

Rt Hon John Reid MP
Home Secretary
Home Office
2 Marsham Street
London SW1P 4DF

21 May 2007

Dear Home Secretary,

Public Inquiry into Harmondsworth Disturbance 28 - 30 November 2006

Liberty is instructed to write this letter by Mr [REDACTED], 'SM', 'LM', 'AM', 'RR', 'PS' and 'Detainee K' who were all detainees at Harmondsworth Immigration Removal Centre, Colnbrook Bypass Harmondsworth, West Drayton, UB7 0HB ("Harmondsworth") on 28 November 2006.

Introduction

Each of the above-listed individuals went through traumatic experiences during the disturbance that took place at Harmondsworth on 28 November 2006 and its aftermath (together "the disturbance") and call on you to conduct a public inquiry into the underlying causes of the disturbance and the treatment of immigration detainees while it took place.

Each of these individuals has made a written statement of their experiences leading up to and during the disturbance. These statements are attached to this letter, together with further statements from individuals not represented currently by Liberty. It is submitted that the statements reveal inhuman and degrading treatment on the part of immigration and prison service officers in violation of Article 3 of the European Convention on Human Rights ("ECHR")

(or at least an arguable violation of Article 3).

We believe that the events surrounding the Harmondsworth disturbance warrant a full public inquiry in any event, particularly since it occurred:

- (a) immediately after the publication of a damning report from the Chief Inspector of Prisons likening the regime at Harmondsworth to that of a “high security prison”¹;
- (b) following a mysterious settlement for contract failures on the part of Kalyx² totalling more than £5,000,000; and
- (c) following another serious disturbance in the centre just 28 months earlier.

Nevertheless, the existence of an arguable breach of Article 3 by agents of the state mean that you are not only morally but also legally obliged to carry out a public inquiry.

You are asked to order a public inquiry to be held using your discretionary power to do so, or alternatively to order an inquiry under the Public Inquiries Act 2005.

The Evidence

Despite substantial difficulties Liberty has managed to obtain the attached witness statements from individuals who were caught up in the disturbance – the seven currently represented by Liberty and two further witnesses.

Anonymity issues

Our clients SM, LM, AM, RR and PS are concerned about their names being put into the public domain. For this reason, they have asked to be identified at this stage only by their initials. They have, however, all provided full, signed witness

¹ See below for further discussion.

² ‘Kalyx’ is the new name for UK Detention Services, the company contracted to run Harmondsworth IRC.

statements but are only prepared to provide the enclosed redacted versions until they are sure that their identities will not be disclosed to the public.

It is therefore asked that you provide Liberty with written assurance that the names and personal details of our clients SM, LM, AM, RR and PS will be used solely for the purposes of the proposed public inquiry and will not be allowed to enter the public domain.

It is Liberty's view that to disclose the identities and personal details of these individuals would in any event constitute an actionable breach of confidence. Your attention is also drawn to the Practice Note handed down by Sir Anthony Clarke MR on 31 July 2006 in which the Court of Appeal confirmed that it would be following the universal practice observed by other European jurisdictions of anonymising its judgments in cases involving asylum-seekers. The Court accepted that "the publication of the names of appellants may create avoidable risks for them in the countries from which they have come".

If you are able to provide the assurance requested, then the full versions of the witness statements of SM, LM, AM, RR and PS will be sent to you to replace the redacted versions.

Three of the witnesses, 'K', 'N' and 'V', have chosen to remain anonymous at all times for fear of reprisals (see their statements for more details).

The witness statements of the detainees are attached under the following tabs:

- Tab 1 -** Mr [REDACTED]
- Tab 2 -** SM
- Tab 3 -** LM
- Tab 4 -** AM
- Tab 5 -** RR
- Tab 6 -** PS
- Tab 7 -** Detainee 'K'

Tab 8 - Detainee 'N'

Tab 9 - Detainee 'V'

The witness statements must be read in full, but they reveal *inter alia* the following incidents that amount to a breach of Article 3 ECHR:

A) *Mistreatment at Harmondsworth leading up to the disturbance*

1. Officers were frequently abusive to the detainees and humiliated them intentionally. They would use racist slurs and beat detainees without provocation.
2. There was no effective complaints procedure. One detainee ('K') suggests that each time a complaint was made a warning would be given to the complaining detainee. Three warnings resulted in being sent to the "block" or solitary confinement.
3. Punishments were given arbitrarily. Guards would take detainees to solitary confinement for responding to verbal abuse. On the way to secure they would often be beaten severely. One detainee ('N') describes seeing blood in the corridors after such beatings.
4. Guards would deprive detainees of their correspondence, including with solicitors.
5. Guards revealed the fact that one detainee was a homosexual and HIV positive to other detainees, which led to that detainee suffering physical abuse and depression.
6. Guards bullied the detainees including one detainee who suffered from the medical condition Alopecia.
7. A detainee who suffered from back pain was left for many hours without treatment and received abuse from the guards when he expressed his discomfort.
8. The overall effect of these conditions was psychological damage to some

detainees. Detainees would commit acts of self harm and there were several suicide attempts.

