Neutral Citation Number: [2025] EWHC 1853 (Admin)

Case No: AC-2024-LON-002158 &
AC-2024-LON-003384

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21 July 2025

Before :

MRS JUSTICE LANG DBE

- -

Between :

AC-2024-LON-002158

THE KING	**Claimants**
on the application of	
(1) D1914 **(2) AAA**	
- and -	
SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Defendant**
SPEAKER OF THE HOUSE OF COMMONS	**Intervener**

AC-2024-LON-003384

THE KING	**Claimant**
on the application of	
AVY	
- and -	
SECRETARY OF STATE FOR THE HOME DEPARTMENT	**Defendant**
SPEAKER OF THE HOUSE OF COMMONS	**Intervener**

- -
- -

Stephanie Harrison KC and Emma Fitzsimons (instructed by **Duncan Lewis Solicitors Limited**) for the **Claimants in AC-2024-LON-002158**
Alex Goodman KC and Grace Capel (instructed by **Duncan Lewis Solicitors Limited**) for the **Claimant in AC-2024-LON-003384**
Sam Karim KC, Emily Wilsdon and (in respect of the Defendant's application concerning Parliamentary Privilege) David Manknell KC (instructed by the **Government Legal Department**) for the **Defendant**
Sarah Hannett KC and Katy Sheridan (instructed by the **Office of Speaker's Counsel**) for the **Intervener**

Hearing dates: 17 – 19 June 2025

- -

Approved Judgment

This judgment was handed down remotely at 10.30 am on 21 July 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....

MRS JUSTICE LANG DBE

Mrs Justice Lang :

1. The Claimants seek permission to challenge the Defendant's response to the report of the Brook House Inquiry ('BHI'), a statutory inquiry into the mistreatment of individuals detained at Brook House Immigration Removal Centre ('BH'), which was presented to Parliament and published on 19 September 2023.

2. On 27 February 2025, Sheldon J. ordered that claim AC-2024-LON-002158 ('Claim 1'), filed by D1914 and AAA, should be linked for case management and hearing with claim AC-2024-LON-003384 ('Claim 2'), filed by AVY. He ordered a rolled-up hearing in both claims, to determine whether permission to apply for judicial review should be granted, and if so, to determine the substantive claims, on the same occasion.

3. At the outset of the hearing, I granted the application by the Defendant, supported by the Speaker of the House of Commons as Intervener, that the Claimants' extensive reliance upon parliamentary proceedings was a breach of Parliamentary Privilege. The reasons for my decision are set out in Annex 1 to this judgment.

Grounds of challenge

Ground 1 in Claims 1 and 2

4. All three Claimants submitted that the Defendant failed to discharge the investigative duty imposed by Article 3 ECHR, contrary to section 6 of the Human Rights Act 1998 ('HRA 1998'). An essential element of the investigative duty is that lessons are learned and dangerous practices are rectified. In breach of Article 3 ECHR, the Defendant has failed to address adequately each of the BHI's 33 recommendations and implement measures to rectify the dangerous practices identified in the report. The Defendant contests this ground.

Ground 2 in Claims 1 and 2

5. Further or in the alternative, all three Claimants submitted that the Defendant's failure to comply with the investigative duty to act upon the evidence and the findings of the BHI, to implement its recommendations, and rectify the dangerous practices identified, amounted to a breach of the systems duty in Article 3 ECHR. The Defendant contests this Ground.

Ground 3A in Claim 1

6. D1914 and AAA submitted that the Defendant was frustrating, and acting contrary to, the statutory objects and purposes of the Inquiries Act 2005 ('IA 2005'), which had to be construed compatibly with Article 3 ECHR. The Defendant's formal Response to the report lacked transparency; recommendations have not been acted upon, effectively or at all; and the policy choices that the Defendant has taken contravene the commitments given to learn lessons and ensure such mistreatment does not recur. The Defendant contests this Ground.

Ground 3B in Claim 1

7. D1914 submitted, in the Statement of Facts and Grounds for Claim 1 ('SFG1') (paragraph 86), that he had a legitimate expectation that the Defendant "would take steps to ensure that mistreatment identified in the BHI report would not [recur] in future". In the Claimants' skeleton argument at paragraph 145 ('CSkA/145'), the legitimate expectation was re-formulated as "the Defendant would honour the commitment made to learn the lessons from BHI". However, as there was no application to amend the pleading, the ground remains as originally pleaded.

8. In the light of my ruling that the ministerial statement made by the Defendant (then Ms Priti Patel MP), on 5 November 2019, was inadmissible on grounds of parliamentary privilege, D1914 decided not to pursue Ground 3B at the hearing. However, he reserved a right to rely on Ground 3B in the event that he successfully appealed against the ruling on parliamentary privilege. Permission to apply for judicial review is refused.

Ground 3 in Claim 2

9. AVY alleged a substantive breach of Article 3 ECHR during his detention at BH from 20 January 2024 to 5 November 2024. He was unsuitable for detention, as a vulnerable victim of torture who was at risk of self-harm and suicide. He did not receive appropriate treatment for his mental health. He was unlawfully removed from association. The removals were not properly authorised in accordance with the Detention Centre Rules 2001 ('DC Rules 2001'). He was subjected to the use of force on multiple occasions. In particular, he pointed to the use of force on 30 April 2024 as a disproportionate and unreasonable use of force when he was dangerously restrained in the prone position, and rigid bar handcuffs were used on him, contrary to the recommendation in the BHI to move away from the "prisonisation" of the Immigration Removal Centre ('IRC') estate. AVY also submitted that he was detained pursuant to an unlawful system, by reference to the systems failures identified under Claim 2 Ground 2. The Defendant disputes these allegations.

Ground 4 in Claim 2

10. AVY alleged false imprisonment and a breach of Article 5 ECHR for the period of his detention between 9 January 2024 (initially at HMP Thameside before transfer to BH) and 5 November 2024. He was unsuitable for detention, as a vulnerable victim of torture who was at risk of self-harm and suicide. Rule 35 of the DC Rules 2001 ('Rule 35') and the 'Adults at Risk in Immigration Detention' policy ('the AAR policy') were not complied with. His detention was unreasonably long: he was first granted bail by the First-tier Tribunal ('FTT') on 3 June 2024, but the Defendant did not confirm his eligibility for accommodation under section 95 of the Immigration and Asylum Act 1999 until 8 October 2024. There was no realistic prospect of deportation within a reasonable time. The Defendant did not act with reasonable diligence in authorising detention or organising release. His detention was in breach of the four principles in *Hardial Singh* [1984] 1 WLR 704 and in breach of Article 5 ECHR as it was not in accordance with a procedure prescribed by law and it violated the protection against arbitrary detention. The Defendant disputes these allegations.

Ground 5 in Claim 2

11. On 30 April 2025, AVY applied to add an additional Ground 5 concerning a subsequent period of detention between 8 and 17 March 2025 at HMP Wormwood Scrubs. AVY submitted that this period of detention was unlawful because Mould J. had made an interim order for his release with effect from 5 November 2024; the Defendant's Detention Gatekeeper refused to authorise his detention; there was a subsequent direction by the Defendant's Strategic Director to release him; and an unrecorded grant of bail by the Defendant. The FTT refused bail, without being informed of the order of Mould J. and the unrecorded grant of bail, owing to administrative error.

12. On 9 June 2025, I refused permission to add Ground 5, upholding the Defendant's objection that it had been raised so late that the Defendant had insufficient time to respond, and that there would be insufficient time to deal with it at the forthcoming hearing. The Claimant could pursue this Ground in a separate claim, if so advised. However, following the decision to adjourn AVY's individual Grounds 3 and 4 for a trial on liability in the Kings Bench Division, I granted permission to amend the Statement of Facts and Grounds to add Ground 5, as circumstances had changed. The Defendant admitted liability in a letter of 21 May 2025, but the quantum of damages is not agreed.

Transfer of Grounds 3, 4 and 5 in Claim 2 for trial in the King's Bench Division

13. By an order made on 17 June 2025, at the commencement of the hearing, Grounds 3, 4 and 5 in Claim 2 were adjourned and transferred to the Kings Bench Division for a trial on liability and, if appropriate, an assessment of damages, at the conclusion of the proceedings in the Administrative Court. There is contested factual evidence, on which witnesses will probably need to be cross-examined, and expert witnesses may be called. The Defendant's witness statements were filed late, and AVY has not had sufficient time to respond to it. The allegations in Grounds 3 and 4 are contested by the Defendant, and therefore unproved but the Claimants seek to rely on them as illustrative of the allegations made under Ground 2 in Claim 2.

History

Events leading up to the BHI

14. The Claimants summarised the history of investigations into mistreatment at IRCs and Court findings of unlawful practices and failures, in their skeleton argument (CSkA/11-16).

15. Following a BBC Panorama television programme, in September 2017, which broadcast undercover film footage of mistreatment of detainees at BH, Duncan Lewis (the Claimants' solicitors) sought a public inquiry on behalf of its client MA. Following an investigation by the Professional Standards Unit, the Defendant commissioned the Prisons and Probation Ombudsman ('PPO') to undertake a bespoke independent Article 3 ECHR investigation.

16. Duncan Lewis challenged the Defendant's mode of investigation in a claim for judicial review. In *R (MA and BB) v Secretary of State for the Home Department* [2019] EWHC 1523 (Admin), May J. held that, in order to discharge the investigative duty under Article 3 ECHR, it was essential that the PPO had power to compel the attendance of former staff at BH who would not attend voluntarily. She considered that significant public scrutiny of the investigation would be required, though she left it to the PPO to determine which hearings should be held in public, so as to secure full accountability. May J. also held that MA and BB should be granted funded representation so that they could participate in the investigation.

17. In November 2019, in order to give effect to the Court's judgment in *MA and BB*, the Defendant converted the PPO investigation into a statutory inquiry under the IA 2005. The Chair of the PPO investigation, Ms Kate Eves, was appointed Chair of the BHI.

BHI Terms of Reference

18. The Terms of Reference of the BHI were set out in the BHI report at Appendix 1, as follows:

> "**Purpose**
>
> To investigate into and report on the decisions, actions and circumstances surrounding the mistreatment of detainees broadcast in the BBC Panorama programme 'Undercover: Britain's Immigration Secrets' on 4 September 2017.
>
> To reach conclusions with regard to the treatment of detainees where there is credible evidence of mistreatment contrary to Article 3 ECHR, namely torture, inhuman or degrading treatment, or punishment; and then make any such recommendations as may seem appropriate. In particular the inquiry will investigate:
>
> 1. The treatment of complainants, including identifying whether there has been mistreatment and identifying responsibility for any mistreatment.
>
> 2. Whether methods, policies, practices and management arrangements (both of the Home Office and its contractors) caused or contributed to any identified mistreatment.
>
> 3. Whether any changes to these methods, policies, practices and management arrangements would help to prevent a recurrence of any identified mistreatment.
>
> 4. Whether any clinical care issues caused or contributed to any identified mistreatment.
>
> 5. Whether any changes to clinical care would help to prevent a recurrence of any identified mistreatment.

> 6. The adequacy of the complaints and monitoring mechanisms provided by Home Office Immigration Enforcement and external bodies (including, but not limited to, the centre's independent monitoring board and statutory role of Her Majesty's Inspectorate of Prisons) in respect of any identified mistreatment.
>
> **Scope**
>
> For the purpose of the Inquiry, the term 'complainants' is used to refer to any individual who was detained at Brook House Immigration Removal Centre during the period 1 April 2017 to 31 August 2017 where there is credible evidence of mistreatment of that individual.
>
> 'Mistreatment' is used to refer to treatment that is contrary to Article 3 ECHR …
>
> The Inquiry should in particular include investigation in to [sic] the mistreatment of complainants known (in the recent Brook House litigation) as MA and BB.
>
> The Inquiry may wish to draw upon the evidence and findings of the previous special investigation into the events at Brook House, conducted by the PPO, before it was converted to a statutory inquiry.
>
> …
>
> **Principles**
>
> …
>
> It is not part of the Inquiry's function to determine civil or criminal liability of named individuals or organisations. This should not, however, inhibit the Inquiry from reaching findings of fact relevant to its terms of reference."

BHI proceedings and report

19. The BHI Chair published the report on 19 September 2023. According to the evidence of Mr Roach-Kett (RK/55-57), the BHI conducted oral hearings between 23 November 2021 and 6 April 2022 and heard oral evidence from 78 witnesses. In addition to substantial written evidence, it received over 90 hours of BBC footage as well as CCTV, body-worn and hand-held camera footage. Over 100,000 pages of documentary material was disclosed to Core Participants.

Regulatory framework

20. The report summarised the regulatory framework in the body of the report, and key legislation, rules and guidance were set out in Appendix 2. Safeguards for vulnerable individuals were summarised at Vol. 2 Chapter D5:

> "1. There are a number of provisions that seek, collectively, to provide safeguards for those individuals who may be vulnerable to suffering harm in detention.
>
> 1.1 Rule 34 and Rule 35 of the Detention Centre Rules 2001 (the Rules) require a physical and mental examination by a medical practitioner within 24 hours of admission to a detention centre, as well as a report where the health of a detained person is likely to be injuriously affected by continued detention or any conditions of detention, where the medical practitioner suspects that a detained person has suicidal intentions or where there is a concern that a detained person may have been a victim of torture.[1]
>
> 1.2 The Home Office's statutory Guidance on adults at risk in immigration detention (Adults at Risk policy) specifies the matters to be taken into account in accordance with section 59 of the Immigration Act 2016 when determining the detention of vulnerable people.[2]
>
> 1.3 Detention Services Order 08/2016: Management of Adults at Risk in Immigration Detention (the Adults at Risk DSO) includes mandatory guidance for Home Office staff and suppliers operating in immigration removal centres (IRCs) on the care and management of detained people deemed to be adults at risk while in detention.[3]
>
> 1.4 Detention Services Order 01/2022: Assessment Care in Detention and Teamwork (ACDT) (the ACDT DSO) provides mandatory operational guidance for all Home Office, centre supplier and healthcare staff working in IRCs, to implement "a holistic approach to self harm and suicide prevention within the broader context of decency and safety".[4]"

21. Powers to restrict detained people were summarised at Vol. 2 Chapter D6:

---

[1] Detention Centre Rules 2001. These provisions are reinforced in the Detention Services Operating Standards Manual for Immigration Service Removal Centres, January 2005, pp38-39

[2] Immigration Act 2016: Guidance on Adults at Risk in Immigration Detention, Home Office, August 2016 (first published May 2016 and subsequently updated, most recently in March 2022); see Adults at Risk policy; section 59 of the Immigration Act 2016

[3] Detention Services Order 08/2016: Management of Adults at Risk in Immigration Detention (CJS000731), Home Office, February 2017 (updated August 2022)

[4] Detention Services Order 01/2022: Assessment Care in Detention and Teamwork (ACDT) (INQ000214), Home Office, October 2022, p5

"1. The Detention Centre Rules 2001 (the Rules) contain powers that restrict the rights of detained people, segregating them from others to some degree.

2. Rule 40 allows the removal of a detained person from association where "it appears necessary in the interests of security or safety". It restricts a detained person's ability to associate with others in the way usually permitted at a centre. The initial period of authorisation for removal from association can be up to 24 hours, but may be extended to a maximum of 14 days.[5] …..

3. Rule 42 contains a power to confine a "refractory or violent detained person" in "special accommodation". Although it is not defined within the Rules, 'refractory' is ordinarily understood to refer to someone who is difficult to control or unwilling to obey authority. The power must not be used as a punishment or after a detained person has ceased to be refractory or violent. A detained person cannot be confined under Rule 42 for more than 24 hours without a written direction from an officer of the Secretary of State, who must state the grounds for the confinement and the time during which it may continue (which must not exceed three days).[6]…..

4. The purpose of Rule 40 and Rule 42 is to maintain safety (either of the detained person or of others) or security. Their use must, however, be balanced with "the need to have due regard to the dignity and welfare of the individual".[7] In addition, Rule 40 and Rule 42 "must be used only as a last resort, when all other options have been exhausted or are assessed as likely to fail or to be insufficient as an effective means to address the risk considered to be presented" by the detained person.[8]

5. Rule 40 and Rule 42 impose significant restrictions on detained people's liberty. Accordingly, the Rules strictly define who can authorise their use and in what circumstances they can and cannot be used. Minimum requirements relating to the use of the Rules are set out in the Detention Services Operating Standards Manual for Immigration Service Removal Centres (the Operating Standards Manual, January 2005).[9] In addition, Detention Services Order 02/2017: Removal from Association (Detention Centre Rule 40) and Temporary Confinement (Detention Centre Rule 42) (the Restrictions Detention Services

[5] Detention Centre Rules 2001, Rules 40(3) and 40(4)
[6] Detention Centre Rules 2001, Rules 42(3) and 42(4)
[7] CJS000676_005 para 2
[8] CJS000676_009 para 19
[9] Detention Services Operating Standards Manual for Immigration Service Removal Centres, January 2005

Order (DSO), dated July 2017 and updated in September 2020) sets out further detail about the operation of both Rules.[10]"

Findings

22. The report found 19 incidents in which there was credible evidence that the acts of mistreatment identified were capable of amounting to inhuman and degrading treatment for the purposes of Article 3 ECHR.

23. One of those incidents related to D1914's treatment when being moved to segregation against his will on 27 May 2017. The Chair made findings (see Hearing Bundle Volume 5, pages 170-174, paragraphs 33-45 ('5/170-174/33-45')), which are summarised in Annex A to the CSkA/22:

    i) "The footage shows force being used against a man who appeared to be in physical distress but who was calm and communicative with staff. The period of time when D1914 was on the floor and pushed forwards from the waist was particularly troubling to watch."

    ii) "Dr Oozeerally should have raised concerns in advance about force being used against D1914…" [the use of force against D1914 was] "positively harmful to D1914 and put him at further risk."

    iii) "Given the competing purported justifications for the removal from association, "it is not clear from these records, when read together, precisely why D1914 was made subject to Rule 40. While it may be justifiable in certain circumstances to relocate a detained person to E Wing ahead of their imminent removal, it is not appropriate for that detained person additionally to be made subject to Rule 40 while on E Wing where they do not separately satisfy the criteria for Rule 40. If there was a genuine concern that it was necessary to make D1914 subject to Rule 40 for his own protection (due to the risk of suicide), that should have been made clear in the records. In my view, the documentation gives the distinct impression that D1914 was inappropriately made subject to Rule 40 as a first response to his suicide threat, and/or for the administrative convenience of staff.""

    iv) "The "use of force as anything other than a last resort is inappropriate. It is particularly concerning to see that Mr Tulley was instructed to use a shield against D1914 as a tool to prevent him from self-harming, in preference to de-escalation techniques…""

    v) "The conversations recorded from detention staff "demonstrated a callous indifference to the wellbeing of a vulnerable detained person in their care. Mr Webb also referred to D1914 as a 'cunt' when discussing the planned use of force with other officers.""

    vi) "Officers appeared to "rely entirely upon the Healthcare staff to alert them to the need to stop the restraint." The footage showed that Healthcare staff present

[10] Detention Services Order 02/2017: Removal from Association (Detention Centre Rule 40) and Temporary Confinement (Detention Centre Rule 42) (CJS000676), Home Office, July 2017 (updated September 2020)

> – Mr Omoraka – did not take further clinical readings during the duration of the restraint, nor did he alert staff to "the dangers of a handcuffing technique that is associated with positional asphyxia…Given D1914's health vulnerabilities far greater priority should have been given to the risks to his wellbeing by all the staff present.""

vii) "…The force that was used against D1914 was neither necessary nor used as a last resort."

viii) "The Chair was "concerned by the use of handcuffs on D1914," agreeing with the use of force expert Mr Collier, that they were "unnecessary in the circumstances, particularly in light of D1914's physical condition." The way in which "D1914 was handcuffed was dangerous," and "demonstrated a complete regard for D1914's welfare.""

ix) "As a matter of decency, D1914 should have had the opportunity to dress with a T-shirt."

x) "The debrief held by the lead officer was "lacking depth," with "no discussion of Mr Dix's decision-making or reflection about whether aspects of the restraint could or should have been managed differently. The Healthcare staff made a superficial contribution to the discussion and Mr Dix did not seek any meaningful comment from any of those present.""

