

NOTICE OF DETERMINATION
CORE PARTICIPANT APPLICATION – MEDICAL JUSTICE

1. The Brook House Inquiry was announced by the Secretary of State for the Home Department on 5 November 2019. In my opening statement on 21 April 2020, I formally invited those who wished to be considered for Core Participant status to submit a written application. A deadline was set for 19 May 2020.
2. I received a written application from Medical Justice for Core Participant status dated 15 April 2020 and a further submission dated 18 May 2020. I issued a provisional determination on that application on 14 August 2020, in which I indicated that I was minded to refuse the application. Medical Justice, at my invitation, submitted a renewed application on 11 September 2020. In addition, Ms Emma Ginn, Director of Medical Justice, provided a statement on 22 September 2020. A further written submission from Medical Justice was provided on 24 September 2020. Medical Justice also made oral submissions at a preliminary hearing on 25 September 2020.

Application

3. The designation of individuals or organisations as Core Participants (“CPs”) in an Inquiries Act inquiry is governed by Rule 5 of the Inquiry Rules 2006. The relevant paragraphs provide:

“Core participants

5.—(1) *The chairman may designate a person as a core participant at any time during the course of the inquiry, provided that person consents to being so designated.*

(2) *In deciding whether to designate a person as a core participant, the chairman must in particular consider whether—*

(a) the person played, or may have played, a direct and significant role in relation to the matters to which the inquiry relates;

(b) the person has a significant interest in an important aspect of the matters to which the inquiry relates; or

(c) the person may be subject to explicit or significant criticism during the inquiry proceedings or in the report, or in any interim report.”

4. The application to designate Medical Justice as a Core Participant can be summarised as follows. Medical Justice submits that it meets the criteria provided by Rule 5(2)(a) and (b) because it played a direct and significant role in relation to the matters to which the inquiry relates; and it has a significant interest in an important aspect of the matters to which the inquiry relates.

5. In the application submitted on behalf of Medical Justice, the organisation is described as follows:

‘Medical Justice is an independent charity established in 2005 which has played a direct and significant role in the developing legal landscape concerning immigration detention, conditions of detention, treatment of detainees and the adequacy of healthcare provision in detention. It is the only charity in the UK with a specific clinical remit to assess and assist immigration detainees who present with physical or psychological sequelae of past torture or who have mental or

physical health needs which have not been identified or are unmet within the immigration detention environment. It is also the only organisation in the UK that specifically monitors and investigates the adequacy or otherwise of healthcare provision in immigration detention and the effect of detention on the mental health of detainees.'

6. In respect of Rule 5(2)(a), Medical Justice submits that it *'.....has played a direct and significant role to date in influencing legal and policy reform in the context of immigration detention generally, and specifically in respect of policy and practice in conditions of detention and treatment of detainees, including those who are vulnerable and suffer physical or mental ill health which is particularly affected by immigration detention'*.
7. Regarding Rule 5(2)(b), Medical Justice submits that *'Medical Justice also has a "significant interest".... in important aspects of the Terms of Reference for this Inquiry. Whilst the fact-finding nature of any mistreatment of individual detainees (including the complaints made by MA and BB), as set out within paragraph 1) of the terms of reference, will be outside the scope of the charity's direct knowledge, Medical Justice considers that the systemic issues highlighted in the Inquiry's Terms of Reference concerning law, practices, policies, arrangements of the detention centre and clinical care that contributed to the mistreatment are clearly within the scope of Medical Justice's expertise and knowledge as set out above.'*

Renewed application

8. In Ms Ginn's statement of 22 September 2020 she provided a table containing summary details of 35 individuals who were detained in Brook House in the relevant period and for whom Medical Justice doctors carried out clinical assessments.

