) was issued on 25 October 2016 to provide guidance to IRC managers and Home Office managers in IRCs on the management of detainees being held under Rule 40 or 42, and superseded previous instructions.
8. The Inquiry has asked me if it is correct that the effect of HOM0332163 was that Rule 40 or 42 could only be granted by an appropriate Home Office Immigration Enforcement Manager of EO grade or above, even in cases of urgency. This is not correct, the Detention Centre Rules determine the requirements for due authorisation of each rule.
9. Rule 40 states:

40(1) "...the Secretary of State (in the case of a contracted out detention centre) or the manager (in the case of a directly managed centre) may arrange for the detained person's removal from association accordingly.

40(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"

10. Rule 42 states:

42(1) “...the Secretary of State (in the case of a contracted out detention centre) or the manager (in the case of a directly managed centre) may order.....”

42(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 giving the relevant order”

11. The instruction made clear that any use of Rule 40 or 42 must be made on a case by case basis and only as a final resort where it appears necessary in the interests of safety or security once all the other options have been considered and ruled out. It made clear that an authority for removal from association under Rule 40 cannot exceed 14 days, that an authority for temporary confinement under Rule 42 cannot exceed 3 days, and that any ongoing need for removal/confinement beyond those timescales requires a fresh authorisation to be made.

12. An email clarification was sent to Ben Saunders (G4S) from Alan Gibson on 25 October 2016 explaining that the instruction did not introduce a new restriction on use of removal from association in response to a spontaneous incident. In the event of such an incident the centre manager should continue to manage the situation and advise the Home Office manager as soon as possible thereafter (this reflects the Detention Centre Rules on urgent authorisation).

13. Ben Saunders was the manager of Brook House throughout the relevant period for the purposes of Rules 40(2) and 42(2), as defined by Section 148 of the Immigration and Asylum Act 1999. In urgent situations Rule 40(2) and Rule 42(2) permits the manager to make the decision for the Home Office and if the role of the manager is being performed by another individual because the individual who is normally the manager is unavailable, then it is the person in the role of the manager who makes the decision in an urgent case. As such if Ben Saunders was unavailable the duty manager would undertake this function.

14. The Inquiry has asked whether the position on authorisation in HOM0332163 was later superseded by paragraphs 31-32 of DSO 02/2017 (CJS000676). The position of authorisation was further clarified in DSO 02/2017, which included a reference to the role of centre/duty managers in urgent authorisations, reflecting the Detention Centre Rules. DSO 02/2017 (v2.1) was published on 18 July 2017. An update to the DSO was published on 18 September 2020, this included updates on managing those with mental vulnerabilities and annual audit requirements for contracted service providers and Home Office teams.

15. The Inquiry has asked me whether during the period of time in which CJS000676 governed the management of detainees being held under Rule 40 or Rule 42, Paul Gasson, as the contract monitor and member of the HOIE onsite team, could authorise use of Rule 40 or 42 in non-urgent circumstances. As set out in paragraph 31 of the DSO 02/2017 (version 2.1) Paul Gasson, as Home Office manager at Brook House IRC, could authorise the use of Rule 40/42 for an initial 24 hour period ‘in normal circumstances, any use of Rule 40 or 42, for an initial 24 hour period must be authorised by a manager (Executive Officer or above) from the HOIE IRC Team in a contracted out centre’.

<u>Statement of Truth</u>
<p>I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.</p> <p>I am content for this witness statement to form part of the evidence before the Brook House Inquiry and to be published on the Inquiry’s website.</p>