24. Having considered the totality of the evidence, and reached those findings of fact, the Chair determined that there was credible evidence that D1914's treatment was contrary to Article 3 ECHR (5/174/46):

> "I consider that D1914's treatment was capable of causing intense physical or mental suffering. His physical and mental ill health at the time put him at risk of significant harm while being restrained. I accept D1914's evidence to the Inquiry that he suffered sharp chest pains when the officers entered his cell, and that the restraint caused him pain. Moreover, as noted in paragraph 43, D1914 was placed in a position known to cause positional asphyxia and was plainly out of breath throughout the use of force. In the circumstances, there was a clear disregard for D1914, including whether the restraint caused physical suffering. D1914 had a known history of self-harm which I consider made him more vulnerable to mistreatment. I accept D1914's evidence that he felt he was treated as an "animal" during the strip search. The use of PPE by staff was inappropriate and could have been frightening for D1914. In addition, it is my view that the use of force against D1914 while he was partially dressed was humiliating and showed a lack of respect for his human dignity. Therefore, I find that there is credible evidence that these acts are capable of amounting to inhuman and degrading treatment."

25. In the Executive Summary, the Chair stated that these 19 incidents had been at the forefront of her mind "when determining the lessons that should be learned and the

measures required to ensure that other detained people do not experience similar treatment in the future" (5/18/16). She also observed that the "Home Office has reiterated its desire to learn lessons from this Inquiry" and that was "a particularly important function of this Inquiry, not least because one of the key themes to emerge is how often lessons have not been learnt in the past" and "[t]his failure runs as a dark thread through this report" (5/16/11).

26. The Chair also investigated wider issues of how these incidents were allowed to happen, what features of BH and the detention system caused or contributed to the mistreatment, and how to prevent its recurrence in line with the Terms of Reference (see RK/91; CSkA/31). This included *inter alia*:

i) Physical conditions at BH that were described by witnesses as "unfit for purpose".

ii) Detention, healthcare and Home Office staff were failing to apply safeguards for vulnerable persons in detention. The Chair found "serious failings" in the application of Rules 34 and 35 of the DC Rules 2001 and that there was a disconnect between the Adults at Risk policy, the Assessment Care in Detention and Teamwork ('ACDT') process for monitoring those at risk of self-harm/suicide, and Rule 35. She found this "undoubtedly exposed vulnerable people to a risk of harm and, in some cases, caused actual harm to be suffered".

iii) The use of removal from association (segregation) and force to be routinely misused when not justified nor proportionate. The Chair found the safeguarding system in these areas (and others) to be "dysfunctional" and leaving "vulnerable people at risk of harm". Amongst the concerning practices identified were the use of force and removal from association on detained people who were mentally or physically unwell and sometimes to manage symptoms of mental illness. Unauthorised restraint techniques were being used, and approved techniques were being used incompetently and dangerously. She found force was not used as a last resort and that it was being used unnecessarily, inappropriately and excessively including the routine use of personal protective equipment ('PPE'). She found inadequate monitoring and oversight of use of force leading to "dangerous situations for detained people and staff". She noted poor practices in the recording and justification of the use of force, and repeated failure to wear body worn cameras.

iv) There were serious inadequacies in the way the IRC Healthcare department was run. The Chair found evidence from formerly detained persons that doctors and nurses were "dismissive and exhibit[s] a lack of care or empathy" and that there was often a "failure to recognise challenging behaviours as a manifestation of mental ill health rather than wilful disobedience". She was concerned that "healthcare staff did not understand their obligations towards detained individuals and failed to appreciate their key safeguarding role."

v) There was evidence of abuse and racism in the wider institutional culture at BH, which helped to establish the incidents in Panorama were not just a 'few bad apples' acting alone. She found that during the relevant period "the environment at Brook House was not sufficiently caring, secure or decent for detained people or staff." She found evidence of "abusive, racist and derogatory language

> towards detained people by G4S staff", noting that "[d]isturbingly, this was explained by some as a way to 'fit in'."

27. In Part E of the report, the Chair set out her 33 "[r]ecommendations to prevent recurrence of mistreatment" which I refer to later in my judgment. They were grouped in ten themes: (1) the contract to run BH; (2) the physical design and environment; (3) detained people's safety and experience; (4) safeguards for vulnerable individuals; (5) restrictions on detained people; (6) use of force; (7) healthcare; (8) staffing and culture; (9) complaints and whistleblowing; and (10) inspection and monitoring.

28. In her concluding remarks, the Chair made the following observations (5/643/88):

> "88…. many of the safeguards designed to protect vulnerable detained people failed at Brook House during the relevant period and I remain concerned about how those safeguards are operating currently. In my view, the prompt and full implementation of these 33 recommendations is necessary to "prevent a recurrence of any identified mistreatment", such as that reflected in this Report. Many of the issues identified relate to a failure to follow the safeguards already established in rules and procedures. Too often it was the application, knowledge or understanding that was deficient and the embedding of this, including through the adequate training of staff, will therefore be critical to avoid recurrences of incidents of the kind seen at Brook House."

Other reports

29. The Claimants provided evidence of statutory and independent bodies expressing repeated concerns about conditions in IRCs between 2023 and 2025, which was summarised in CSkA/43 – 46. Insofar as it relates to IRCs other than BH, I have treated it as background information only, as the subject matter of these claims is BH.

30. The Independent Chief Inspector of Borders and Immigration ('ICIBI') published a report on 12 January 2023, inspecting how the AAR policy was working in IRCs between June and September 2022. Building on two prior reports, it noted that "it is disappointing to see that little has changed". Findings included that Rule 35 was not working consistently or effectively as a safeguard; that there was an unfounded perception that the Rule 35 process was being abused by detained persons; low volumes of Rule 35(1) and 35(2) reports; poor practices in identifying vulnerable persons; and that the proposed Rwanda charter flights programme in 2022 led to excessive pressures around Rule 35, both within IRCs and on the Rule 35 team itself.

31. Medical Justice is a campaigning charity which supports detainees. It was a core participant at the BHI. Ms Schleicher, Head of Casework at Medical Justice, has given evidence on behalf of D1914 and AAA in Claim 1.

32. In its 19 September 2023 report, "Clinical Safeguards Continue to Fail," Medical Justice conducted a file review of 66 of its cases and found consistent failings in the safeguards under Rule 35 and the AAR policy.

33. Medical Justice, in its December 2023 report, "If he dies, he dies – What has changed since the Brook House Inquiry", undertook an updated analysis of their 66 case files after the publication of the BHI report. They concluded that there were serious and continuing systemic failures.

34. Medical Justice, in its September 2024 report, "You'll see the outside when you're in Rwanda", strongly criticised the detention of large numbers of asylum seekers, many of whom had mental health conditions, in preparation for forcible removal to Rwanda in 2024, and found evidence of failures in the system under Rules 34 and 35 and the AAR policy.

35. On 29 August 2024, the Independent Monitoring Board ('IMB') published its annual report on the Gatwick IRC estate, comprising of BH and Tinsley House IRC, for the period 1 January 2023 to 31 December 2023. In its "Key points" it described the increase in population numbers with the implementation of Operation Safeguard which, since May 2023, has resulted in an increase of time-served foreign national offenders moving from prisons to immigration detention, some of whom had higher risk profiles or greater levels of vulnerability. The impact of these changes increased levels of tension and use of force. It also explained that the Illegal Migration Act 2023 required unauthorised migrants to be detained and removed, instead of proceeding through the asylum process, and there was considerable preparation for the expected increase in the population of detainees.

36. In its main findings, the report identified concerns about detainee safety, including dangerous overcrowding; escalating use of force; ineffectiveness of safeguards for identifying and protecting vulnerable detained persons; and high levels of self-harm and poor mental health. The IMB repeated previous recommendations for a time limit for immigration detention.

37. His Majesty's Chief Inspector of Prisons ('HMCIP') published a report on 18 November 2024 of an unannounced inspection of BH that took place between 5 and 22 August 2024. In the Executive Summary, it found "there had been a concerning and substantial rise in violence and self-harm since the last inspection;" and that "the centre continued to feel crowded and simply did not have enough space or experienced staff to manage an increasingly vulnerable population". A sudden influx of detainees of ex-prisoners in 2023 as a result of overcrowding in prisons had created some instability, but this factor alone did not explain the problems, and data analysis was not "sophisticated enough to provide a nuanced understanding of the drivers of instability". The centre continued to feel crowded and did not have enough space or experienced staff. It looked and felt like a prison.

38. Two detainees with serious mental illness were housed in the separation unit pending transfer to hospital, in conditions that were neither therapeutic nor sufficiently supportive. Moreover, almost half of those responding to a survey said they had mental health problems and 35% said they had felt suicidal at some time in the centre. In this context, it was a matter of serious concern to find a deterioration in health care provision: the inadequacy of health services was one of the biggest complaints from detainees, and "it was clear that the service was stretched to breaking point". Detainees were held for even longer than at previous inspections.

39. The report found that, despite these problems, there were several positive areas of work. There had been a commendable effort to improve jobs, and physical and recreational activities for detainees. Welfare work remained good. A very active Home Office detention engagement team had substantially increased the level of contact with, and information to detainees and there was some evidence of recent improvements in safety outcomes.

40. The Claimants also relied upon the views of the Chair of the BHI who has expressed concern about the Defendant's failure to implement the BHI's recommendations in her comments to the media.

The Claimants

D1914

41. D1914 is a Romanian national, born on 25 June 1973. His children and ex-partner reside in Romania. He arrived in the UK in 2009 exercising freedom of movement rights as an EU citizen.

42. He has seven convictions for eight separate offences committed in Romania, Germany and Italy. He was subject to extradition proceedings by the Romanian authorities in respect of three of those convictions. In July 2016, he successfully appealed to the High Court against an order for extradition. The High Court found that extradition would be a disproportionate interference with his rights under Article 8 ECHR.

43. Since 2016, D1914 has suffered from serious ill health due to ischaemic heart disease, including heart attacks and two coronary bypass procedures.

44. On 31 March 2017, D1914 was served with notice of liability to deportation because of his previous convictions. On 11 April 2017, the Defendant served a deportation order on him. D1914 was detained for the purposes of deportation on 28 March 2017 and moved to BH on 29 March 2017.

45. In April, May and July 2017 he was admitted to hospital because of chest pain.

46. On 27 May 2017, he was moved, by a control and restraint team, against his will, to the Care and Separation Unit at BH, and removed from association, before his proposed removal to Romania the following day. The BHI found that there was credible evidence that the acts of mistreatment identified were capable of amounting to inhuman and degrading treatment for the purposes of Article 3 ECHR.

47. Prior to the move, Dr Oozeerally, lead GP at BH, stated that he was fit for detention and fit to fly, but he would need a medical escort because of his condition. Reasonable force (control and restraint) could be used to facilitate the removal. In the event, the pilot refused to let him fly because of his medical condition.

48. On 5 July 2017, he was refused bail. He then attempted suicide.

49. On 17 July 2017, a Rule 35(1) report was completed. He was identified as Level 3 in the AAR policy because of his heart condition. The report expressed concern about the detrimental effect of detention on his health.

50. On 8 August 2017, D1914 was released from immigration detention. On 30 April 2018, the FTT allowed his appeal against deportation, following the High Court's judgment that removal from the UK would be an unlawful interference with his rights under Article 8 ECHR.

51. D1914 stated in his witness statement ('WS/38') that he believes that his detention contributed to the breakdown of his relationship with his partner in the UK and aggravated his existing health conditions. Since being detained, he has found life difficult and stressful. At WS/40, he stated that following the publication of the BHI report, he felt reassured and vindicated. At WS/41-44, he stated that he wants the Defendant to make the changes recommended in the BHI report so that what happened to him at BH will not happen again, and that the Defendant will be held accountable for her actions.

52. On 22 September 2023, D1914's application under the EU Settlement Scheme was successful and he was granted indefinite leave to remain.

53. In March 2023, D1914 filed a civil claim for damages, including aggravated and exemplary damages, in the Central London County Court in respect of his detention in 2017. The causes of action were (1) false imprisonment; (2) breach of Article 5 ECHR; (3) breach of Article 3 ECHR; (4) breach of Article 2 ECHR; and (5) breach of Article 8 ECHR. The Defendant settled the claim in March 2025.

AAA

54. AAA is a national of Syria, who was born on 1 March 1993.

55. In 2014, his home was raided by the Syrian army and he was detained in extreme conditions until 2016. Upon his release, he was in poor mental and physical health, and experiencing seizures. In 2017 his home was hit by an airstrike, killing two of his brothers, and he sustained shrapnel injuries. In 2020 his mother was injured by a gunshot.

56. In 2020, AAA fled to Lebanon, then Libya where he was taken captive and forced to work on a farm. He made his way to Italy and France.

57. On 22 January 2023, he entered the UK without authorisation, in a small boat. He then claimed asylum. After initial detention at Manston for a few days, he was released on bail to hotel accommodation, subject to a reporting condition.

58. On 3 May 2024, he was detained by the Defendant when he went to report and he was taken to Colnbrook IRC. Form IS.91 referred to the risk of absconding, and the lack of strong ties to the UK, without noting that his sister and brother were living in the UK. On 4 May 2024, the Defendant issued him with a Notice of Intent to treat his asylum claim as inadmissible and to remove him to Rwanda.

59. On 6 May 2024, a Rule 35(3) report was produced. The GP's opinion was that his injuries and account were consistent with torture and he was referred to the mental health team for further assessment. The GP advised that prolonged detention may be detrimental to his mental health.

60. On 10 May 2024, the Defendant responded to the Rule 35(3) report, deciding that he was at Level 2 in the AAR policy. Detention was maintained on the basis that removal to Rwanda would proceed in 8 – 10 weeks.

61. On 23 May 2024, the then Prime Minister announced that no flights to Rwanda would take place before the general election on 4 July 2025. On 24 May 2024, the FTT granted AAA bail and he was released on 25 May 2024.

62. On 6 September 2024, AAA was recognised as a refugee and granted five years leave to remain in the UK.

63. In May 2025, a civil claim for damages for false imprisonment and breach of the Human Rights Act 1998 was issued in the County Court on his behalf.

64. In his witness statement in this claim, he stated that he was motivated to bring this challenge to ensure that other vulnerable individuals were not treated in the way that he was.

AVY

65. AVY is a national of Algeria who was born on 1 August 1999. He entered the UK on 9 June 2023. He claimed asylum on the same day.

66. On 22 June 2023, AVY was convicted of theft and sentenced to a community order. On 8 November 2023, he was again convicted of theft and sentenced to 8 weeks imprisonment.

67. On 5 December 2023, AVY was convicted of two counts of sexual assault and sentenced to 4 months and 18 days imprisonment. He was made subject to the notification requirements of the Sexual Offences Act 2003.

68. On 28 December 2023, a Stage 1 deportation notice was served on AVY. At the conclusion of his custodial sentence, he was detained under immigration powers at HMP Thameside from 9 January 2024. He was transferred to BH on 20 January 2024.

69. I refer to AVY's Statement of Facts in his Statement of Facts and Grounds, (paragraphs 8 to 17) and the Agreed Chronology, but they include disputed allegations that have been adjourned for a trial on liability.

70. On 8 February 2024, shortly after his transfer to BH, AVY reported that he had been tortured in Algeria. He also disclosed that his mental health was deteriorating, that he had a history of self-harm and that he had started to have suicidal thoughts. He was referred for a Rule 35 assessment.

71. On 28 February 2024, GP Dr. Abdulrahman issued a Rule 35 report expressing concern that AVY was a victim of torture. He confirmed that AVY had scars on his body

consistent with his account of torture in Algeria. He identified symptoms of depression and made a referral to the mental health team.

72. The Rule 35(3) report was treated by the Defendant at Level 2 of the AAR policy on the basis that AVY was "stable in detention". Detention was maintained based on an estimated timeframe for removal of 3 months and the Defendant's own assessment that he posed a "significant public protection concern". Subsequent Monthly Progress Report failed to refer to the Rule 35(3) report and incorrectly designated him as Level 1 of the AAR policy.

73. AVY repeatedly self-harmed while in detention by cutting himself with sharp objects. He also refused food. He was found tying a ligature. The records showed that AVY was subject to the Defendant's ACDT process for a significant proportion of his detention and had at times been subject to hourly observation because of risks of self-harm and suicide.

74. AVY was removed from association on 5 May 2024 immediately after he had self-harmed and had experienced a panic attack requiring transfer to the healthcare unit in an evacuation chair. He was also removed from association on 6 May 2024 after learning of his mother's ill health, apparently as a punishment for going onto the netting. It was contended that these were misuses of removal from association, which were not properly authorised. Misuse of removal from association was the subject of detailed inquiry and recommendations in the BHI report.

75. AVY's medical records also suggested that force was used on AVY on multiple occasions. There was conflicting evidence about the use of force, including a review undertaken on behalf of the Defendant by an experienced Prison Service Use of Force Instructor. On 30 April 2024, AVY was restrained on the floor in the extremely dangerous "prone" position, which risks positional asphyxia. This practice was the subject of inquiry and recommendation in the BHI report. Whilst still in that position, rigid bar handcuffs were applied. There was conflicting evidence from the Defendant about this incident.

76. According to the Defendant, records indicated that he was in possession of illicit drugs and possibly supplying drugs.

77. AVY previously made an unsuccessful application for permission to apply for judicial review of the lawfulness of his detention (AC-2024-LON-002455). Permission was refused on 21 August 2024.

78. On 15 October 2024, this claim was issued together with an application for urgent interim relief. On 24 October 2024, Mould J. ordered his release from detention into accommodation under section 95 of the Immigration and Asylum Act 1999 by 5 November 2024, having been informed by the Defendant that he was due to be released on 31 October 2024. Mould J. stated in the reasons for his order that there was clear evidence that his health was deteriorating and he was vulnerable to self-harm and a suicide risk. But as he was a convicted sex offender under the supervision of the probation service, the Defendant was justified in taking appropriate account of the risks to the public in providing dispersal accommodation that was suitable to AVY.

Standing

Defendant's submissions

79. The Defendant submitted that D1914 and AAA lack standing and victim status under the HRA 1998 to pursue this claim. The Defendant owes legal duties to individuals who are detained. D1914 was released on 8 August 2017 and AAA on 24 May 2024. Claim 1 contains no ground relating to their past detention – that is the subject of separate civil claims. Neither is currently detained at BH or elsewhere, nor were they in the three months before the issue of the claim.

80. The legal rights of D1914 and AAA are not directly affected by Claim 1. Neither of them is impacted by the Defendant's response to the BHI report. AAA was never at BH and played no part in the BHI. Neither of them has any standing to represent individuals who are currently detained, nor are they an association or non-governmental organisation ('NGO') with particular expertise in the subject matter. Others who allege specific breaches in respect of their recent detention at BH would be better placed to bring the claim.

81. The Defendant accepted that AVY had standing and victim status as he was detained at BH from January to November 2024, after the report of the BHI and so potentially affected by the Defendant's response to the report.

Submissions by D1914 and AAA

82. D1914 and AAA submitted that the issue of standing was determined by Sheldon J. in his order of 27 February 2025, where he said, in his 'Observations and Reasons' that (1) D1914 had standing because he was a core participant at the public inquiry; and (2) AAA had standing because he was detained at Brook House after the report of the public inquiry was published.