9. In Medical Justice’s renewed application of 11 September 2020, which was supplemented by a written submission on 24 September and an oral submission on 25 September, they emphasised the following key points:

- i. Medical Justice asserts that *‘Based upon its regular and extensive contact with detainees, detention staff (including healthcare), its monitoring of decision-making processes and practices and its interaction with senior civil servants at the macro policy level, Medical Justice is able to place the direct detainee experiences into the important context of the structural arrangements, practices and institutional culture at the detention centre.’*;
- ii. Medical Justice states that the organisation has played a central role as *‘...an advisor to statutory bodies charged with monitoring and investigating immigration detention conditions...’*;
- iii. Medical Justice considers that they have a unique insight into the interrelationship between the Home Office and its contractors and healthcare services: *‘It is not possible, and wrong, to separate out matters concerning clinical care from use of force, conditions of detention, including the use of segregation, the institutional culture and practices that existed and were perpetuated within the contractual arrangements that the Home Office operated within the detention centre, escort and healthcare contractors, and their collective impact on detainees’ experience and treatment in immigration detention at Brook House.’*

Decision

10. I have considered the application in line with my approach as set out below and have decided to grant the application for the following reasons.

11. This Inquiry's terms of reference relate to the experiences of detainees at Brook House in the relevant period. I intend to hear, as far as possible, directly from those detainees who can be identified and are willing to share their experiences with the Inquiry.
12. Where an NGO has played a direct and significant role in relation to the issues being considered by the Inquiry and can, for example, provide first-hand insights not available from those detained, it may well be appropriate that such an organisation is designated as a core participant. The approach I have taken is to determine NGO Core Participant applications on the basis of the specificity of their experience of, and involvement in, the relevant events at Brook House.
13. As Chair, I am required by rule 5(2) to consider the specific statutory tests set out above. I should emphasise, though, that an applicant who meets one or more of those tests will not necessarily be designated a Core Participant. Conversely, an applicant who does not meet any of those tests may have some other good reason for being designated a Core Participant. The work of NGOs may mean that their applications for CP status in public inquiries do not always fit readily into the statutory tests. NGOs will tend to be neither alleged victims nor alleged perpetrators, and they will often not be at risk of criticism. Their work may not relate squarely to the matters under investigation. The statutory tests may therefore not be as easy to apply to NGO applications as they are to many other CP applications. In approaching the applications for Core Participant status from NGOs, I have applied the relevant statutory tests, and in doing so I have considered the following matters:
 - i. The proximity of the organisation's role or remit to the Inquiry Terms of Reference;
 - ii. The extent and nature of its insights into events at Brook House and/or relevant systemic or structural issues.

14. I have also considered the following:

- i. Whether the applicant's proposed contribution as a CP could *as effectively or more* effectively be made by another organisation or individual/s;
- ii. Whether the applicant needs CP status in order to participate properly in the Inquiry, or whether the applicant could contribute effectively through the provision of written and/or oral evidence;
- iii. Whether it might be appropriate to reconsider the application at a later stage of the Inquiry, if it is not appropriate to grant CP status now.

The test under rule 5(2)(a): a direct and significant role

15. In Medical Justice's application, it is stated that: *'Medical Justice's database, in combination with its direct clinical work with detainees, puts the charity in a unique position of having unrivalled and comprehensive knowledge and insight into the full range of issues that arise in respect of clinical care within immigration detention. This insight is particularly important given the small number of complaints that are dealt with by the formal complaints system and where there have been concerns about the accessibility and efficacy of the complaints process.'*

16. The application further states that: *'Medical Justice also provides clinical perspective and knowledge to statutory bodies with oversight of immigration detention, including the HM Inspector of Prisons and the Independent Chief Inspector of Borders. The charity is regularly asked by the HMIP to provide its clinical expertise and experience on longstanding concerns such as the deficiencies of Rule 35 of the Detention Centre Rules 2001.'*

17. My consideration of this element of the application has included a careful review of the information provided by Medical Justice about the specific focus of the organisation's work. I have considered the context in which its staff and volunteer doctors may have engaged firstly with detainees at Brook House and, secondly, with organisations that monitor conditions in Brook House. I accept that Medical Justice staff and/or volunteer doctors are likely to have played a direct and significant role in relation to matters which the Inquiry will investigate. In reaching this decision, I am particularly influenced by the direct contact which Medical Justice personnel appear to have had with detainees in the relevant period. I am also mindful of the fact that I am required by the Inquiry's Terms of Reference specifically to investigate healthcare matters (addressed further below). Issues of medical confidentiality, particularly in relation to detainees who cannot now be contacted or who decline to participate in the Inquiry, are difficult ones. Medical Justice has a unique insight into clinical issues arising at Brook House at the relevant time, and I hope will be in a position to provide a valuable contribution, if necessary by reference to anonymised records.