83. In addition to being a core participant, D1914 has standing because the BHI found there was credible evidence that he was subjected to violations under Article 3 ECHR and D1914's civil claim for damages for breach of Article 3 ECHR has been settled. The civil claim did not overlap with this claim as it did not relate to events at BH subsequent to his detention. In this claim, he seeks to ensure that neither he nor others are subjected to such mistreatment again.

84. AAA accepted that he was never detained at BH, but nonetheless submitted that he had standing because the issues arising in the BHI affected the entire detention estate. He also seeks to ensure that neither he nor others are subjected to such mistreatment again.

Conclusions

85. Section 31(3) of the Senior Courts Act 1981 ('SCA 1981') provides:

> "No application for judicial review shall be made unless the leave of the High Court has been obtained in accordance with rules of court; and the court shall not grant leave to make such

> an application unless it considers that the applicant has a sufficient interest in the matter to which the application relates."

86. In his order of 27 February 2025, Sheldon J. adjourned the application for permission for determination at a rolled-up hearing which is now listed before me. By virtue of section 31(3) SCA 1981, I must not grant permission unless I am satisfied that D1914 and AAA have standing. Furthermore, I agree with the Defendant's submission that Sheldon J. did not make an order or a ruling on the issue of standing; he merely expressed his view.

87. Where a claim for judicial review seeks to rely on breach of a Convention right as a ground of review, in relation to that ground the meaning of "sufficient interest" in section 31(3) SCA 1981 is modified by section 7 HRA 1998, which provides, so far as is material:

> "(1) A person who claims that a public authority has acted (or proposes to act) in a way which is made unlawful by section 6(1) may –
>
> (a) bring proceedings against the authority under this Act in the appropriate court or tribunal, or
>
> (b) rely on the Convention right or rights concerned in any legal proceedings, but only if he is (or would be) a victim of the unlawful act.
>
> ……
>
> (3) If the proceedings are brought on an application for judicial review, the applicant is to be taken to have a sufficient interest in relation to the unlawful act only if he is, or would be, a victim of that act.
>
> …..
>
> (7) For the purposes of this section, a person is a victim of an unlawful act only if he would be a victim for the purposes of Article 34 of the Convention if proceedings were brought in the European Court of Human Rights in respect of that act.
>
> ……"

88. Article 34 ECHR sets out the standing requirement as any person, organisation or group "claiming to be a victim of a violation". Generally, the term "victim" denotes a person directly affected by the specific act or omission in issue. It does not permit an *actio popularis* i.e. an action in which any member of the public may be entitled as such to vindicate certain forms of public right (*Human Rights Practice*, Simor & Emmerson at 20.052). A real and immediate threat of a future violation may be sufficient. It is not necessary to establish actual damage, as that issue is relevant primarily to the assessment of "just satisfaction" under Article 41 ECHR.

89. An applicant may fail to qualify as a victim if adequate redress has been afforded by the national authority which has remedied the alleged violation (*Human Rights Practice* at 20.059). Financial remedies may not give sufficient redress, for example, in alleged violations of Article 2 or 3 where no effective investigation has been conducted. Where there is a continuing breach of a Convention right, an applicant may remain a victim even after receiving compensation (see *Re McKerr's Application for Judicial Review* [2004] UKHL 12, [2004] 1 WLR 807, at [14] and [27]). In *Rabone v Pennine Care NHS Trust* [2012] UKSC 2, [2012] 2 AC 72, Lord Dyson identified the Convention principles of the ECtHR as follows, at [57]:

> "As they said in *Caraher v United Kingdom* (2000) 29 EHRR CD 119, if relatives settle their domestic law claims arising from a death, they will generally cease to be victims in a corresponding Convention claim ….By this I mean that, if (i) the domestic law claim that is settled was made by the same person as seeks to make an article 2 claim and (ii) the head of loss embraced by the settlement broadly covers the same ground as the loss which is the subject of the article 2 claim, then I would expect the ECtHR to say that, by settling the former, the claimant is to be taken to have renounced any claim to the latter."

90. However, on the facts of that case, the applicants did not lose their victim status because the settlement did not amount to an express or implied renunciation of the Article 2 claim, and the redress made was not adequate.

91. D1914 clearly had victim status in his civil claim for breach of Article 3 ECHR. His treatment, which the BHI found to be credible evidence of acts capable of amounting to inhuman and degrading treatment, occurred as long ago as 2017. It was thoroughly investigated at the BHI (where he was granted core participant status) and he subsequently received adequate financial redress from the Defendant. There is no real risk of further detention as he has EU settled status in the UK and deportation is highly unlikely.

92. However, I consider that D1914 has sufficient interest and victim status to pursue this further claim that there is a continuing breach of Article 3 ECHR by reason of the Defendant's alleged failure to act upon the recommendations of the BHI report, as that is a separate issue to the mistreatment, which has not yet been determined, and no redress has yet been made for it. He is directly affected because of his history at BH which has prompted his wish to see the changes recommended in the BHI report implemented and for the Defendant to be held accountable for her actions.

93. In AAA's case, Sheldon J. observed that he had standing because he was detained at BH. It is agreed that Sheldon J. erred in this respect. AAA was detained at Colnbrook IRC, not BH. I do not consider that there is any risk that he will be detained in future, as he has been granted refugee status.

94. AAA has made allegations about his three weeks of detention at Colnbrook in May 2024. The veracity of those allegations will not be tested or determined in this claim, and they have not yet been tested or determined in his civil claim as it was only issued in May 2025.

95. In my view, AAA is not capable of being a victim because he was not directly affected by the specific act or omission in issue in this claim, namely, the Defendant's response to the BHI report. Any causative link between AAA's experiences at Colnbrook and the Defendant's response to the recommendations in the BHI report is very tenuous indeed. His wish to see the changes in the BHI report implemented is too remote to confer victim status upon him, in contrast to the position of D1914.

96. In conclusion, D1914 and AVY have standing to bring the claim but AAA does not have standing, accordingly permission to apply for judicial review is refused in AAA's case.

Grounds 1 and 2 in Claims 1 and 2

97. It is convenient to consider Grounds 1 and 2 together because of the overlap between them.

Claimants' submissions

98. Under Ground 1, the Claimants submitted that the Defendant failed to discharge the investigative duty imposed by Article 3 ECHR, contrary to section 6 HRA 1998. The investigative duty was not discharged merely by concluding the investigation and publishing the report. An essential element of the investigative duty is that lessons are learned and dangerous practices are rectified. The Defendant has failed to address adequately each of the BHI's 33 recommendations and to implement measures to rectify the dangerous practices identified in the report. Further, the Defendant has made a series of policy decisions which are at odds with the recommendations and findings of the BHI and will reduce safeguards for detainees and increase the number of vulnerable people in detention.

99. There is a minimum standard that the Defendant must meet, by taking effective measures to reduce risk identified in the BHI report. While the Defendant has a discretion as to the means of rectification, the Court must undertake the task of assessing whether measures taken in response to the recommendations are effective, and whether they meet a minimum standard.

100. Under Ground 2, in their pleaded cases (Claim 1, SFG/76-79; Claim 2, SFG/52-55), the Claimants submitted that the Defendant's failure to comply with the investigative duty to act upon the findings of the BHI, to implement its recommendations, and rectify the dangerous practices identified, amounted to a breach of the systems duty in Article 3 ECHR. But in their skeleton argument and their oral submissions, they re-formulated their submission as a general ongoing breach of the systems duty in Article 3 (CSkA/118). In support of that submission, they also relied on matters such as post-inquiry reports, case studies of other detainees and government policies.

Defendant's submissions

101. The Defendant's overriding submission was that the claims were not suitable for judicial review because they invited the Court to embark on a wide-ranging and wholly unmanageable investigation into the Defendant's decisions, actions, policies and

practice at BH and even other IRCs. Despite clear concerns raised by the Defendant, the Claimants relied on Parliamentary material throughout to support their case, in breach of Parliamentary Privilege.

102. The relief sought includes "an order that the Defendant will withdraw its published response and decision of 19 March 2024 …. and agree to commit to a fresh review and response to the evidence, findings, and recommendations of the BHI …. and then publish this fresh review setting out which of the recommendations it accepts, confirmation that it has undertaken the reviews required and what steps have and will be taken to implement those recommendations" (SFG1/75). The Defendant submitted that this application for relief was an inappropriate use of judicial review, which is not a mechanism practically or constitutionally suited to a wide-ranging review of the current state of immigration detention. In effect, the Claimants were seeking to use the Court as a form of second inquiry, which went beyond the confines of its supervisory jurisdiction.

103. As to Ground 1, the Claimants were seeking to expand the reach of the investigative duty from the investigation itself to the State's response to the investigation. This was a novel and surprising submission which was not supported by the authorities and was simply wrong. The response to an investigation was a matter entirely outside the ambit of an "investigation"; it is what comes after an investigation. None of the authorities cited by the Claimants supported the proposition that the Article 3 investigative obligation permits or requires a court to enforce any particular response to an investigation.

104. On Ground 2, the Defendant contested the proposition in the Claimants' pleaded case that it was *per se* a breach of the systems duty not to act upon or implement the BHI report's recommendations, essentially for the reasons given in response to Ground 1. It was a matter for the Defendant's executive discretionary power to decide how to respond to the report. The Defendant rejected the Claimants' submissions and evidence that there was a continuing breach of the systems duty at BH.

105. Further and in the alternative, under both Grounds 1 and 2, the Defendant submitted that to date she has given proper consideration to the findings and recommendations in the BHI report and, where appropriate, she had taken reasonable steps in response to the concerns raised. To some extent, this work was ongoing.

Law

106. Article 3 ECHR provides:

> "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

It is an absolute prohibition.

107. The threshold established by the ECtHR for treatment falling within the scope of Article 3 is that of attaining a certain "minimum level of severity", which is relative, depending on all the circumstances of the case, including, duration of treatment, its physical and

mental effects, and in some cases, the sex, age, and state of health of the victim *(Ireland v UK* [1979-80] 2 EHRR 25, at [162]).

108. In *Rooman v Belgium* [2019] ECHR 105, at [141] - [147], which concerned the provision of psychiatric treatment to a prisoner with paranoid psychosis, the ECtHR considered that detention of a mentally ill person in inappropriate conditions without adequate medical care may be treatment in violation of Article 3 ECHR. However, this does not mean that every detainee must be guaranteed the same level of medical treatment in prison that is available outside prison. Where the treatment cannot be provided in the place of detention, it must be possible to transfer the detainee to hospital or to a specialist unit.

109. In *Bouyid v Belgium* (2016) 62 EHRR 32, the ECtHR held, at [87], that "in respect of a person who is deprived of his liberty …. any recourse to physical force which has not been made strictly necessary by his own conduct diminishes human dignity and is, in principle, an infringement" of Article 3 ECHR.

110. Although Article 3 ECHR imposes a negative obligation, the courts have implied three positive obligations on States, in order for the fundamental safeguards of Article 3 to be effective (see *ASY v Home Office* [2024] 3 WLR 766, per Fraser LJ at [80] – [86]):

i) **The systems duty**: a positive duty to put in place a suitable legislative and administrative framework to avoid harm of a kind which would engage Article 3 ECHR.

ii) **The operational duty**: a positive duty to take measures to protect individuals who are at risk of harm which is sufficiently serious to engage Article 3 ECHR. It will arise where there is a real and immediate risk of harm which would engage Article 3 ECHR.

iii) **The investigative duty**: a positive procedural obligation to carry out an effective investigation into arguable claims of breaches of Article 3 ECHR.

111. The investigative duties under Article 2 and Article 3 ECHR are analogous, and the same basic principles apply: see *R* (*AM) v Secretary of State for the Home Department* [2009] UKHRR 973, per Sedley LJ at [4].

112. An effective investigation is required where an individual raises an arguable claim that they have been subjected to torture or inhumane or degrading treatment: *Assenov and Others v Bulgaria* (App No 24760/ 94) 28 October 1998 at [102]. The positive obligation under Article 3 is "parasitic upon" the primary duty, and so in order for the investigative duty to arise there must be an arguable breach of the substantive right: *R (Gentle) v Prime Minister* [2008] UKHL 20, [2008] 1 AC 1356 at [6].

113. In *R (Amin) v Home Secretary* [2004] 1 AC 653, at [41], Lord Slynn described the Article 2 investigative duty as owed, not only to the next of kin of the deceased, but also to "others who may be in similar circumstances be vulnerable and whose lives may need to be protected".

114. In *R* (*Wright) v Secretary of State for the Home Department* [2001] EWHC Admin 520 at [43], Jackson J. summarised the investigative duty in the following terms:

> "1. Articles 2 and 3 enshrine fundamental human rights. When it is arguable that there has been a breach of either article, the state has an obligation to procure an effective official investigation.
>
> 2. The obligation to procure an effective official investigation arises by necessary implication in articles 2 and 3. Such investigation is required, in order to maximise future compliance with those articles.
>
> 3. There is no universal set of rules for the form which an effective official investigation must take. The form which the investigation takes will depend on the facts of the case and the procedures available in the particular state."

115. While the form of the investigation will vary, it must be independent, effective, reasonably prompt, have a sufficient element of public scrutiny, and appropriately involve the individuals directly affected: *Wright,* at [43], approved by Lord Bingham in *Amin* at [25]. Depending on the context, the investigation may "go well beyond the ascertainment of individual fault and reach questions of system, management and institutional culture": *AM*, per Sedley LJ at [60].

116. Lord Bingham described the purposes of an Article 2 compliant investigation in *Amin* (at [31]), as being:

> "...to ensure so far as possible that the full facts are brought to light; that culpable and discreditable conduct is exposed and brought to public notice; that suspicion of deliberate wrong doing (if unjustified) is allayed; that dangerous practices and procedures are rectified; and that those who have lost loved ones may at least have the satisfaction of knowing that lessons learned from his death may save the lives of others."

117. In *R (L) v Secretary of State for Justice* [2009] 1 AC 588, Lord Phillips rejected the submission that the only purpose of an investigation was to ascertain whether or not state agents were in breach of duty, holding that "the investigation will be concerned to see what lessons can be learned for the future" (at [29]).

118. In *R (Morahan) v West London Assistant Coroner* [2021] QB 1205, Popplewell LJ observed, at [74], that the two purposes of the investigative duty – (1) to hold culpable state agents to account, and (2) to remedy deficient practices to minimise the risk of future violations – engage different aspects of the Article 2 duties. The first is concerned with exposing breaches of the substantive duties in relation to the death which has occurred; the second is concerned with the framework or system duty to protect against subsequent deaths.

119. In *AM*, at [57], Sedley LJ endorsed Jackson J.'s statement in *Wright* that a purpose of an investigation was "to maximise future compliance", and went on to explain that:

> "The purpose, in other words, is neither purely compensatory nor purely retributive; nor is it necessarily restricted to what has

> happened to the particular victim. Nor, however, is it to usurp the role of government. It is to inform the public and its government about what may have gone wrong in relation to an important civic and international obligation and about what can be done to stop it happening again."

120. Commenting on Lord Bingham's formulation of the purposes of an Article 2 compliant investigation in *Amin* at [31], Sedley LJ observed in *AM* at [59] that:

> "It is significant, in the light of the foregoing discussion, that that formulation includes ensuring, so far as possible, that the full facts are brought to light and that lessons will be learned and implemented. Both of these objectives go markedly beyond the identification and punishment of those responsible".

121. In *MA and BB*, at [42] and [43], May J. considered the requirements of an effective investigation as follows:

> "42. Synthesising the principles to be derived from the above authorities, an effective Article 3 inquiry must:
>
> (1) Be conducted by a person/body that is both institutionally and practically independent from the person(s) involved in events,
>
> (2) Ensure, so far as possible, that the full facts are brought to light, so as to uncover and expose culpable and discreditable conduct to public view and allay any unjustified suspicions of wrongdoing,
>
> (3) permit effective access to the investigatory procedure for complainants,
>
> (4) discover and rectify processes which have caused or contributed to Article 3 breaches (if established), in order that
>
> (5) lessons may be learned, the better to minimise the risk of recurrence.
>
> 43. The "learning lessons" element of an Article 2/3 investigation is critical, as the purpose of the investigation is to buttress the substantive prohibition for the future. The best way to ensure future compliance is to learn lessons from the past. Depending upon the precise nature of the breaches this may involve looking into *"questions of system, management and institutional culture"* (*AM*, per Sedley LJ at [60])."

122. In *Banks v United Kingdom* (2007) 45 EHRR SE2, the ECtHR dismissed complaints of a failure to provide an adequate investigation into allegations of ill-treatment in prison, holding that the allegations were sufficiently investigated in the civil and criminal proceedings. The Court considered that the "wider questions raised by the case as to the background of the assaults and the remedial measures apt to prevent any recurrence in

a prison in the future were, in the Court's opinion, matters for public and political debate which fall outside the scope of Art. 3 of the Convention" (paragraph 2 at page 24).

Defendant's response to the BHI report

123. The 'Government Response to the Public Inquiry into Brook House Immigration Removal Centre' ('the Response') was presented to Parliament in March 2024. Its introductory remarks were as follows:

> "2. The aim of the Inquiry was to establish the facts of what took place and ensure that lessons were learnt to prevent those events happening again. We expect the highest standards from all contracted service provider staff. The documentary footage was utterly shocking, and the Government has been clear from the outset that the sort of behaviour on display from some of those staff was totally unacceptable.
>
> 3. The Government has made significant reforms to immigration detention over the past few years in line with external reports and recommendations and is grateful to the Chair of the Brook House Inquiry (BHI), Kate Eves, for her review. We welcome this important contribution to ensuring the safety and welfare of those in detention. The Government has carefully considered and accepts the broad thrust of the recommendations, and this paper sets out the Government's response to the 10 key issues of concern raised in the report. In reflecting on the recommendations, we have sought to address concerns relating specifically to Brook House IRC but also the wider implications and lessons to be learnt across the entire removal estate.
>
> 4. The Home Office currently operates 7 IRCs (6 in England, 1 in Scotland), 4 residential short-term holding facilities (1 in Northern Ireland, 3 in England) and 1 pre-departure accommodation for families. All are operated under private contract. The Government wishes to highlight within this response, the substantial operational process and policy changes that have been implemented across the removal estate to enhance assurance and oversight of service provision. Further improvements have been made since the events of 2017 to uphold the welfare and dignity of those detained across the estate including strengthening safeguards, promoting a culture of transparency and improving the oversight of contractors' performance.
>
> 5. A cross-government working group, under the chairmanship of the Senior Civil Servant for Detention Services, has been considering the report and recommendations in detail and will continue to monitor the appropriateness of and adherence to policy and operational guidance to ensure those involved in

> overseeing and running the estate remain cognisant of inquiry recommendations."

124. The Response then considered the recommendations according to the ten themes identified by the Chair in the report.

125. On 26 November 2024, Ms Frances Hardy, Deputy Director, Detention Services, wrote to Mr Roach-Kett with an update on progress with the BHI recommendations ('the Hardy letter'). She explained that a cross-departmental group, chaired by her, had been meeting approximately monthly since September 2023 ('the BHI Working Group'). Its role was to consider and monitor delivery of the BHI's recommendations, providing oversight and overarching governance to monitor the BHI's recommendations. The minutes of these meetings have been disclosed ('the Minutes') and, in my view, it is clear that the Defendant has conscientiously considered the report and the recommendations.

126. On 22 May 2025, Dame Angela Eagle DBE MP, Minister for Border Security & Asylum, wrote to Ms Bell Ribeiro-Addy MP providing a further update ('the Minister's letter'). She confirmed that "positive progress continues to be made against the 30 accepted or partially accepted recommendations as set out below, and I am fully sighted on this work. 20 recommendations have been met and closed, with the remaining recommendations on track for closure by summer 2025".

Recommendations

Contracts

127. **Recommendation 1: Robust monitoring of contract performance**

"The Home Office must actively and robustly monitor the performance of the Brook House contract, including satisfying itself that any self-reported information is accurate. This may include engagement with monitoring bodies and appropriate stakeholders. Penalties must be attached to inadequate self-reporting."

128. Response March 2024:

i) Developed new contract to improve service provision and bolster oversight. Contracts require internal audit, key performance indicators, compliance with DC Rules and Detention Services Orders ('DSO').

ii) Oversight by Detention Services Compliance Team (responsible in ensuring contractual requirements and monitor service, treatment of detained persons and condition) and Detention Engagement Teams.

iii) Improvements to be made to Detention Services Operations Compliance and Assurance Strategy to define robust staffing structure, improve consistency of monitoring of contracts.

129. Hardy letter:

i) Investment of new contracts and comprehensive review of older contracts to ensure consistency.

ii) New staffing model with better ratio of staff per detained individual to almost double since 2017.

130. Minister's letter:

> "All recommendations in this thematic area have been met and closed. We accepted the recommendation on monitoring contract performance, and have improved compliance oversight and contract monitoring, including application of Key Performance Indicators."

131. The Claimants complained that the Defendant rejected applying penalties to inadequate self-reporting by contractors. The Defendant said that separate penalties would not be applied as this requirement was already monitored through contractual Key Performance Indicators ('KPIs') and penalties are attached to failures. There were also Cabinet Office restrictions on the permitted number of KPIs.

132. I accept that Recommendation 1 has been substantially met, and any departure is a reasonable exercise of the Defendant's executive discretion.

133. **Recommendation 2: Contractual term requiring compliance with the overriding purpose of Rule 3 of the Detention Centre Rules 2001**

"The Home Office must ensure that each contract for the management of an immigration removal centre must expressly require compliance with the overriding purpose of Rule 3, which is to provide "the secure but humane accommodation of detained persons in a relaxed regime with as much freedom of movement and association as possible, consistent with maintaining a safe and secure environment, and to encourage and assist detained persons to make the most productive use of their time, whilst respecting in particular their dignity and the right to individual expression".

The provisions and operation of each contract must be consistent with and uphold the requirements of the Detention Centre Rules 2001, the Adults at Risk in Immigration Detention policy and the safeguards contained in detention services orders (including those concerning the use of force)."

134. Response March 2024: Executive Oversight Board to be held quarterly allowing escalation of issues that cannot be resolved at operational level.

135. Minister's letter:

> "We partially accepted the recommendation regarding the compliance of Detention Centre Rule 3 within our IRC contracts. Each contract for the management of an IRC expressly stipulates compliance with the overriding purpose of Rule 3. In addition, the provisions and operation of each contract must be consistent with and uphold the requirements of the wider Detention Centre

> Rules 2001, the Adults at Risk in Immigration Detention policy and the safeguards contained in Detention Services Orders (DSO)."

136. The Claimants also complained that the introduction of a maximum capacity for association spaces and increasing lock-ins was potentially contrary to Rule 3 DC Rules 2001. I accept the Defendant's response, namely, that this was an appropriate change to operational requirements for implementation of the Illegal Migration Act 2023, which was anticipated to result in increased numbers of detainees, pending removal. They were justified and explained in the document from Detention Services on 17 November 2023 as follows:

> "a To improve safety under health and safety/fire regulations and to reduce the risk of a large group becoming involved in a significant incident"
>
> B To "provide relief for supplier staff, ensure all residents are accounted for during roll count, allow staff to conduct welfare checks on vulnerable residents, carry out planned removals safely and allow time to handover and debrief, should any incidents have occurred, while also reducing any possible need for ad-hoc extensions to manage any of the abovementioned points, which could be unsettling for residents."

137. I accept that Recommendation 2 has been substantially met, and any departure is a reasonable exercise of the Defendant's executive discretion.

Design and layout

138. **Recommendation 3: Limit on cell sharing**

"The Home Office must ensure that a maximum of two detained people are accommodated in each cell at Brook House."

139. Response March 2024: In Brook House, no room designed for only two individuals houses more than two. There are no plans to increase room occupancy at Brook House, although legislation would allow it.

140. Minister's letter: Re-stated Response above and added "We accepted the recommendation to limit room sharing in principle". Recommendation met and closed.

141. I accept that Recommendation 3 has been met.

142. **Recommendation 4: Ensuring reasonable access to computers and the internet access**

"The Home Office and its contractors must ensure reasonable access to computers and the internet.

Contractors must comply in full with Detention Services Order 04/2016: Detainee Access to the Internet, in particular:

Computers and the internet provided for detained people's use must be maintained and fixed, if broken, within a reasonable time period, in order to allow detained people to access the internet for a minimum of seven hours per day, seven days per week.

Websites containing personal internet-based email accounts must not be blocked, since this is not a prohibited category of website.

Websites facilitating the provision of legal advice and representation must not be blocked, as this is not a prohibited category of website."

143. Response March 2024: "All service contracts require adherence to DSOs including mandatory provision of and regulated access to IT equipment and internet services. The Home Office has the ability to impose fines if these obligations are not met."

144. IRC suppliers continue to adhere to DSO 06/2018 - Accommodation standards and DSO 04/2016: access to the internet within the immigration removal estate. Regulated access to IT equipment and internet permitted with ability to apply fines if not provided.

145. It is a requirement set out in contracts to provide IT access for a minimum of 7 hours per day.

146. Minister's letter: All recommendations met and closed.

147. The Claimants complained that there was no reference to computer maintenance or access to specified website categories. In my view, the response from the Defendant can be assumed to cover all the matters raised in the recommendation.

148. I accept that Recommendation 4 has been met.

Detained people's safety and experience

149. **Recommendation 5: Undertaking and complying with cell-sharing risk assessment**

"The Home Office must ensure that adequate risk assessment for cell sharing is carried out by contractors in relation to every detained person. This must be done at the outset of detention and then repeated at reasonable intervals (at least every 14 days) or following any relevant change in circumstances.

In the event that an immigration removal centre is unable to detain someone in accordance with the outcome of a risk assessment (due to capacity or for other reasons), the Home Office must ensure that the individual does not remain at that centre."

150. Minister's letter: "Careful consideration has been given to the frequency of room sharing risk assessments (RSRA). A dynamic approach is used whereby reviews are conducted immediately in specific circumstances, including in response to a change in a detained individual's behaviour, following their involvement in an incident within the centre, or after new intelligence is received. This will strengthen the approach to assessing risk and further ensure staff and detained individuals' safety. Our suppliers must also consider the review of the RSRA after other actions relating to a detained individual's health and wellbeing have taken place, for example following the opening

of a vulnerable adult care plan. In addition, a systematic and frequent review of all those rated as 'high-risk' will now take place, with revised guidance prepared to set out these changes. This new approach is routinely monitored each month by the Home Office onsite compliance teams to ensure it is being delivered as required."

151. The Defendant did not accept the recommendation for cell risk assessments every 14 days. This was actively considered and rejected, for reasons relating to resources and practicability, and the fact that reviews are triggered in any event by relevant events. Following an Options paper which set out evidence and modelling, a decision was taken instead to prioritise reviews on an immediate basis in the event of new intelligence received, changes in behaviour and/or a resident's involvement in an incident. This would require a revised DSO which has been delayed several times during the process of drafting and then sending out for review.

152. The Claimants complained that there was in practice non-implementation, citing an HMCIP 2024 inspection report for Harmondsworth IRC which referred to criteria for cell sharing and treatment of those who refuse to share. However, these were not matters relevant to implementation of the recommendation regarding risk assessment.

153. I accept that Recommendation 5 has been substantially met, and the departures from it are a reasonable exercise of the Defendant's executive discretion.

154. **Recommendation 6: Review of the lock-in regime**

"The Home Office, in consultation with the contractor responsible for operating each immigration removal centre, must review the current lock-in regime and determine whether the period of time during which detained people are locked in their cells could be reduced.

The Inquiry does not consider cost alone to be a sufficient justification for extensive lock-in periods."

155. The BHI report stated "Before and after the relevant period, detained people at Brook House were locked in their cells from 21.00 to 08.00 every day and during two daily 30-minute roll calls." (Bundle reference 5/609/20).

156. Response March 2024: One of the most significant changes affecting staffing levels is a shorter night state, when staffing requirements are reduced, limiting the amount of time a person can be locked in their room overnight to up to a maximum of 9 hours. This 9-hour maximum night state is now embedded.

157. The Claimants complain that overall hours in lock-in have not been reduced. A letter from SERCO (contractors) to detainees, dated 28 November 2023, announced that detainees at Gatwick IRC would be required to return to their rooms for roll counts at 11.30 and 16.30. The "goal is to ensure that all residents are accounted for, that staff can conduct welfare checks on vulnerable residents, and that planned discharges can be carried out safely". It appears that this practice was already in place at the time of the BHI report.

158. The Defendant has reviewed periods of lock-in, as recommended in Recommendation 6. She has significantly reduced the length of the overnight lock-in from 11 hours to a

maximum of 9 hours. The decision to require detainees to return to their rooms for roll calls twice a day is, in my view, a lawful exercise of the Defendant's executive discretion.

159. **Recommendation 7: A time limit on detention**

"The government must introduce in legislation a maximum 28-day time limit on any individual's detention within an immigration removal centre."

160. Response: "The Government does not accept the recommendation that it should set a time limit on detention. A time limit would significantly impair the ability to remove those who have breached immigration laws and refused to leave the UK voluntarily. The Illegal Migration Act makes it clear that immigration detention must only be used for a period of time that is reasonably necessary, in the opinion of the Secretary of State, for the relevant immigration function to be carried out."

161. I consider that the Defendant was entitled not to accept or implement this recommendation, as a lawful exercise of her executive discretion. The Claimants' suggestion that this intensifies her duty to rectify other identified issues is their opinion, not an arguable legal submission.

Safeguards for vulnerable individuals

162. **Recommendation 8: Mandatory training on Rule 34 and Rule 35 of the Detention Centre Rules 2001**

"The Home Office (in collaboration with NHS England as required) must ensure that comprehensive training on Rule 34 and Rule 35 of the Detention Centre Rules 2001 is rolled out urgently across the immigration detention estate. Staff must be subject to refresher training, at least annually.

Attendance must be mandatory for all staff working in immigration removal centres and those responsible for managing them, as well as GPs and relevant Home Office staff. Consideration must be given as to whether such training should be subject to an assessment."

163. Response March 2024: "Careful consideration has been given to training linked to Rule 34 and Rule 35 of the DC Rules 2001. NHS England is developing interim clinical guidance to support GPs undertaking Rule 35 assessments and reports. Once the Rule 34 and 35 and AaR policies have been reviewed, NHS England will commission training to further support clinicians' understanding of their responsibilities under the revised rules. Information is also included within Initial Training Courses (ITCs) to promote awareness amongst all new contracted service provider staff."

164. The Minutes show ongoing liaison between the Defendant's officials and NHS England on this recommendation. Healthcare staff have their own training and NHS England is committed to developing and delivering training following a review of the AAR Policy by the Defendant's policy team. Other staff training was rolled out in March and April 2024.

165. The Claimants were critical of the fact that interim training had been undertaken by Dr Oozeerally, who was criticised in the BHI report. However, he is a qualified and regulated medical practitioner.

166. I accept that Recommendation 8 is in the course of being substantially met, and any departures from it are a reasonable exercise of the Defendant's discretion.

167. **Recommendation 9: Review of the operation of Rule 35 of the Detention Centre Rules 2001**

"The Home Office must, across the immigration detention estate, assure itself that all three limbs of Rule 35 of the Detention Centre Rules 2001 (reports by a medical practitioner where: (i) it is likely that a detained person's health would be injuriously affected by continued detention (Rule 35(1)); (ii) it is suspected that a detained person has suicidal intentions (Rule 35(2)); or (iii) there is a concern that a detained person may have been a victim of torture (Rule 35(3))) are being followed, are operating effectively and are adequately resourced, in recognition of the key safeguarding role that the Rule plays.

The Home Office must also regularly audit the use of Rule 35 in order to identify trends, any training needs and required improvements."

168. Minister's letter: "The Home Office is currently undertaking a wholesale review of the Adults at Risk in Immigration Detention (AaR) policy and Detention Centre Rules 34 and 35, with external engagement sessions with external stakeholders having recently taken place. All feedback options for reform have been captured and we remain on track to complete the review in spring 2025. This work will aim to deliver significant reform to improve the efficiency and effectiveness of safeguarding policies. The review seeks to ensure vulnerable people are quickly identified and place individual needs at the centre of the Adults at Risk policy."

169. The Claimants complained that the revised AAR policy issued on 21 May 2024 is inferior to the existing policy. They contend that it weakens the previous presumption against detention for vulnerable persons, as acknowledged in the Equality Impact Assessment. The current Government's policy is a continuation of the previous policy of expansion of the detention estate, and it has provided an additional 1000 bed spaces in IRCs. The IMB's 2023 Annual Report, published on 22 May 2024, documented that increases in the detention population placed staff and services under strain. Ms Schleicher criticised in her witness statement the Defendant's draft proposals for a revised AAR policy and a restructuring of the provisions currently in Rule 34 and 35 DC Rules 2001. She submitted that the proposals do not address the failure of the detention safeguards identified by the BHI and would put vulnerable people at risk

170. The Claimants' summary of the revised AAR policy guidance is selective and so it is necessary to consider the actual text. Under the heading 'Purpose and background', it states:

> "1. This guidance specifies the matters to be taken into account in accordance with section 59 of the Immigration Act 2016 when determining whether a person would be particularly vulnerable to harm if they were detained, or if they remained in detention,

and, if they were particularly vulnerable in those circumstances, whether they should be detained or should remain in detention. This guidance provides a framework for undertaking a case-by-case, evidence-based assessment of the appropriateness of the detention of a person considered vulnerable in terms of this guidance. This enables a holistic approach to be taken to assessing vulnerability in detention, ensuring that genuine cases of vulnerability are consistently identified, in order to ensure that vulnerable people are not detained inappropriately.

2. The adults at risk in immigration detention policy was originally introduced in September 2016, following an independent review by Stephen Shaw into the welfare of vulnerable people in detention. Since then, the Government has adapted its approach around the use of immigration detention in response to the international challenge of illegal migration. As part of a fair immigration system, it is essential to tackle immigration abuse in order to secure the UK's borders and protect the public. Detention plays a key role in maintaining effective immigration control, particularly as a means to facilitate the removal of people who have no right to be in the UK but refuse to leave voluntarily.

This guidance aims to strike a balance between protecting the vulnerable and the public interest in maintaining legitimate immigration control and ensuring public protection.

3. There is a general presumption of liberty which is strengthened for those considered vulnerable under this guidance. A person considered vulnerable under this guidance may be detained only where the immigration factors outweigh the risk factors in their particular case. No group of vulnerable people within this guidance is exempt from the possibility of detention.

4. This guidance will apply in all cases in which an individual is being considered for immigration detention and then whilst continued immigration detention is considered.

5. An assessment will be made of whether the individual is "at risk" in the terms of this guidance and, if so, the level of risk (based on the available evidence) into which they fall. In considering evidence of vulnerability and assigning an individual an evidence level, a balanced and evaluative approach must be taken to ensure decisions to detain or to maintain detention are informed by all the relevant information. This may involve additional information being sought to fully inform the decision. The process involves a holistic assessment of all the individual circumstances to reach an outcome. If the individual is considered to be at risk in detention, an assessment will be made of whether the immigration factors outweigh the risk

> factors and only when they do will the person be initially detained or remain in detention."

171. In my judgment, the Defendant was entitled, in the exercise of her executive discretion, to adopt policy guidance in these terms. She is not bound to follow the approach taken by the Chair of the BHI. The Claimants plainly disagree with the Defendant's policy, but have not demonstrated that it is even arguably unlawful. In response to the BHI report, the Defendant is undertaking an extensive review of the safeguards for vulnerable adults which remains work in progress.

172. The Claimants also complained that the Defendant weakened oversight and scrutiny of the AAR policy and Rule 35 by removing them from the remit of the ICIBI's inspections in 2023, following three critical reports by Mr David Neal (the former ICIBI). However those topics were not within the statutory remit of the ICIBI. The three reports were specifically commissioned by the Defendant, under section 50 of the UK Borders Act 2007, because the ICIBI generally has no statutory power to monitor detention conditions. That role comes within the statutory remit of the Chief Inspector of Prisons (see section 48(2A) of the UK Borders Act 2007). In December 2022, the Defendant indicated that annual reports were no longer required, and any further scrutiny of the AAR policy should be incorporated into his own inspection planning. The ICIBI 's statutory functions are set out in section 48 of the UK Borders Act 2007. He monitors and reports on, among other matters, the Secretary of State's functions relating to immigration, asylum or nationality. In my view, the decision not to commission further specific reports on the AAR policy was a lawful exercise of the Defendant's wide discretion.

Restriction on detained people

173. **Recommendation 10: Clarification on the use of Rule 40 and Rule 42 of the Detention Centre Rules 2001**

"The Home Office must amend, as a matter of urgency, Detention Services Order 02/2017: Removal from Association (Detention Centre Rule 40) and Temporary Confinement (Detention Centre Rule 42) and, if necessary, the Detention Services Operating Standards Manual for Immigration Service Removal Centres, to clarify who can authorise use of Rule 40 and Rule 42 of the Detention Centre Rules 2001, in both urgent and non-urgent circumstances, including providing a definition of the term 'manager' in Rule 40(2) and Rule 42(2).

In anticipation of the update to Detention Services Order 02/2017, the Home Office must issue an immediate instruction to communicate this clarification to staff and contractors operating immigration detention centres".

174. Minister's letter: "On 18 March 2024, the Home Office published an interim DSO to provide staff with further clarity on the use of removal from association and temporary confinement in line with the DCR 2001 and Short-Term Holding Facility Rules 2018. This operational guidance details who can authorise use of removal from association and temporary confinement and the circumstances when this is appropriate. The introduction of a formal delegation process under DCR Rule 65 is not only intended to bring clarity but ensure the safety and security of the centre and crucially, enable

authorisation of removal from association and temporary confinement without delay, by an appropriately trained and skilled manager. Once fully updated, the revised DSO will be supplemented by awareness sessions for IRC staff."

175. The DSO is due to be issued later in 2025.

176. I accept that Recommendation 10 is in the course of being substantially met, and any departures from it are a reasonable exercise of the Defendant's executive discretion.

177. **Recommendation 11: Review of the use of E Wing at Brook House**

"The Home Office and the current operator of Brook House must keep under review the appropriateness of the multi-purpose use of E Wing, particularly in relation to its suitability as a location to detain vulnerable people."

178. In May 2024, E Wing was converted into a dedicated Care and Supervision Unit used solely for removal from association and temporary confinement purposes, ending co-location with vulnerable individuals. It is no longer multi-purpose.

179. The Claimants now raise concerns about the use of E Wing to expand capacity for removal from association under Rule 40(2) DC Rules 2001. However that goes beyond the scope of the recommendation which in my view has been met.

180. **Recommendation 12: Training in relation to Rule 40 and Rule 42 of the Detention Centre Rules 2001**

"The Home Office and contractors operating immigration removal centres must provide regular training, at least annually, on the operation of Rule 40 and Rule 42 of the Detention Centre Rules 2001, which must include:

- *that Rules 40 and 42 are the only powers under which detained people in immigration removal centres can be removed from association and/or located in temporary confinement;*

- *who is permitted to authorise use of those Rules and in what circumstances they may be authorised;*

- *that Rules 40 and 42 cannot be used as a punishment or solely for administrative convenience before a planned removal or transfer; and*

- *the need to assess any adverse effect that use of Rule 40 or Rule 42 could have on a detained person's physical or mental health, and to consider any steps that could be taken to mitigate those effects.*

Attendance must be mandatory for all staff working in immigration removal centres and those responsible for managing them. The training must be subject to an assessment."