The test under rule 5(2)(b): a significant interest in an important aspect

18. In relation to the systemic and/or structural issues that may relate to the mistreatment at Brook House, I accept that Medical Justice is likely to have a significant interest in two specific aspects of the Inquiry's terms of reference:

1. Whether any clinical care issues caused or contributed to any identified mistreatment;
2. Whether any changes to clinical care would help to prevent a recurrence of any identified mistreatment.

19. I have concluded that the organisation's focus on systemic issues in relation to clinical care in detention is likely to result in Medical Justice having a significant interest in an important aspect of the matters to which the Inquiry relates.

Other factors

The role of others as CPs

20. I have concluded that Medical Justice has a more direct and greater role and interest in the Inquiry's ToR than other applicants and I do not consider that their proposed contribution as a Core Participant could *as* effectively or *more* effectively be made by another organisation or individuals. Of most relevance in this context is, firstly, the nature and extent of Medical Justice's interaction with individual detainees for whom their doctors provided clinical assessments and, secondly, the organisation's role in advising monitoring and investigative bodies.

The provision of evidence by the Applicant

21. I turn now to the information provided in the application relating to Medical Justice's specific insights into the experience of detainees at Brook House in the relevant period. In the application submitted on their behalf, Medical Justice describes a specific element of its case work as follows:

'Where appropriate and necessary, Medical Justice's volunteer clinicians provide medico-legal reports to document individual experiences of torture and other cruel, inhuman or degrading treatment or punishment. All of the charity's healthcare professionals are trained to complete medico-legal reports to the standard of the

Istanbul Protocol. These reports are regularly relied upon in hearings before the Immigration and Asylum Tribunals and also in public law litigation in the Administrative Court and Court of Appeal.'

22. It is my view that the Inquiry should hear from such clinicians directly, if at all possible. The Inquiry will request this evidence in due course. However, I do consider that Medical Justice may itself have relevant evidence to give to the Inquiry, particularly on systemic issues relating to healthcare provision and in relation to its involvement with investigative and monitoring entities.

23. Where individual medical practitioners have direct experience of events at Brook House in the 'relevant period' and/or systemic issues which may relate to those events, I will endeavour to hear from those individuals directly in the first instance. I do however consider that Medical Justice is likely to offer a unique insight into the provision of healthcare at Brook House on a systemic level and that the extent and nature of that insight is sufficient to warrant its designation as a Core Participant.

Conclusion

24. I have considered the statutory tests, and have taken account in particular of the specificity of Medical Justice's role in relation to healthcare provision in Brook House in the relevant period, including its role in advising investigative and monitoring entities and the volume and nature of the clinical assessments carried out during that time. I therefore grant the application.

Legal Representative

Applications for designation as the recognised legal representative of a core participant are governed by Rules 6 and 7 of the Inquiry Rules 2006, which provide as follows:

6(1) Where - (a) a core participant, other than a core participant referred to in rule 7; or (b) any other person required or permitted to give evidence or produce documents during the course of the inquiry, has appointed a qualified lawyer to act on that person's behalf, the chairman must designate that lawyer as that person's recognised legal representative in respect of the inquiry proceedings.

7(1) This rule applies where there are two or more core participants, each of whom seeks to be legally represented, and the chairman considers that - (a) their interests in the outcome of the inquiry are similar; (b) the facts they are likely to rely on in the course of the inquiry are similar; and (c) it is fair and proper for them to be jointly represented.

(2) The chairman must direct that those core participants shall be represented by a single recognised legal representative, and the chairman may designate a qualified lawyer for that purpose.

(3) Subject to paragraph (4), any designation must be agreed by the core participants in question.

(4) If no agreement on a designation is forthcoming within a reasonable period, the chairman may designate an appropriate lawyer who, in his opinion, has sufficient knowledge and experience to act in this capacity.

25. Accordingly, as I am satisfied that Medical Justice has appointed Mr Hamish Arnott of Bhatt Murphy Solicitors as its qualified lawyer, I designate Mr Arnott as Medical Justice's recognised legal representative in accordance with Rule 6 (1) of the Inquiry Rules 2006.

Kate Eves

Chair to the Brook House Inquiry

9 October 2020