181. See the response to Recommendation 10. Training is being developed in parallel with the publication of the updated DSO. The Defendant has not accepted the recommendation of making the training subject to an assessment.

182. I accept that Recommendation 12 is in the course of being substantially met, and any departures from it are a reasonable exercise of the Defendant's executive discretion.

183. **Recommendation 13: Audit of use of Rule 40 and Rule 42 of the Detention Centre Rules 2001**

"The Home Office must regularly (and at least quarterly) audit the use of Rule 40 and Rule 42 across the immigration detention estate, in order to identify trends, any training needs and required improvements.

In addition, HM Inspectorate of Prisons and the National Chair and Management Board of Independent Monitoring Boards must review processes to consider how they fulfil their oversight role in respect of Rule 40 and Rule 42, and report on the monitoring of the use of Rules 40 and 42 going forward."

184. See the response to Recommendation 10. The audit requirement is covered in the draft DSO, reflecting audits that are already in place.

185. I accept that Recommendation 13 is in the course of being substantially met, and any departures from it are a reasonable exercise of the Defendant's executive discretion.

Use of force

186. **Recommendation 14: Handcuffing behind backs while seated**

"The Home Office and contractors operating immigration removal centres must ensure that all staff are aware that the technique of handcuffing detained people with their hands behind their back while seated is not permitted, given its association with positional asphyxia."

187. Response March 2024: The Defendant has communicated to all IRCs and service providers that techniques involving hand cuffing whilst seated is not permitted.

188. The Minutes of 6 June 2024 record that a reminder instruction for service providers has been circulated and 6 monthly reviews are to be conducted.

189. I accept that Recommendation 14 has been met.

190. **Recommendation 15: A new detention services order about the use of force**

"The Home Office must introduce, as a matter of urgency, a new and comprehensive detention services order to address use of force in immigration removal centres.

The detention services order must include the following issues:

• *the permissible justifications for the use of force within immigration removal centres, based on the key principle that force must not be used unnecessarily and must be used only as a last resort;*

• *the use of Personal Protective Equipment (PPE), including that it must be subject to a dynamic risk assessment before and during any use of force incident;*

• *the protection of dignity when force is used on a naked or near-naked detained person;*

• *the circumstances in which force can be used against a detained person with mental ill health; and*

• *monitoring, oversight and reporting of use of force by contractors and by the Home Office.*

The Home Office must ensure that training about the application of the new detention services order and use of force techniques takes place on a regular (at least annual) basis for all detention staff as well as healthcare staff. Attendance must be mandatory for all staff working in immigration removal centres and those responsible for managing them. The training must be subject to an assessment. In anticipation of a new detention services order on the use of force in immigration detention, the Home Office must issue an immediate instruction to its contractors managing immigration removal centres that force must be used only as a last resort, using approved techniques."

191. Minister's letter: "A new DSO in relation to use of force is being developed specifically for the immigration detention estate. The DSO will include key considerations on mental health of detained individual's prior to and during the application of force. There will be engagement with non-governmental organisations (NGOs) and key stakeholders during the development of the DSO."

192. Publication of the new DSO is expected in September 2025.

193. I accept that Recommendation 15 is being met.

194. **Recommendation 16: Urgent review of use of force on detained people with mental ill health**

"The Home Office must urgently commission an independent review (with the power to make recommendations) of use of force on detained people with mental ill health within immigration removal centres.

The review must consider:

• *how, when and whether to use force on detained people with mental ill health (including the application of pain-inducing techniques);*

• *the likely effect of the use of force on a detained person's mental health;*

• *the use of individual risk assessments for detained people, which could be conducted by personal officers and healthcare professionals; and*

• *the increased use and prioritisation of de-escalation techniques for those who have mental ill health.*

The review must take place in consultation with relevant stakeholders, including detained people's representative groups and mental ill health experts.

The recommendations of the review must be incorporated in the new detention services order regarding the use of force (see Recommendation 15), in respect of which additional, regular (at least annual) training must then be provided."

195. While Recommendation 16 has not been accepted in full (in terms of a fully independent review and the range of stakeholders), a review is taking place: a small pilot at Yarl's Wood IRC is assessing the appropriateness of force on those with known mental health conditions. A multidisciplinary panel is reviewing evidential footage and use of force paperwork from past cases to assess the impact and appropriateness of the force used, with the outcomes informing the benefits of conducting a wider review. Lessons learned from the pilot, and any subsequent follow up review, will be incorporated into the Use of Force DSO at the earliest opportunity.

196. The Claimants complained that it was premature to draft the new DSO before the Recommendation 16 review was complete. They also complained that the Yarl's Wood review was small, not independent, and did not involve stakeholders. I accept the Defendant's submissions that these were opinions which the Claimants were entitled to hold, but the Defendant was entitled to undertake her review as she sees fit. As the review and the DSO were not yet completed, the Claimants' concerns were premature. It was clear from the Minutes (e.g. 11 September 2024, paragraph 2.8) that the Defendant's officials were alive to the issues about the use of force and mental ill health, and have been grappling with limitations to reliable data available to inform the DSO.

197. I accept that Recommendation 16 is in the course of being substantially met, and any departures from it are a reasonable exercise of the Defendant's executive discretion.

198. **Recommendation 17: Urgent improvement of use of force reviews**

"The Home Office must ensure, as a matter of urgency, that training is delivered on how to conduct an effective use of force incident debrief, ensuring that issues of detained person and staff welfare, as well as training needs, are covered. The training must be mandatory for all immigration removal centre contractor employees who conduct such reviews and those who manage them.

The Home Office must also require that use of force incidents be reviewed, at a minimum, at the following levels:

• *Within 36 hours of each use of force incident, the Use of Force Coordinator must conduct a thorough incident review, ensuring that all documentation and footage are collated and preserved, and with a view to taking emergency action in instances of unlawful or inappropriate force. On a weekly basis, all use of force incidents must be reviewed (including all necessary paperwork and available video footage) at a formal meeting by the Use of Force Coordinator and a suitable manager in order to review each incident and to identify any issues or further action required.*

• *On a monthly basis, immigration removal centre contractor senior management must arrange meetings with other stakeholders (including detained people and representatives of non-governmental organisations) to review use of force trends.*

• *Periodically, the Home Office (or its Professional Standards Unit if the Home Office considers it more appropriate) must review use of force at Brook House and across the*

immigration detention estate, to identify trends and to direct the implementation of any changes and improvements that are required.

This review process must be reflected in the new detention services order regarding the use of force – see Recommendation 15 – in respect of which additional, regular (at least annual) training must then be provided."

199. The Minutes (18 March 2025, paragraph 2.16) confirmed that reviews, including a RAG rating system, were in place across the IRCs. The review process would be included in the new DSO, due for publication in September 2025.

200. The Claimants reiterated the complaints referred to under Recommendation 16 (paragraph 196 above). They also complained that implementation referred to existing rather than improving practices, and the draft DSO was modelled on equivalent prison documents. Statistics showed an increase in use of force incidents. I note that the draft DSO is subject to engagement and so the Claimants' complaints about the draft DSO may have already been raised; if not, they should be considered.

201. I accept that Recommendation 17 is in the course of being substantially met and any departures from it are a reasonable exercise of the Defendant's executive discretion.

Healthcare

202. **Recommendation 18: Urgent guidance in relation to food and fluid refusal**

"The Home Office must, as a matter of urgency, update Detention Services Order 03/2017: Care and Management of Detained Individuals Refusing Food and/or Fluid, to ensure that it deals with:

- *food and fluid refusal being clearly and directly linked to consideration of the Rule 35 process and whether a detained person is defined as an 'adult at risk';*

- *the consideration by the healthcare provider at each immigration removal centre, upon an incidence of food and fluid refusal occurring, of assessments of mental capacity, of mental state, and under Rule 35, and the conduct of these where indicated, as well as ensuring compliance with Adults at Risk in Immigration Detention policy and making sure that decisions made in relation to these are recorded;*

- *the notification to the Home Office of the numbers of detained people refusing food and fluid, and the reasons for such refusal, on a monthly basis (in the same way that incidents of self-harm are notified); and*

- *the monitoring by the Home Office of the compliance by healthcare providers with Detention Services Order 03/2017 and the numbers of detained people refusing food and fluid, and the reasons for such refusal, in order to identify any patterns of concern and take appropriate action.*

The Home Office must ensure that mandatory training about the application of the updated detention services order takes place on a regular (at least annual) basis for all detention staff and healthcare staff, as well as those responsible for managing them. Attendance must be mandatory for all staff working in immigration removal centres

and those responsible for managing them. The training must be subject to an assessment.

In anticipation of the update to Detention Services Order 03/2017, the Home Office must issue an immediate instruction to communicate this clarification to those operating immigration detention centres."

203. Response March 2024: "An update to the DSO in relation to refusing food and fluid has been published. It covers the requirement to link food and fluid refusal with consideration of the Rule 35 process and whether a detained person should be defined as an adult at risk. Any decisions by healthcare providers are recorded along with the numbers of instances and reasons. This information is monitored by the Home Office and reviewed to assist in identification of trends and appropriate action."

204. The Minutes (24 April 2024, paragraph 2.10) recorded that "Recommendation is largely addressed by a DSO review from last year but there were other concerns which needed to be addressed by a subsequent review."

205. I accept that Recommendation 18 is in the course of being substantially met and any departures from it are a reasonable exercise of the Defendant's executive discretion.

206. **Recommendation 19: Guidance and training for healthcare staff on the use of force**

"The Home Office must ensure that guidance is issued to healthcare staff in immigration removal centres clarifying their role in use of force incidents. It must liaise as necessary with NHS England and any relevant medical regulators.

The Home Office must ensure that mandatory training is introduced for healthcare staff, and those responsible for managing them, on their roles and responsibilities in relation to planned and unplanned use of force (liaising with NHS England and any other relevant parties). The training must be subject to an assessment."

207. Minister's letter: "It is not within the remit of healthcare staff within an IRC to undertake use of force. Healthcare staff need to be aware of the use of force mechanisms in place within establishments and have a role in ensuring the safety of patients post any use of force. Use of force guidance and policy frameworks exist for healthcare staff working across prison, health, mental health and community settings. The NHS England Clinical Reference Group are working to produce an aligned use of force guidance document for IRC healthcare providers."

208. This text was first set out in the Hardy letter and identified as a rejected recommendation, although much of the recommendation was in fact accepted. It appears that the title of the recommendation, which refers to "use of force", was taken literally and the Defendant wished to clarify that it was not within the remit of healthcare staff to undertake use of force. However, the Defendant has been liaising with NHS England who take responsibility for providing training for healthcare staff. As the Minister's letter stated, the NHS England Clinical Reference Group are working to produce an aligned use of force guidance document for IRC healthcare providers.

209. An internal Home Office 'Table of Progress against BHI recommendations (July 2024)' stated on recommendation 19: "NHS England have provided NICE guidelines for healthcare staff that must be adhered to. Participating or observing the training could be viewed as compromising their professional registration and integrity."

210. In my view, Recommendation 19 has been met in part, and any departures from it are a reasonable exercise of the Defendant's executive discretion.

211. **Recommendation 20: Updating guidance regarding 'fit to fly and fit for detention' letters**

"The Home Office must review and update Detention Services Order 01/2016: The Protection, Use and Sharing of Medical Information Relating to People Detained Under Immigration Powers, to ensure that guidance given to GPs working in the immigration detention estate in relation to their duties and responsibilities in writing 'fit to fly and fit for detention' letters is clear. It must liaise with NHS England and any relevant medical regulators as necessary.

The Home Office must ensure that training about the updated guidance takes place on a regular (at least annual) basis for GPs working in the immigration detention estate and those responsible for managing them. The training must be subject to an assessment.

The Home Office must monitor compliance with this updated guidance at least annually."

212. Response March 2024: "Within IRCs, NHS England are responsible for commissioning a healthcare service [commensurate] to that which is available within the community. Although fit to fly letters are a medico legal practice – and outside of the responsibility of NHS England – where a clinician has concerns in relation to an individual's detention or fitness to fly, they will, in line with safeguarding responsibilities ensure that this is shared, where appropriate, with the Home Office to support decision making."

213. Minister's letter: "A new healthcare inquiry form has been in use since July 2024, providing additional guidance on 'fit to remove' assessments and enabling detained case workers to complete them where there are concerns an individual may not be suitable for removal. The impact of this change is being reviewed before the recommendation is considered for closure."

214. The Minutes (12 June 2025) record that updating guidance regarding 'fit to fly' and 'fit for detention' letters was being drafted, with sign-off expected in July 2025, and with a view to presentation for closure in September 2025.

215. I accept that Recommendation 20 is in the course of being substantially met and any departures from it are a reasonable exercise of the Defendant's executive discretion.

216. **Recommendation 21: Ensuring effective communication of medical information**

"The Home Office must review and update Detention Services Order 04/2020: Mental Vulnerability and Immigration Detention: Non-Clinical Guidance to set out comprehensive guidance for detention and healthcare staff where there are concerns

that a detained person is suffering mental ill health or lacks mental capacity. This must include an appropriate system for:

- *the routine handover or sharing of relevant information between detention custody staff and healthcare staff (for example, in Security Information Reports and Anti-Bullying Support Plans);*

- *the identification and follow-up of missed medical appointments;*

- *the assessment of mental capacity where indicated; and*

- *mental health assessment where indicated.*

The Home Office must ensure that training about the updated guidance takes place on a regular (at least annual) basis for detention and healthcare staff, as well as those responsible for managing them.

The training must be subject to an assessment."

217. Response March 2024: "The Home Office and DHSC are considering the policy around detained people with mental ill health as part of a wider piece of work around vulnerable adults and, along with NHS England, are scoping out the requirements for any further work."

218. Minister's letter: "We are currently reviewing the process for sharing medical information to ensure that the most appropriate legal basis is used in any situation and to mitigate operational challenges. Ongoing work includes reviewing the DSO on Medical Information Sharing (DSO 01/2016) with the aim of completion in summer 2025."

219. The Minutes recorded as follows:

i) 24 April 2024: Developed a data protection impact assessment; examples of when medical information is stored and shared with consideration of formal agreement between NHS England and the Home Office.

ii) 18 March 2025: Publication date for the new DSO is expected to be August 2025.

iii) 12 June 2025: Draft paper has been shared with NHS England for final checks prior to ministerial advice being developed and the updated DSO being progressed.

220. I accept that Recommendation 21 is in the course of being substantially met and any departures from it are a reasonable exercise of the Defendant's executive discretion.

221. **Recommendation 22: Improving the handling and audit of healthcare complaints**

"The Home Office must review and update Detention Services Order 03/2015: Handling of Complaints to ensure that appropriate guidance is given to healthcare providers on the investigation and handling of complaints specific to the provision of healthcare in an immigration detention setting.

The Home Office must ensure that training about the updated guidance takes place on a regular (at least annual) basis for staff dealing with healthcare complaints, as well as those responsible for managing them. The training must be subject to an assessment.

Healthcare providers in immigration removal centres must ensure that all healthcare complaints are robustly investigated in accordance with the updated guidance. The methodology and outcomes must be clearly communicated, including to the detained person. They must also ensure that appropriate, regular (at least annual) training and guidance is provided to those holding responsibility for the investigation of healthcare complaints."

222. A review took place to inform the publication of new DSOs on complaints processes. DSO 03/2015 was updated in February 2025 to include steps for healthcare complaints.

223. I accept that Recommendation 22 has been substantially met and any departures from it are a reasonable exercise of the Defendant's executive discretion.

Staffing and culture

224. Recommendations 23 to 27 on this topic are considered together.

225. **Recommendation 23: Ongoing assessment of staffing levels**

"The Home Office and contractors operating immigration removal centres must ensure that there is ongoing assessment of staffing levels (at least on a quarterly basis), so that the level of staff present within each centre is appropriate for the size and needs of the detained population.

The Home Office must also ensure that the detained population does not increase at any immigration centre unless staffing is at an adequate level."

226. **Recommendation 24: Mandatory training for immigration removal centre staff**

"The Home Office, in conjunction with contractors, must ensure that all relevant immigration removal centre staff receive mandatory introductory and annual training on:

- *mental health;*
- *race and diversity;*
- *a trauma-informed approach;*
- *their own resilience;*
- *drug awareness; and*
- *the purpose of immigration removal centres.*

This training must include the perspectives of, or be conducted in consultation with, detained people.

The Home Office must also ensure, in conjunction with contractors, that new joiners must start on probation on completion of introductory training and be adequately supervised for a period of time as necessary to establish their competence to work independently."

227. **Recommendation 25: Improving the visibility of senior managers within centres**

"Contractors operating immigration removal centres must ensure that senior managers are regularly present and visible within the immigration removal centre and are accessible to more junior detention staff."

228. **Recommendation 26: Improving the visibility of Home Office staff**

"The Home Office must ensure that its staff are regularly present and visible within each immigration removal centre."

229. **Recommendation 27: Developing a healthy culture among staff**

"Contractors operating immigration removal centres must develop and implement an action plan to ensure a safe and healthy staff culture in immigration removal centres. The action plan must address:

- *the identification of and response to any sign of desensitisation among staff;*
- *training staff on coping mechanisms and secondary trauma awareness; and*
- *an appropriate balance between care and safety or security.*

The Home Office must regularly monitor each contractor's compliance with their action plans."

230. Response March 2024:

> "6.8 Staffing and culture:
>
> 6.8.1 The report findings in relation to contracted service provider staff behaviour and culture were shocking and unacceptable. Significant changes have been implemented to better define operational staffing levels, introduce accredited training, a code of conduct, and a mandatory staff engagement strategy. The Government is particularly mindful of the findings that the negative culture at Brook House during the time of the documentary was endemic and enabled by senior managers. The Home Office is working to ensure that all safeguards and monitoring of conduct apply to all staff, including senior leadership.
>
> 6.8.2 The ITC for all new contracted service provider staff in IRCs is undergoing a full review to ensure understanding of fundamental subjects including AaR, mental health awareness, racial awareness and safeguarding children. There will also be a mentorship phase following completion of initial training and

> annual refresher training to ensure new recruits are effectively supported. These are contractual obligations that are also set out in the contract and certification DSO.
>
> 6.8.3 The DET teams are being expanded, with further recruitment underway to support the Home Office's commitment to improving the access of detained individuals to Home Office staff. DET staff are regularly present and visible within the IRCs, using face-to-face interaction to build relationships with those in detention and help focus them towards return, utilising available incentives such as the Voluntary Returns Scheme and providing an important on-site link between people in detention and their case working teams. Being based at the centres, engaging with those in detention and on-site healthcare providers and contracted service providers, DETs work to identify and manage any vulnerability issues at the earliest opportunity.
>
> 6.8.4 Contract requirements across IRC contracted service providers are being reviewed to provide a policy on safe staffing levels and appropriate mitigations where staff capacity is temporarily an issue."

231. Minister's letter:

> "All recommendations in this category have been met and closed. Significant investment has been made into the development of new contracts to improve service provision and staff culture, alongside a comprehensive review of remaining older contracts to ensure consistency.
>
> The Initial Training Course (ITC) for all new supplier staff in IRCs is undergoing a full review to ensure understanding of fundamental subjects including AaR, mental health awareness, race awareness and safeguarding children. There will also be a mentorship phase following completion of initial training and annual refresher training to ensure staff are effectively supported.
>
> Annual refresher training and completion of ITCs in line with the DSO Detainee Custody Officer and Detainee Custody Officer (Escort) Certification (DSO 02/2018) are currently included within all IRC contracts, any changes following the full review will be reflected and incorporated by each IRC supplier."

232. Recommendation 25 is addressed to contractors. An internal Home Office 'Table of Progress against BHI recommendations (July 2024)' stated that Recommendation 25 was met: "Evidence from the mandated requirements within the new Gatwick contract. Adherence is monitored and attached to KPIs."

233. I accept that Recommendations 23 to 27 have been substantially met and any departures are a reasonable exercise of the Defendant's executive discretion.

Complaints and whistleblowing

234. **Recommendation 28: Action to address barriers to making complaints**

"The Home Office and its contractors operating immigration removal centres must take steps to identify and address the barriers to making complaints that are faced by detained people, including a fear of repercussions. This must include training for staff on their role in enabling detained people to overcome these barriers."

235. Minister's letter:

> "A comprehensive review into complaints processes, including medical complaints, was undertaken in 2024 and included engagement with individuals in detention and key stakeholders, including the Prisons and Probation Ombudsman (PPO). These findings informed the updated DSO on complaint processes, published in December 2024.
>
> We have already seen improvement in accessibility to the complaints process for detained individuals, with a simplified DCF9 complaints form and clearer signage across IRCs, evidenced by the 16% increase in complaints received in 2024. The timeliness of complaint responses has improved, and complaint translations are now quicker following the introduction of a centralised tracking database to effectively monitor the languages being translated, with handling times having decreased from 7 to 4 days.
>
> We are continuing to drive up the quality of complaint responses, with assurance checks now undertaken on all responses, ensuring they are not issued until they meet satisfactory standards. Regular meetings are undertaken with IRC teams to address concerns regarding the quality of responses, and complaints champions have now been designated to maintain focus and momentum on the importance of both timely and quality responses."

236. I accept that Recommendation 28 has been substantially met.

237. **Recommendation 29: Improving investigations by the Home Office Professional Standards Unit**

"The Home Office must update Detention Services Order 03/2015: Handling of Complaints to clarify that, in investigations carried out by the Professional Standards Unit into allegations of serious misconduct against contractor staff:

• *Professional Standards Unit investigators must carry out interviews themselves and not rely on contractors to do so.*

• *All staff against whom allegations are made must be invited to interview.*

• *Where there are inconsistencies between any accounts given of events, any evidence relating to those accounts (including footage and documentation) obtained by an investigating officer must be shown to the complainant and to the subject of the complaint, prior to reaching a conclusion.*

• *The Professional Standards Unit must be given information about previous complaints made against alleged perpetrators, including unsubstantiated complaints.*

• *Previous disciplinary action against alleged perpetrators must be taken into account.*

• *Investigators must look for evidence that is both supportive and undermining of the complaint.*

• *Full reports must be sent to complainants (and their solicitors if applicable).*

• *Investigation reports and/or outcome letters must be sent directly from the PSU to complainants (and their solicitors if applicable).*

The Home Office Professional Standards Unit must ensure that training about the updated guidance takes place on a regular (at least annual) basis for staff dealing with investigations, as well as those responsible for managing them. The training must be subject to an assessment.

The Professional Standards Unit must also review the training provided to investigators and ensure that investigators receive regular and adequate training, from a variety of perspectives, on issues including:

• *the nature of immigration removal centres and issues that may arise;*

• *obstacles that detained people may face in making complaints;*

• *interviewing vulnerable witnesses; and*

• *use of force and assessing reasonableness of force."*

238. As stated under Recommendation 28, a comprehensive review into complaints processes was undertaken in 2024 and included engagement with individuals in detention and key stakeholders, including the Prisons and Probation Ombudsman ('PPO'). These findings informed the updated DSO on complaint processes which was published in February 2025.

239. Response March 2024: "The Home Office Professional Standards Unit (PSU) has been closely involved in the Government's review of the report. Many of the

recommendations relating to the work of the PSU are already part of its standard operating procedures (SOPs) and those that are not will be incorporated. Training has been updated to reflect BHI findings, highlighting the nature of immigration removal centres and any obstacles that detained people may face in making complaints. The PSU has also sought expert training in interviewing vulnerable witnesses and has an embedded officer with expertise in the use of force and assessing reasonableness of force."

240. However, it appears from the 'Table of Progress against BHI recommendations (July 2024)' that there has been resistance to mandatory disclosure of evidence to both the complainant and the subject of the complaint before reaching a conclusion. The Table noted that discussions were ongoing as to the mechanics of sharing information relating to prior disciplinary action or previous complaints.

241. The issue of disclosure is the subject of another claim: *R (AK) v Secretary of State for the Home Department* AC-2023-LON-003316, issued in November 2023. In August and September 2023, the PSU dismissed complaints made by AK in May and June 2023, whilst at BH and Harmondsworth IRC, without disclosing the evidence it had reviewed and relied upon in its investigation, nor the full investigation report. Initially, AK was only given a summary of the reasons for the decision. The PSU applied the DSOs in force at the relevant dates. These decisions were made before the report of the BHI was issued.

242. The claim was heard in July 2024, but judgment was only handed down on 1 July 2025, after the hearing before me had concluded, and therefore the parties made written submissions on it. Sweeting J. granted judicial review on Ground 1 (procedural unfairness in failing to provide AK with the underlying evidence) but dismissed Ground 2 (failure to make reasonable adjustments for AK's disability) and Ground 3 (failure to hold an effective investigation which complied with Article 3 ECHR).

243. Under Ground 1, Sweeting J. concluded:

i) The PSU's handling of disclosure in AK's case was conducted pursuant to a discernible policy or practice of generally withholding underlying evidence from complainants, rather than a flexible case-by-case approach.

ii) This practice did not meet the required standards of procedural fairness, as it denied AK a fair opportunity to comment on the evidence.

244. Under Ground 3, Sweeting J. found as follows:

> "100. The Defendant argues that the combination of the PSU investigation, the right to appeal to the PPO, and the availability of civil proceedings provides a sufficient investigative framework to comply with the State's obligations under Article 3 ECHR. I accept this submission. While the PSU investigation itself might have procedural shortcomings, as addressed under Ground 1, it is a preliminary step. The overall system, including the independent oversight provided by the PPO and the robust fact-finding mechanism available through civil litigation, is

> capable of providing an effective investigation into credible allegations of mistreatment.
>
> 101. The Claimant's arguments concerning the alleged lack of independence of the PSU and its process, while relevant to procedural fairness (Ground 1), do not, in my judgment, demonstrate that the State has failed to discharge its Article 3 investigative duty when the totality of available remedies is considered. The case law, particularly *Banks v United Kingdom* and its subsequent application in domestic courts, supports the proposition that a combination of internal processes, independent review (PPO), and judicial remedies (civil claims) can satisfy Article 3 requirements. This case does not, on the facts presented, appear to engage the need for a broader public inquiry into systemic issues in the way discussed in cases like *R (L) v Justice Secretary* or the Brook House Inquiry, which concerned widespread allegations following a disturbance. The Claimant's challenge focuses on the investigation of his specific complaints.
>
> 102. For these reasons, I conclude that the Claimant has not established that the Defendant's policy or practice for investigating complaints of mistreatment, when viewed as part of the overall system of available remedies including the PPO appeal and civil proceedings, falls short of the State's investigative duty under Article 3 ECHR. This ground therefore fails."

245. The Court made the following declarations:

> "The PSU's policy or practice of conducting investigations without providing the complainant with key underlying evidence, such as body-worn video footage and witness accounts, to allow them a fair opportunity to comment and make submissions, is unlawful.
>
> The Defendant's decision to refuse to provide the Claimant with the full reasons for the decision on his complaints until 19 March 2024 was unlawful."

246. The Defendant is considering whether or not to appeal against the grant of judicial review on Ground 1. Unless Sweeting J.'s decision is overturned on appeal, the Defendant will be obliged to introduce a revised policy on disclosure which complies with the judgment of the Court.

247. The judgment in *AK* did not address the lawfulness of the other matters covered by Recommendation 29, which have been substantially met.

248. **Recommendation 30: Improving the independence of the Home Office Professional Standards Unit**

"The Home Office must:

• *take steps to enhance the independence of the Professional Standards Unit from the Home Office and the perception of this independence; and*

• *increase the seniority of the Head of the Professional Standards Unit so that they are closer in status to the Heads of the relevant Home Office Immigration Enforcement teams."*

249. Recommendation 30 was rejected by the Defendant in the formal Response of March 2024, and the Minister's letter which was in similar terms.

250. Response March 2024: "Whilst the seniority of the Head of the PSU will not be changed, the Government is confident that the PSU operates within Advisory Conciliation and Arbitration Service (ACAS) Code of Practice on disciplinary procedures requiring fairness and transparency in workplace investigations. Should any complainant be dissatisfied with the outcome of an investigation, there are well communicated routes for escalation or redress outside the Home Office via the PPO."

251. I accept that the decision not to accept Recommendation 30 was a reasonable exercise of the Defendant's executive discretion.

252. **Recommendation 31: Improving the process for and response to whistleblowing**

"The Home Office must update Detention Services Order 03/2020: Whistleblowing – The Public Interest Disclosure Act 1998 to require contractors that run immigration removal centres to:

• *have a whistleblowing policy and procedure that is specific to the immigration detention environment;*

• *ensure that the whistleblowing mechanism is not limited to a hotline and allows for anonymous reporting of concerns;*

• *ensure that those who receive whistleblowing concerns have an understanding of immigration removal centres;*

• *take active steps to encourage staff to use whistleblowing processes, for reasons including those set out at paragraph 10 of Detention Services Order 03/2020; and*

• *ensure that whistleblowing concerns are investigated thoroughly by someone external to the immigration removal centre, and that the Home Office is informed of the nature of the concern and the investigation carried out. The Home Office must ensure that training about the updated guidance takes place on a regular (at least annual) basis for staff dealing with whistleblowing, as well as those responsible for managing them. The training must be subject to an assessment."*

253. Response March 2024: "A comprehensive review into complaints, including medical complaints, and whistle blowing processes is being undertaken. This has involved a review of the existing DSOs and improving the visibility of communications about an accessibility to complaints processes within every IRC. Engagement with residents themselves, as well as with the IMB and Prisons and Probation Ombudsman (PPO), is

also being undertaken to obtain feedback on the existing complaints process. The DSOs will be updated once the review is complete."

254. Minister's letter: "In relation to whistleblowing, both the Home Office and suppliers have worked to enhance the reporting of concerns through whistleblowing lines. All whistleblowing policies have been reviewed, and procedures are clearly displayed in IRC staff and visitor areas. The lines are tested quarterly to ensure they are operational, and improvements were made when automated messages were found to potentially discourage reporting. The updated DSO on whistleblowing (DSO 03/2020) is currently undergoing external engagement. We will be going further by supplementing this with a new DSO focused on staff conduct and reporting wrongdoing which will follow in due course."

255. Publication of the whistleblowing DSO is expected in July 2025.

256. I accept that Recommendation 31 is in the process of being substantially met and any departures from it are a reasonable exercise of the Defendant's executive discretion.

Inspection and monitoring

257. **Recommendation 32: Enhancing the role of the Independent Monitoring Boards**

"The government must:

• *respond to and publish responses to all concerns raised by any Independent Monitoring Board regarding immigration removal centres;*

• *take steps without further delay to amend the Detention Centre Rules 2001, in so far as they govern Independent Monitoring Boards, in order to accurately reflect their current role; and*

• *consider whether to put the National Chair and Management Board of the Independent Monitoring Boards on a statutory footing."*

258. **Recommendation 33: Improving the investigation and reporting of HM Inspectorate of Prisons and Independent Monitoring Boards**

"HM Inspectorate of Prisons and Independent Monitoring Boards working within immigration removal centres must ensure that they have robust processes for:

• *obtaining and reporting on an enhanced range of evidence and intelligence from detained people and those who represent or support them, staff and contractors, including that which is received outside of inspections or visits; and*

• *reporting on any concerns about the Home Office and contractors."*

259. Response March 2024: "The report highlighted the lack of statutory status for the National Chair and Management Board of the IMBs. In the Prisons Strategy White Paper (2021), the Ministry of Justice (MoJ) committed to pursue legislative reform that will provide the relevant Arm's Length Bodies, including the IMBs, with the statutory

framework needed to undertake scrutiny activity as effectively as possible. The MoJ intend to legislate as soon as Parliamentary time allows."

260. Minister's letter: "The recommendations in this thematic area have been met and closed. Recommendation 33 to improve investigation and reporting of HM Inspectorate of Prisons (HMIP) and Independent Monitoring Boards (IMB) has been responded to separately by HMIP and the IMB. Action plans in response to HMIP reports are published by HMIP alongside the original report, with actions plans from IMB reports being published from this year, starting with reports covering the 2024 calendar year. HMIP and IMB recommendations are now held on a Home Office wide central software system with established processes in place for monitoring the progress of these recommendations by Detention Services, with additional oversight provided by a central Immigration Enforcement team."

261. The Minutes record the efforts made to implement Recommendation 32:

i) 30 January 2024: "Prison and detention centre rules have work on-going and we will continue to keep you updated with progress and to ensure we align with practises."

ii) 24 April 2024: "SG advised that the team is awaiting the Home Office response to the part of the recommendation relating to publication of the Home Office response to IMB reports and also updating the Detention Centre Rules which, at present, there isn't capacity for …discussions were taking place with the IMB Chair concerning publication of the Home Office responses to the IMB reports. 2.25 New legislation will provide the IMB Chair with an appropriate footing but there is not a legislative slot at present. The MoJ are content enough work has been done to improve reporting functions of HMIP and IMB to satisfy the recommendation."

iii) 6 June 2024: "Whilst a legislative slot is required for recommendation 32, a lot of information regarding the HMIP and IMB improvements had been provided. The group agreed to keep the recommendations open pending views of any new administration following the General Election that may result in a different stance in responding to these recommendations."

iv) 9 January 2025: spirit of recommendation met but no current legislative vehicle, "MoJ colleagues have written to ministers to set out the recommendation and assess appetite. There is no legislative vehicle to complete this currently, but the spirit of the recommendation has been met."

262. The Claimants complained about the lack of progress in giving effect to these recommendations.

263. I accept that Recommendations 32 and 33 are in the process of being met.

Conclusions on Grounds 1 and 2

264. The Claimants' grounds raise a novel argument that has not been considered in the case law. None of the cases cited by the parties support the proposition that the investigative

duty extends to the State's response to the findings and recommendations made in the investigation. I agree with the Defendant that the State's response is a matter outside the ambit of the "investigation" – it is what comes after an investigation. I consider it is clear that the statements of principle cited in the case law, which refer to "learning lessons" and ensuring future "compliance" with Article 3 ECHR, are describing the objects and purposes of an investigation which is carried out by an independent body, not the State. In my view, it would be wrong for me to extend the scope of Article 3 ECHR in the manner proposed by the Claimants.

265. Furthermore, I accept the Defendant's submission that there is no legal obligation upon the Defendant to comply with the BHI recommendations. They are recommendations, not directions. The BHI had no power to compel the Defendant to implement its recommendations. The Claimants have not heeded the guidance on the role of the investigation given in *AM* by Sedley LJ at [57]:

> "The purpose, in other words, is neither purely compensatory nor purely retributive; nor is it necessarily restricted to what has happened to the particular victim. Nor, however, is it to usurp the role of government. It is to inform the public and its government about what may have gone wrong in relation to an important civic and international obligation and about what can be done to stop it happening again." (emphasis added)

266. The Claimants have rightly conceded, in the course of the litigation, that the Defendant's response to the report is a matter for her discretionary judgment. However, the Claimants now challenge the lawfulness of any response which departs from the approach taken in the BHI report, and do not respect the Defendant's exercise of judgment and different viewpoint. In *R (CSM) v Home Secretary* [2021] 4 WLR 110, Bourne J. correctly set out the legal position at [98]:

> "It is for the defendant to consider what policy or guidance to adopt, and then to adopt and disseminate it properly. It is not for the court to dictate that this should be the BHIVA guidance."

267. Whilst the Defendant has responded to the BHI report and recommendations, both formally and informally, there is no express legal obligation on her to do so.

268. The Claimants also make the somewhat startling submission that, pursuant to the duty in Article 3 ECHR, the Court must undertake the task of assessing whether measures taken in response to the recommendations are effective, and whether they meet a minimum standard, and then order the Defendant to undertake a fresh review. I agree with the Defendant that the Administrative Court is not a mechanism which is practically or constitutionally suited to a wide-ranging review of the current state of immigration detention. In its expanded Ground 2, the Claimants are seeking to use the Court as a form of second inquiry, which goes beyond the confines of its supervisory jurisdiction.

269. I accept the Defendant's submission that if any breaches of Article 3 ECHR are apparent or imminent, the appropriate role for the Court would be to adjudicate upon a claim brought by a victim which set out the individual and/or systemic breaches alleged. Where the evidence is disputed, as in AVY's case, a trial with witnesses will be ordered.

I am informed that such a claim has been issued (*R (AH & IS) Secretary of State for the Home Department*) and is currently before Jefford J..

270. I also accept the Defendant's alternative case that, even if the investigative duty did extend to her response, the Defendant has sufficiently addressed, or is in the course of addressing, the BHI's recommendations, and implementing the measures which she considers appropriate, in the exercise of her discretionary judgment. In the section of my judgment on the recommendations, I have set out where each recommendation has been met or substantially met or rejected, and where I consider that any departure from a recommendation was a reasonable exercise of the Defendant's executive discretion.

271. I am not persuaded by the Claimants' submission that the Defendant's response, or lack of response, has resulted in an ongoing breach of the systems duty in Article 3 ECHR, for the reasons set out in my review of the recommendations. The focus of the BHI was the mistreatment of detainees, but it is important to bear in mind that the Defendant has to have regard to other factors too, namely, the requirements of an effective system of immigration control, which may include detention, segregation, and the reasonable use of force, as a last resort, to address the risks of absconding, offending and non-compliance. The BHI report does not grapple in any meaningful way with these factors, presumably because they were considered to be outside its remit. Of course, these factors cannot justify any breach of Article 3 ECHR, but they do serve to explain why the Defendant's approach differs from that of the Inquiry Chair in some instances.

272. Under Ground 2, in their pleaded cases (Claim 1, SFG/76-79; Claim 2, SFG/52-55), the Claimants submitted that the Defendant's failure to comply with the investigative duty to act upon the findings of the BHI, to implement its recommendations, and rectify the dangerous practices identified, amounted to a breach of the systems duty in Article 3 ECHR. That submission cannot succeed because it was predicated upon the Defendant's breach of the investigative duty which I have rejected.

273. In their skeleton argument and their oral submissions, the Claimants re-formulated their submission under Ground 2 as a general ongoing breach of the systems duty in Article 3 ECHR (CSkA/118), by reference to individual detainees, post-inquiry reports, and government policies, among other matters.

274. Whilst the BHI could not, by virtue of section 2 IA 2005, make findings of breaches of Article 3 ECHR, it did find, in the case of D1914 and others, that there was credible evidence that the acts of mistreatment identified were capable of amounting to inhuman and degrading treatment. Reflecting the Terms of Reference, the findings also pointed to systemic failings. However the BHI was an investigation into events which took place 8 years ago, in 2017. Whilst the findings are clearly significant, the evidence is not current, and changes have taken place since then.

275. The Claimants relied upon the findings of a breach of the operational and systemic duties of Article 3 ECHR in *Adegboyega v Secretary of State for the Home Department* [2024] EWHC 2365 (KB). *Adegboyega* was a hearing for the assessment of damages in a civil claim, where the Defendant had admitted liability on common law grounds, but not on the grounds under the HRA 1998. The claimant was detained at BH in 2017 and his case was considered at the BHI. HH Judge Roberts, sitting as a Judge of the High Court, considered each specific allegation made by the claimant, with reference to the evidence and findings of the BHI, and found operational as well as systemic

failings, amounting to a breach of Article 3 ECHR in the claimant's case. The Judge had earlier ruled that the BHI report was admissible for this purpose, which I find somewhat surprising, but since his admissibility ruling was not available to me, and the point was not argued before me, I make no further comment. For my purposes, the probative value of this case is limited as it merely confirms conditions in 2017, as found in the BHI.

276. The more recent allegations made by AVY are disputed and as yet unproven. The Court cannot place reliance on anonymised case studies to which the Defendant cannot make a meaningful response. The evidence of Ms Schleicher is untested. The post-inquiry reports raise concerns to be considered by the Home Office, but they do not amount to the comprehensive, first-hand evidence in relation to the topics covered by the recommendations upon which this Court could properly determine that the Defendant is currently in breach of the systems duty, despite its detailed response to the BHI recommendations.

277. Therefore, I am not satisfied that the Claimants have established an ongoing breach of the systems duty under Article 3 ECHR, at BH.

278. For these reasons, Grounds 1 and 2 do not succeed.

Ground 3A in Claim 1

Claimant's submissions

279. D1914 submitted that the Defendant was frustrating, and acting contrary to, the statutory objects and purposes of the IA 2005, which has to be construed compatibly with Article 3 ECHR, applying section 3 HRA 1998.

280. The IA 2005 is intended to provide a comprehensive statutory framework for inquiries set up by Ministers to investigate matters of public concern: see sections 1 (power to establish inquiry); section 2 (no determination of liability); section 5 (terms of reference); section 24 (submission of an inquiry report); and section 26 (laying before Parliament).

281. D1914 relied in particular upon the Explanatory Notes to the IA 2005, at paragraph 8:

> "**Section 2: No determination of liability**
>
> 8. The purpose of this section is to make clear that inquiries under this Act have no power to determine civil or criminal liability and must not purport to do so. There is often a strong feeling, particularly following high profile, controversial events, that an inquiry should determine who is to blame for what has occurred. However, inquiries are not courts and their findings cannot and do not have legal effect. The aim of inquiries is to help to restore public confidence in systems or services by investigating the facts and making recommendations to prevent recurrence, not to establish liability or to punish anyone."

282. D1914 submitted, on the basis of paragraph 8, that the statutory purposes of the IA 2005 included the restoration of public confidence, as well as making recommendations to prevent recurrence. D1914 also submitted that public confidence is a key ingredient in the discharge of the investigative duty in Article 3 and that it was implicit and part of the statutory purpose that inquiries must have efficacy and allay concerns.

283. The scope of the Terms of Reference, which required a wide-ranging investigation into policies and practices, as well as specific allegations of mistreatment, was intended to ensure that the BHI could meaningfully and effectively work towards the restoration of public confidence in the immigration detention system and for the purpose of making recommendations to prevent recurrence. The BHI was intended to establish the facts, identify lessons to be learnt by the Defendant and contractors, restore public confidence and discharge the investigative duty. The Defendant stated in its Response that it agrees with the "broad thrust" of the recommendations.

284. The events causing public concern which led to the setting up of the BHI under section 1 IA 2005, were obviously material to the Defendant's lawful exercise of discretion in responding to the BHI's findings and recommendations. The Defendant had to exercise that discretion so as to give effect to the statutory objects and purposes of the IA 2005, construed in accordance with Article 3 HRA 1998.

285. However, D1914 submitted that the Defendant's formal Response to the report lacks transparency. Key recommendations have not been acted upon effectively or at all. The policy choices that the Defendant has taken (e.g. the revised AAR Guidance) contravene the commitments given to learn lessons and ensure such mistreatment does not recur.

Conclusions

286. In my view, Ground 3A does not disclose any arguable ground of challenge, for the reasons given by the Defendant.

287. The Defendant has not acted in breach of any provision of the IA 2005.

288. Section 6 IA 2005 requires a minister to make a statement to Parliament when setting up an inquiry, which was done in November 2019. Section 26 IA 2005 requires a minister to lay the report of an inquiry before Parliament, which was done in this instance on 19 September 2023. However, there is no express or implied requirement in the IA 2005 for a substantive response by the Defendant to the inquiry recommendations. In this instance, the Defendant's Response to the BHI, which was presented to Parliament, was a discretionary exercise of her non-statutory powers.

289. The IA 2005 does not include any express or implied obligation on a minister to implement inquiry recommendations. Parliament did not mandate whether, how and to what extent any recommendations should be implemented. Ms Wilsdon drew my attention to the following extract from *Beer: Public Inquiries* (OUP, 2011) which states:

> "One function of a public inquiry may be (and often is) to learn lessons to prevent recurrence of similar events in the future. But there is no legal obligation on the Government to respond in

> Parliament as to whether it accepts, and will implement, the recommendations of an inquiry, no legal obligation on the Government or public authorities to implement the recommendations of an inquiry, and indeed no legal obligation to explain why the recommendations have not been implemented or to publish updates as to progress in implementation. It might be said that inquiries have an advisory function in that regard. One of the most common criticisms is that they are ineffectual in the sense that their recommendations are not implemented."

These principles apply whether or not an inquiry is also discharging the investigative obligations under Articles 2 or 3 ECHR.

290. On a natural and ordinary reading of the IA 2005, I do not accept D1914's submission that there was an express or implied obligation on the Defendant to exercise her discretion in responding to the BHI's findings and recommendations in accordance with the text in the Explanatory Note at paragraph 8. In my view, paragraph 8 merely summarises the possible features or functions of a public inquiry, depending on its specific remit in any particular case. The statutory purpose is set out in section 1 IA 2005 which empowers a minister to cause an inquiry to be held where it appears to him that (a) particular events have caused, or are capable of causing, public concern, or (b) there is public concern that particular events have occurred. It is implicit that the purpose of the inquiry is to inquire into those events and any public concern arising from them, in accordance with the provisions of the IA 2005.

291. An inquiry under the IA 2005 is one among several means of discharging an investigative duty arising under Articles 2 or 3 ECHR, and in such a case the inquiry ought to be conducted in a manner which is ECHR-compliant. However, I do not consider that this entails any particular construction of the IA 2005. The HRA 1998 will provide the legal basis for compliance with Convention rights, not the IA 2005.

292. In conclusion, I do not consider that there is any legal or factual basis for the submission that the Defendant has frustrated and acted contrary to the statutory objects and purposes of the IA 2005. Therefore permission is refused on Ground 3A.

Final conclusions

Claim 1

293. AAA is refused permission to apply for judicial review, on grounds of lack of standing.

294. D1914 is refused permission to apply for judicial review on Ground 3B. Permission to apply for judicial review on Grounds 1, 2 and 3A is granted, but the claim for judicial review is dismissed.

Claim 2

295. AVY is granted permission to apply for judicial review on Grounds 1 and 2, but the claim for judicial review is dismissed. Grounds 3, 4 and 5 are adjourned for case management directions and a trial on liability in the Kings Bench Division.

Case No: AC-2024-LON-002158 &
AC-2024-LON-003384

ANNEX 1

Introduction

1. The Defendant applied, on 5 June 2025, for an order that the Claimants are not permitted to rely upon material which is subject to Parliamentary Privilege and where its intended use constitutes impermissible questioning of proceedings in Parliament. Such material is inadmissible. The material was set out in the Table included within the application.

2. The Speaker's Counsel sent a letter on behalf of the Intervener ('the Speaker'), dated 20 May 2025, agreeing with the Defendant's assessment and submissions in all save one respect, namely, the Government Response to the House of Lords Statutory Inquiries Committee's Report (item 39 in the Table). The Defendant subsequently withdrew its objection to admission of that item, and Mr Roach-Kett's consideration of it in his witness statement (item 12).

3. The Claimants opposed the Defendant's application in full. I gave my decision at the hearing, with the reasons reserved.

Legal principles

4. I accept the submissions on the law made by the Defendant and the Speaker.

5. Article 9 of the Bill of Rights 1689 ('BR 1689') provides:

> "That the Freedom of Speech, and Debates or Proceedings in Parliament, ought not to be impeached or questioned in any Court or Place out of Parliament."

6. Article 9 BR 1689 is a substantive rule of law which goes to the jurisdiction of the court; it is not merely procedural.

7. In *Prebble v Television New Zealand Ltd* [1994] 3 WLR 970, [1995] 1 AC 321, Lord Browne-Wilkinson identified Article 9 BR 1689 as part of a wider principle, saying, at 332D-F:

> "In addition to article 9 itself, there is a long line of authority which supports a wider principle, of which article 9 is merely one manifestation, viz. that the courts and Parliament are both astute to recognise their respective constitutional roles. So far as the courts are concerned they will not allow any challenge to be made to what is said or done within the walls of Parliament in performance of its legislative functions and protection of its established privileges: *Burdett v Abbot* (1811) 14 East 1; *Stockdale v Hansard* (1839) 9 Ad. & E1. 1; *Bradlaugh v Gossett*

> (1884) 12 QBD 271; *British Railways Board v Pickin* [1974] AC 765; *Pepper v Hart* [1993] AC 593. As Blackstone said in his *Commentaries on the Laws of England*, 17th ed. (1830), vol 1, p.163:
>
> > "the whole of the law and custom of Parliament has its origin from this one maxim, 'that whatever matter arises concerning either House of Parliament, ought to be examined, discussed, and adjudged in that House to which it relates, and not elsewhere.'""

8. Lord Browne-Wilkinson explained the rationale behind Article 9 BR 1689 at 333H – 334C:

> "….Hunt J. based himself on a narrow construction of article 9, derived from the historical context in which it was originally enacted. He correctly identified the mischief sought to be remedied in 1689 as being, inter alia, the assertion by the King's Courts of a right to hold a Member of Parliament criminally or legally liable for what he had done or said in Parliament. From this he deduced the principle that article 9 only applies to cases in which a court is being asked to expose the maker of the statement to legal liability for what he has said in Parliament. This view discounts the basic concept underlying article 9, viz. the need to ensure so far as possible that a member of the legislature and witnesses before committees of the House can speak freely without fear that what they say will later be held against them in the courts. The important public interest protected by such privilege is to ensure that the member or witness at the time he speaks is not inhibited from stating fully and freely what he has to say. If there were any exceptions which permitted his statements to be questioned subsequently, at the time when he speaks in Parliament he would not know whether or not there would subsequently be a challenge to what he is saying. Therefore he would not have the confidence the privilege is designed to protect."

9. The principles stated in *Prebble* were approved by the House of Lords in *Hamilton v Al-Fayed* [2001] 1 AC 395, per Lord Browne-Wilkinson at 402F – 403B.

10. Stanley Burnton J. neatly summarised the principles in *Office of Government Commerce v Information Commissioner* [2010] QB 98, when he said:

> "46. These authorities demonstrate that the law of parliamentary privilege is essentially based on two principles. The first is the need to avoid any risk of interference with free speech in Parliament. The second is the principle of the separation of powers, which in our constitution is restricted to the judicial function of government, and requires the executive and the legislature to abstain from interference with the judicial function,

> and conversely requires the judiciary not to interfere with or to criticise the proceedings of the legislature…."

The meaning of "proceedings in Parliament"

11. Erskine May's Treatise on the *Law, Privileges, Proceedings and Usages of Parliament* (25th ed), states at paragraph 13.12:

> "The primary meaning of proceedings, as a technical parliamentary term, which it had at least as early as the seventeenth century, is some formal action, usually a decision, taken by the House in its collective capacity. While business which involves actions and decisions of the House are clearly proceedings, debate is an intrinsic part of that process which is recognised by its inclusion in the formulation of Article IX. An individual Member takes part in a proceeding usually by speech, but also by various recognised forms of formal action, such as voting, giving notice of a motion, or presenting a petition or report from a committee, most of such actions being time-saving substitutes for speaking.
>
> Officers of the House take part in its proceedings principally by carrying out its orders, general or particular. Members of the public also may take part in the proceedings of a House, for example by giving evidence before it or one of its committees, or by securing the presentation of a petition…"

12. The leading authority on the scope of the phrase "proceedings in Parliament" in Article 9 BR 1689 is the decision of the Supreme Court in *R v Chaytor* [2010] UKSC 52, which held that a prosecution for false accounting in respect of Parliamentary expenses was not a proceeding in Parliament. Lord Phillips said, at [47]:

> "The jurisprudence to which I have referred is sparse and does not bear directly on the facts of these appeals. It supports the proposition, however, that the principal matter to which article 9 is directed is freedom of speech and debate in the Houses of Parliament and in parliamentary committees. This is where the core or essential business of Parliament takes place. In considering whether actions outside the Houses and committees fall within parliamentary proceedings because of their connection to them, it is necessary to consider the nature of that connection and whether, if such actions do not enjoy privilege, this is likely to impact adversely on the core or essential business of Parliament."

13. This passage in *Chaytor* was endorsed in *R (Miller) v Prime Minister* [2019] UKSC 41, [2020] AC 373, at [66], where the Supreme Court held that prorogation of Parliament was not a proceeding in Parliament.

14. In considering what amounts to Parliamentary proceedings, the court has considered the connection between the potential proceeding and the necessary respect for the separation of powers which underlies Article 9 BR 1689. In *R v Parliamentary Commissioner for Standards ex p Al Fayed* [1998] 1 WLR 669, at 670, Lord Woolf considered the issue "best approached by consideration of the broader principles which underline the relationship between Parliament and the courts. That relationship was elegantly described by Sedley J. as 'a mutuality of respect between two constitutional sovereignties'."

15. As the Speaker explained, a matter may be said in Parliament and then repeated in a context wholly unconnected to Parliamentary proceedings. Provided it does not purport to be a report of the Parliamentary proceedings, it may then be relied upon in Court, subject to the test in *Chaytor*, at [47]. For example, in *R (West Berkshire DC) v Secretary of State for Communities and Local Government* [2015] EWHC 2222 (Admin)[11] the relevant Minister announced a policy change through a Written Ministerial Statement, which was then repeated and elaborated in the National Planning Practice Guidance ('NPPG'). Holgate J. held that, although quashing a Written Ministerial Statement would raise Article 9 BR 1689 issues, he would not be prevented from making a quashing order in respect of the relevant parts of the NPPG, given that was a policy statement outside Parliament.

The meaning of "impeached or questioned"

16. In *Prebble,* the Privy Council confirmed that section 16(3) of the Australian Parliamentary Privileges Act 1987 ("the APPA 1987") was declaratory of common law. Section 16(3) provides:

> "In proceedings in any court or tribunal, it is not lawful for evidence to be tendered or received, questions to be asked or statements, submissions or comments made, concerning proceedings in Parliament, by way of, or for the purpose of —
>
> (a) questioning or relying on the truth, motive, intention or good faith of anything forming part of those proceedings in Parliament;
>
> (b) otherwise questioning or establishing the credibility, motive, intention or good faith of any person; or
>
> (c) drawing, or inviting the drawing of, inferences or conclusions wholly or partly from anything forming part of those proceedings in Parliament."

17. The definition of "questioning" set out in the APPA 1987 was endorsed in the cases of *Prebble* (at 333C-F) and *Hamilton v Al Fayed* [2001] 1 AC 395 (at 403). That gives effect to the constitutional principle underlying Article 9 BR 1689 – the separation of powers. As explained in *R (SC) v Secretary of State for Work and Pensions* [2022] 2 AC 223 at [165]:

[11] The decision was overturned in the Court of Appeal but not on this issue

> "…the law of parliamentary privilege is not based solely on the need to avoid any risk of interference with freedom of speech in Parliament. It is underpinned by the principle of the separation of powers, which, so far as relating to the courts and Parliament, requires each of them to abstain from interference with the functions of the other, and to treat each other's proceedings and decisions with respect. It follows that it is no part of the function of the courts under our constitution to exercise a supervisory jurisdiction over the internal procedures of Parliament. That principle was affirmed by this court in *R (Buckinghamshire County Council) v Secretary of State for Transport* [2014] UKSC 3; [2014] 1 WLR 324, in my own judgment at para 110 and in the judgment of Lord Neuberger and Lord Mance at paras 203-206, where they observed (at para 206) that "[s]crutiny of the workings of Parliament and whether they satisfy externally imposed criteria clearly involves questioning and potentially impeaching (ie condemning) Parliament's internal proceedings, and would go a considerable step further than any United Kingdom court has ever gone"."

18. Courts may admit evidence of proceedings in Parliament to prove what was said or done in Parliament as a matter of historical fact where this is uncontentious. This is on the basis that reliance on uncontentious facts does not amount to "questioning or impeaching" those facts: *Prebble* at 337; *R (Heathrow Hub Ltd) v Secretary of State for Transport* [2020] 4 CMLR 17, at [158].

19. However, it is not permissible for parties to rely on matters forming parts of proceedings in Parliament for the purposes of establishing the truth of their contents where such matters are in dispute. As explained in *OGC*, at [58]-[59]:

> "58. …If a party to proceedings before a court (or the Information Tribunal) seeks to rely on an opinion expressed by a select committee, the other party, if it wishes to contend for a different result, must either contend that the opinion of the committee was wrong (and give reasons why), thereby at the very least risking a breach of parliamentary privilege, if not committing an actual breach, or, because of the risk of that breach, accept that opinion notwithstanding that it would not otherwise wish to do so. This would be unfair to that party. It indicates that a party to litigation should not seek to rely on the opinion of a parliamentary committee, since it puts the other party at an unfair disadvantage and, if the other party does dispute the correctness of the opinion of the committee, would put the tribunal in the position of committing a breach of parliamentary privilege if it were to accept that the parliamentary committee's opinion was wrong. …
>
> 59. If it is wrong for a party to rely on the opinion of a parliamentary committee, it must be equally wrong for the tribunal itself to seek to rely on it, since it places the party seeking to persuade the tribunal to adopt an opinion different

> from that of the select committee in the same unfair position as where it is raised by the opposing party. Furthermore, if the tribunal either rejects or approves the opinion of the select committee it thereby passes judgment on it. To put the same point differently, in raising the possibility of its reliance on the opinion of the select committee, the tribunal potentially made it the subject of submission as to its correctness and of inference, which would be a breach of parliamentary privilege. This is, in my judgment, the kind of submission or inference, to use the words of section 16(3) of the Parliamentary Privileges Act 1987, which is prohibited."

20. This aspect of the judgment was approved by the Court of Appeal in *R (Reilly) v Secretary of State for Work and Pensions (No 2)* [2017] QB 657 at [109], per Underhill LJ, and by the Divisional Court in *GS v Central District of Pest* [2016] 4 WLR 33 at [34], per Burnett LJ. See also *R (Gardner & Anor) v Secretary of State for Health and Social Care* [2021] EWHC 2946 (Admin), at [23] – [24] where a Divisional Court refused to allow reliance on opinions in a report from the Committee of Public Accounts.

21. *Kimathi and Ors v Foreign and Commonwealth Office* [2018] 4 WLR 48 concerned an attempt to use Parliamentary material to prove facts (the numbers of detainees in camps in Kenya in the 1950s) which were neither confirmed nor denied by the other party to the case, and in respect of which there was no other evidence. Stewart J. stated at [20]:

> "… The Claimants' application is an unusual one because it is sought by them to rely on what was said in Parliament to prove (a) that facts which occurred extraneous to Parliament but were mentioned in Parliament were true and (b) that the person who related those facts in Parliament believed them to be true… here the Defendant does not admit those underlying facts, in which case the Claimants cannot rely upon Hansard for the truth of what was said. If they were able to rely on it for that purpose, the Court would then be in a position of having to decide the accuracy of the content of the proceedings in Parliament, so as to determine if those facts had been proven. This is expressly forbidden."

22. In *Heathrow Hub*, the Court of Appeal approved the following submissions made by Speaker's Counsel, at [158]:

> "The Speaker accepts that there are circumstances in which reference can properly be made to proceedings in Parliament and where therefore this will not constitute impermissible "questioning" of statements made in Parliament:
>
> (1) the courts may admit evidence of proceedings in Parliament to prove what was said or done in Parliament as a matter of historical fact where this is uncontentious: see *Prebble v Television New Zealand Ltd* [1995] 1 A.C. 321 at 337;

> (2) Parliamentary material may be considered in determining whether legislation is compatible with the European Convention on Human Rights: see *Wilson First County Trust Ltd (No.2)* [2004] 1 A.C. 816; [2003] H.R.L.R. 33 at [65] (Lord Nicholls of Birkenhead);
>
> (3) the courts may have regard to a clear ministerial statement as an aid to the construction of ambiguous legislation: see *Pepper (Inspector of Taxes) v Hart* [1993] A.C. 593 at 638;
>
> (4) the courts may have regard to Parliamentary proceedings to ensure that the requirements of a statutory process have been complied with. For example, in this case, the courts may admit such material in order to be satisfied that the steps specified in s.9 of the Planning Act have been complied with;
>
> (5) the courts may have regard to Parliamentary proceedings in the context of the scope and effect of Parliamentary privilege, on which it is important for Parliament and the courts to agree if possible: see the decision of Stanley Burnton J (as he then was) in *Office of Government Commerce v Information Commissioner* [2010] Q.B. 98; [2009] 3 W.L.R. 627 at [61]; and
>
> (6) an exception has also been identified for the use of ministerial statements in judicial review proceedings. The Speaker accepts that such an exception exists but contends that the scope and nature of this exception has not yet been the subject of detailed judicial analysis. It calls for careful consideration of the constitutional issues involved. We respectfully agree."

23. I accept the Speaker's submission that paragraph 158(6) is a species of the "uncontentious fact" category, referred to in paragraph 158(1). The scope of paragraph 158(6) was explained by the Court of Appeal in *R (Project for the Registration of Children as British Citizens and Ors) v Secretary of State for the Home Department* [2021] 1 WLR 3049, per Richards LJ at [105]:

> "As it appears to me, this use of ministerial statements is permitted for the limited purpose of identifying the Government's purposes and reasons for taking or proposing the action which is being challenged in proceedings. Those are the purposes or reasons which have been formulated outside Parliament and explain action taken by the Government outside Parliament, either, for example, by the Directive issued in *Brind* or by the decision to make subordinate legislation. Essentially, it is a convenient way of putting those purposes or reasons in evidence, which may be simpler than setting them out in a witness statement by the minister or an official."

24. I agree with the Speaker that *Heathrow Hub*, at paragraph 158, does not permit the use of Ministerial Statements for other purposes which would be otherwise inadmissible

for example, to found a legitimate expectation claim where there is a dispute as to whether a statement is clear or unambiguous.

25. In *R (ALX & Ors) v Chancellor of the Exchequer* [2025] EWHC 1467 (Admin), a Divisional Court reviewed the authorities in Annex B to its judgment and said at [47]:

> "Finally, in *R (Heathrow Hub Ltd) v Secretary of State for Transport* [2020] EWCA Civ 213, [2020] 4 CMLR 17, the Court of Appeal did not have to rule on the application of Article 9. However, it saw force in submissions made by the Speaker, relying on *OGC* among other authority, that an answer given by a Minister in the House of Commons and evidence given to a Select Committee were both inadmissible. This was because "if the statements were held to be admissible and if there is a dispute as to their meaning, the court would be drawn into having to resolve whether what was said on behalf of the Secretary of State was accurate or not. That would bring the court into the territory which is forbidden by art. 9 of the Bill of Rights": [169]."

Material in dispute in Claims 1 and 2

26. As a preliminary matter, in response to a letter from the Claimants' solicitors, the letter from the Speaker's Counsel correctly observed, at paragraph 21:

> "We should also note that no conclusion can safely be drawn from the fact that no issue was taken with the use of Parliamentary material in the Brook House inquiry. First, an inquiry is, in our view, an "other place" for the purposes of Article 9, and this is reflected in Erskine May, but it is certainly not a court and the status of inquiries has not yet been tested. Second, on a practical issue, we are reliant on parties to proceedings (whether court, tribunal or public inquiry) informing us if Parliamentary material is to be relied on, to enable us to intervene if a proposed use of such material seems likely to create a privilege issue. We were not consulted concerning the evidence referred to, though we did write a letter in general terms to the Inquiry to set out the position in relation to use of privileged material."

27. In my judgment, the fact that Parliamentary material was considered in the BHI does not affect the position where the admissibility of such material is legitimately raised in the different context of Court proceedings.

28. The material has been divided into five categories:

i) Reliance upon the findings of a Parliamentary Committee;

ii) Reliance upon evidence given to a Parliamentary Committee;

iii) Reliance upon a Government Response to a Parliamentary Committee;

iv) Reliance upon evidence of a report by the National Audit Office; and

v) Reliance upon a written statement by a Minister to the House of Commons.

Category (i): reliance upon the findings of a Parliamentary Committee

29. The Claimants seek to rely upon the reports of the Parliamentary Scrutiny Committee (item 15); the Home Affairs Select Committee (items 16, 18, 21, 23, 25, 27, 28, 30); the Joint Committee on Human Rights (items 18, 19, 21, 27, 28); the Statutory Inquiries Committee "Public Inquiries: Enhancing public trust" (Items 3, 9, 24, 34); and the Secondary Legislation Scrutiny Committee (Item 32).

30. It is well recognised that a report of a Parliamentary Committee is a proceeding in Parliament (see Lord Phillips in *Chaytor*, at [47]). However, the Claimants contend that the reports are not contentious and are relied on to give a historical account, and therefore do not question or impeach the proceedings.

31. In my judgment, the Claimants' use of this material will involve an impermissible questioning or impeaching of Parliamentary proceedings, applying established principles: see *OGC*, at [58] - [59], and the other authorities cited at paragraphs 19 to 25 above.

32. It is clear that the Claimants are seeking to rely on the reports as evidence of facts found by the Parliamentary Committees and/or their conclusions, in support of their claims. The evidence and findings are not uncontentious or accepted by the Defendant, and the Defendant cannot explain why without also breaching Parliamentary privilege. Therefore they do not fall within paragraph 158(1) of *Heathrow Hub*.

33. The exception in paragraph 158(2) of *Heathrow Hub* is also not applicable. The issue in this case is not concerned with an assessment of the compatibility of legislation under the Human Rights Act 1998. The allegations of a breach of Article 3 ECHR in these claims is addressing different issues which fall outside the intended scope of the exception. The exception in paragraph 158(4) of *Heathrow Hub* is not applicable because the Claimants are not seeking to rely on Parliamentary proceedings "to ensure that the requirements of a statutory process have been complied with". That exception is directed at situations where there is a need to prove that requirements such as laying before Parliament have been met.

34. I conclude that these materials are inadmissible.

Category (ii): Evidence to Parliamentary Committees

35. The Claimants seek to rely upon evidence given to Parliamentary Committees in items 2, 5, 7, 8, 10, 17, 22, 26, 31, 33, 35, 36 and 37.

36. The analysis I set out above in respect of Parliamentary Committee reports applies also to evidence given to Parliamentary Committees. In *OGC*, Stanley Burnton J. considered the issue at [64]:

> "If the evidence given to a committee is uncontentious, i e, the parties to the appeal before the tribunal agree that it is true and accurate, I see no objection to its being taken into account. What the tribunal must not do is refer to evidence given to a parliamentary committee that is contentious (and it must be treated as such if the parties have not had an opportunity to address it) or to the opinion or finding of the committee on an issue that the tribunal has to determine."

37. In this case, it is not agreed by the Defendant that the evidence that the Claimants seek to rely upon in support of their claims is true and accurate. It is contentious.

38. Therefore I conclude that these materials are inadmissible.

Category (iii): Reliance upon Government response to Parliamentary Committees

39. The Claimants seek to rely upon the Government Response ('the Response') to the House of Lords Statutory Inquiries Committee's Report ('the SI Committee') (item 39), and Mr Roach-Kett's reliance upon it in his witness statement (item 12).

40. By the time of the hearing, the parties and the Speaker were in agreement that the Response and Mr Roach-Kett's comments on it were admissible, for reasons which I consider to be exceptional to this case and therefore require explanation.

41. The SI Committee was appointed by the House of Lords to undertake an inquiry and to report thereon to the House. Each year the House of Lords Liaison Committee publishes a report in which it recommends to the House proposals for new special inquiry committees in the particular year. In 2024, the Liaison Committee recommended the creation of four Special Inquiry Committees, one of which was a Special Inquiry Committee on Statutory Inquiries. Its suggested terms of reference, as set out in the Special Inquiry Committee proposals 2024, were to "consider the efficacy of the law and practice relating to statutory inquiries established under the Inquiries Act 2005, to report by the end of November 2024". The House of Lords agreed to the appointment of the Committee on 24 January 2024.

42. Erskine May refers to such committees as 'special inquiry committees' (at paragraph 40.45). As set out in Erskine May, at paragraph 40.4, "A special inquiry committee, appointed to undertake a particular inquiry and to report thereon to the House, ceases to exist when it makes its final report to the House". The SI Committee ceased to exist after the publication of its Report on 16 September 2024. Accordingly, when the Government Response was made, there was no committee in existence to which it could reply. The SI Committee had ceased to exist, and Lord Norton had ceased to be its Chair.

43. Erskine May advises, at paragraph 40.41 (footnote 2), that "Government responses to committees no longer in existence should be given in the form of a command paper". The Command Paper would have made clear the connection between the work of the SI Committee and the Response, and this advice is intended to ensure that the

Government response has the benefit of Parliamentary privilege, as would ordinarily be the case for a Government response sent to a Parliamentary Committee.

44. In this case, no Command Paper was issued; the advice in Erskine May was not followed by the Cabinet Office (see witness statement of Mr Madden, Director, Propriety and Ethics at the Cabinet Office). The Response was sent on behalf of the Minister for the Cabinet Office to Lord Norton, the Chair of the former SI Committee on 10 February 2025. On the same date, it was announced to the House of Commons by Written Ministerial Statement ('WMS'). The Response was published on the gov.uk website on 10 February 2025.

45. The view of the Speaker was that "in the very particular and unusual circumstances of this case", namely, the fact that the SI Committee had ceased to exist and so the Response could not be made to the SI Committee and the Response was not published as a Command Paper, the Response was "disconnected from the Committee's proceedings" and it did not benefit from Parliamentary privilege, applying *Chaytor* at [47].

46. In the light of the Speaker's view, the Defendant withdrew her application for Parliamentary privilege in respect of items 12 and 39 at the hearing. This conclusion did not affect the status of the SI Report or the WMS.

Category (iv): Report by National Audit Office

47. The Claimants seek to rely on the National Audit Office ('NAO') Report titled 'The Home Office's management of its contract with G4S to run Brook House Immigration Removal Centre' (2019) (item 13).

48. In *R (ALX & Ors) v Chancellor of the Exchequer*, which was an unsuccessful challenge to the Chancellor's decision to make private school fees liable to valued added tax, in Annex B [65] – [73], the Divisional Court accepted the submissions of the Speaker and the Defendant that NAO reports fell within the scope of Parliamentary proceedings, applying the principles in *Chaytor*, at [47]. That meant that the claimants could not rely on NAO reports to establish factual matters, save where the facts were agreed by parties (at [74] – [90]).

49. In the light of this recent comprehensive judgment on the status of NAO reports, and the absence of agreement on the facts relied upon in these claims, the NAO report is inadmissible.

Category (v): Reliance upon ministerial statements to Parliament

50. The Claimants rely upon three Ministerial Statements to Parliament:

    i) Ms Priti Patel MP (the then Home Secretary), on 5 November 2019, stating "I want to establish the facts of what took place at Brook House and ensure that lessons are learnt to prevent these shocking events happening again." (Items 1, 4, 6).

ii) Mr Nick Thomas-Symonds MP, on 10 February 2025, announcing the publication of the Government Response to the House of Lords SI Committee (Items 11, 38).

iii) Mr James Brokenshire MP, on 14 January 2016, Ministerial Statement responding to the Shaw Report 2016 (Items 14 and 29).

51. Statements made by Ministers to Parliament are clearly Parliamentary proceedings. The intended use of the statements goes beyond the limited permitted purpose of setting out the government's purpose and reasons for legislating or taking action. The Claimants are impermissibly seeking to rely on the statements for a contentious interpretation of what was said and to draw inferences in support of their allegations. Therefore they do not fall within the exception at paragraph 154(6) of *Heathrow Hub,* as explained in *Project for the Registration of Children as British Citizens*, per Richards LJ at [105]:

> "As it appears to me, this use of ministerial statements is permitted for the limited purpose of identifying the Government's purposes and reasons for taking or proposing the action which is being challenged in proceedings. Those are the purposes or reasons which have been formulated outside Parliament and explain action taken by the Government outside Parliament, either, for example, by the Directive issued in *Brind* or by the decision to make subordinate legislation. Essentially, it is a convenient way of putting those purposes or reasons in evidence, which may be simpler than setting them out in a witness statement by the minister or an official."

Legitimate expectation: Ministerial Statement of 5 November 2019

52. Further, D1914 submitted at SFG1/86 that he had:

> "a legitimate expectation that the Defendant would take steps to ensure that mistreatment identified in the BHI Report would not reoccur in future. The Ministerial Statement of 5 November 2019, particularly seen in the context of prior decision of the High Court, is a clear [un]ambiguous statement that the Defendant would "ensure that … lessons are learnt to prevent these shocking events happening again."".

53. D1914's formulation of the legitimate expectation was altered in the skeleton argument (CSkA/145) to an expectation that the Defendant "would honour the commitment made to learn the lessons from BHI".

54. The Defendant submitted in response, at DGD/51 – 54:

> "51. It is trite law that a legitimate expectation requires a clear, unambiguous representation devoid of relevant qualification. It must induce an expectation, not a mere hope.

> 52. This ground relies entirely on a ministerial statement to Parliament, and relies on a contentious (and unlikely) interpretation of what was meant by the then Secretary of State for the Home Department, the Rt Hon Priti Patel, when she said "I want to establish the facts of what took place at Brook House and ensure that lessons are learnt".
>
> 53. While the scope and nature of the extent of the exception to Parliamentary privilege allowing reference to ministerial statements in judicial review is yet to be determined, the way in which the Claimants seek to use this ministerial statement certainly would require questioning in detail what was meant by the then Secretary of State.
>
> 54. In any event, the BHI was established as a statutory inquiry under the 2005 Act and its terms of reference were published. It found facts and set out recommendations (i.e. 'learning lessons'). There is no reason to think that the then Secretary of State was purporting to bind a future government to take any particular steps in response to as yet unknown facts and recommendations, i.e. to go beyond the requirements of the 2005 Act. It is not arguable that there was any express promise to do so."

55. In my view, adjudicating on the question whether the Minister made a promise that was clear, unambiguous and devoid of relevant qualification necessarily involves interpreting and drawing inferences as to the meaning of the statement, thereby "questioning" it. It necessarily involves considering the political context in which the statement was made, and how it would have been reasonably understood by those to whom it was made. It brings the Court into the territory that was described as "forbidden" in *Heathrow Hub* at [169]:

> "The fundamental difficult in our view, is that, if the statements were held to be admissible and if there is a dispute as to their meaning, the court would be drawn into having to resolve whether what was said on behalf of the Secretary of State was accurate or not. That would bring the court into the territory which is forbidden by art. 9 of the Bill of Rights."

56. Therefore I agree with the Speaker's submission that the claimed distinction between "questioning" and "relying", in the context of a disputed legitimate expectation claim, is unsustainable, particularly in the light of the observations of Stanley Burnton J. in *OGC*, at [58] - [59], and *Heathrow Hub* at [158] – [169]. In my view, reliance on that distinction undermines the decision in *R (Donald) v Secretary of State for the Home Department* [2024] EWHC 1492 (Admin), at [165] and the view expressed in *Wheeler v Office of Prime Minister* [2008] EWHC 1409 (Admin), at [53].

57. As the Speaker submitted, the authorities which have assumed that a Ministerial Statement can found a legitimate expectation illustrate the risks of doing so. For example, in *R (Association of British Civilian Internees: Far East Region) v Secretary of State for Defence* [2003] QB 1397, the Court considered the natural meaning of

"British civilians" in a Ministerial Statement and found that "in our judgment, the announcement was less clear than it should have been". In *Donald*, reliance on one Ministerial Statement led to a "striking imbalance" unless the other party was permitted to rely on a different Ministerial Statement to different effect (at [168]).

58. The difficulties in relying upon Ministerial statements are illustrated by *Wheeler* where the Divisional Court (*obiter*) doubted whether Article 9 BR 1689 prevented reliance on a Ministerial Statement for the purpose of a legitimate expectation, at [53], but gave effect to and endorsed the importance of the principle to which Article 9 BR 1689 gives effective protection. Richards LJ concluded, at [41]:

> "Even if we had accepted that the relevant ministerial statements had the effect of a promise to hold a referendum in respect of the Lisbon Treaty, such a promise would not in our view give rise to legitimate expectation enforceable in public law, such that the courts could intervene to prevent the expectation being defeated by a change of mind concerning the holding of a referendum. The subject-matter, nature and context of a promise of this kind place it in the realm of politics, not of the courts, and the question whether the government should be held to such a promise is a political rather than a legal matter. In particular, in this case the decision on the holding of a referendum lay with Parliament, and it was for Parliament to decide whether the government should be held to any promise previously made."

59. The mere fact that other cases have assumed, without argument, that a statement in Parliament could found a legitimate expectation does not determine the outcome of this application, as they are distinguishable on the facts.

60. For example, in *R (Abassi) v Secretary of State for Foreign and Commonwealth Affairs* [2002] EWCA Civ 1598 the Court considered a Ministerial statement as one constituent element of statements which "taken together" indicated a particular position on behalf of government.

61. In *Finucane's Application for judicial review* [2019] 3 All ER 191, the Supreme Court considered whether the appellant has a legitimate expectation based on "the unequivocal assurance given to her by the then Secretary of State for Northern Ireland and his statement to the House of Commons on 23 September 2004." (at [50]) *emphasis added*. The statement in question had been outlined in a private letter to the appellant in advance of it being said in Parliament (at [35]). It is therefore unsurprising that the court did not consider the extent to which Parliamentary privilege would have prevented the claim from being advanced had the assurance only been given in Parliament.

62. The Speaker referred me to high authority in support of his submissions. In *R v DPP ex parte Kebilene* [2000] 2 AC 326, the claimants sought to rely on Ministerial statements to found a legitimate expectation that the Director of Public Prosecutions ('DPP') would exercise his prosecutorial discretion in accordance with the Convention (prior to the bringing into force of the Human Rights Act 1998). In the Divisional Court, the argument was first rejected on the basis that the DPP remains wholly independent from the Minister. But Lord Bingham went on to say that "I would, furthermore, be very

hesitant to hold that a legitimate expectation could be founded on answers given in Parliament to often very general questions: to do so is to invest assertions by the executive with quasi-legislative authority, which could involve an undesirable blurring of the distinct functions of the legislature and the executive" (339F). The Divisional Court's rejection of the legitimate expectation argument was endorsed by the House of Lords (per Lord Steyn at 368D; Lord Hobhouse at 391B).

63. In *Thoburn v Sunderland City Council* [2002] EWHC 195 (Admin) [2003] QB 151, the Divisional Court was taken to assurances in Parliament that the Henry VIII power in the then European Communities Bill would only be used to make minor changes. In considering whether such assurances had been legitimately adduced, Lord Justice Laws found, at [76], that (even if such materials had had the effect contended of) he would "not base an enforceable legitimate expectation (for that is what would be involved) purely on what was said in Parliament. I think that would infringe article 9 of the Bill of Rights 1689. If a minister gives the House a false impression of the potential effect of a Bill's provisions (and I do not say that was done here), the cost and the sanction are political. The relationship between Parliament and the courts is one of mutual respect, not only out of habit of mind, but by convention and by the law. So long as that is so, I think we should be strict about such matters."

64. Therefore, for the reasons set out above, I conclude that the Ministerial Statements are inadmissible and the Ministerial Statement of 5 November 2019 cannot be relied upon to found a claim of legitimate expectation.