B) Mistreatment during the disturbance

1. Detainees were forced to go without food and water, some for over 40 hours.
2. Detainees were locked in severely overcrowded rooms in squalid and dangerous conditions - some for 24 hours or more.
3. Rooms were flooded with dirty water and there was a smell of leaking gas in many areas which caused particular fear.
4. The locked-in detainees' fears were compounded by the fact that some of the cells were in total darkness.
5. Due to being trapped in their rooms detainees were forced to urinate in front of each other on the floor. The urine mixed with the water which was flowing round the room and got inside their shoes.
6. Detainees were also forced to defecate in their rooms without any privacy.
7. One detainee was denied access to insulin that was necessary to treat his diabetes, leading to a potentially dangerous rise in his blood sugar levels.
8. During this time guards were verbally abusive to the detainees and refused them permission to use the toilets on the landing.
9. Detainees were not allowed to take their possessions with them on leaving Harmondsworth.
10. Detainees were strip-searched in front of a number of officers.
11. This experience inevitably had a terrible psychological effect and left at least one detainee severely traumatised ('K').

C) Mistreatment after the disturbance

1. Detainees 'V' and 'N' were both transferred from Harmondsworth into appalling 'short term facilities' designed for just one detainee but used to house two.
2. They were required to shower, urinate and defecate without any partition to shield them from their cell mate.
3. They were prevented from leaving their cells for more than a few minutes each day.
4. One detainee was denied the materials needed to maintain his cleanliness, including a towel, a toothbrush and clean clothing.

In addition to the attached witness statements from detainees, also enclosed is a witness statement from Alex Gask, solicitor at Liberty, in which he sets down further evidence obtained by him of what took place at Harmondsworth. This statement is attached under **Tab 10**.

"Report on an unannounced inspection of Harmondsworth Removal Centre" by HM Chief Inspector of Prisons

Light has been shone on the experience of detainees at Harmondsworth in the months prior to the disturbance by the Chief Inspector of Prisons, Anne Owers, who visited Harmondsworth on 17-21 July 2006. A report on this visit was made publicly available on 28 November 2006 - the day of the disturbance³. In her report she found that Harmondsworth:

“was not performing sufficiently well against any of our tests of a healthy custodial environment. At the heart of the centre’s problems were the relationships between custody officers and detainees, together with an over-emphasis on physical security – which was more appropriate to a high security prison than a removal centre run under rules that require ‘secure and humane detention under a relaxed regime’”

³ Please see the attached witness statements for more information on the link between the publication of Anne Owers’ report and the disturbance.

The report also contained the disturbing statistics that over 60% of detainees said that they felt unsafe at Harmondsworth, and an appalling 44% said that they had been victimised by staff. The introduction to the report explains the causes behind these statistics:

“We attributed these poor relationships [between staff and detainees], which were worse than any we have seen elsewhere, at least in part to the centre management’s over-emphasis on physical security and control. Many of the rules and systems would have been considered over-controlling in a prison, let alone a removal centre. Detainees were unable to have basic possessions, such as tins, jars, leads for audio equipment and nail clippers. Their movements were strictly controlled. Use of force was high, as was the use of temporary confinement in segregated conditions – sometimes as a response to poor behaviour rather than for reasons of security or safety as specified in the Detention Centre Rules. The incentives scheme operated rather as a punishment system, sometimes depriving detainees of basic entitlements, such as the ability to attend religious services.”

Some of the specific problems identified in the body of the Chief Inspector of Prisons’ report themselves involve potential violations of human rights:

- Lack of sophisticated care/systems for dealing with risk of self harm by detainees
- Lack of access to immigration staff
- Misuse of IEP (privileges) system - particularly to remove access to faith provision
- Misuse of Detention Centre Rule 40 (removal from association) & 42 (solitary confinement) as punishment rather than for security
- Routine strip-searching of rule 42 detainees
- Lack of appeal rights re: rule 40/42 and removal of ‘privileges’
- Difficulties of complaining (including lack of confidentiality and scope for abuse)
- Ban on physical interaction with visitors except at greeting and farewell
- Lack of risk-assessment before room-sharing

A copy of the report is enclosed under **Tab 11**.

The Law

Investigative obligation

Article 3 of the European Convention on Human Rights reads:

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

It is well established that the obligations imposed on the State by Article 2 (right to life) and Article 3 ECHR to refrain from taking life or inflicting inhuman or degrading treatment (the 'negative obligation') also requires the State to conduct an effective investigation into allegations of breaches of these Articles. Without such an obligation, the protection offered by Article 2 & 3 would be worthless.

The Article 2 investigative obligation has been discussed at length in cases before the domestic courts (notably *R (Amin) v Secretary of State for the Home Department* [2003] UKHL 51, *R (on the application of Middleton) v Coroner for West Somerset* [2004] UKHL 10 and, more recently, *R (Scholes) v Secretary of State for the Home Department* [2006] EWCA Civ 1343) and in cases before the European Court of Human Rights (including cases concerning the UK such as *Jordan v UK* [2003] 37 EHRR 2). While the discussion of the investigative obligation arising under Article 3 is not as extensive, the existence of the obligation is nonetheless clear from cases such as *Assenov v Bulgaria* (1998) 28 EHRR 652 and *Aksoy v. Turkey* (1997) 23 EHRR 533:

Assenov v Bulgaria:

"102. The Court considers that, in these circumstances, where an individual raises an arguable claim that he has been seriously ill-treated by the police or other such agents of the State unlawfully and in breach of Article 3, that provision, read in conjunction with the State's general duty under Article 1 of the Convention to "secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention", requires by implication that there should be an effective official investigation. This investigation, as with that under Article 2, should be capable of leading to the identification and punishment of

those responsible (see, in relation to Article 2 of the Convention, the McCann and Others v. the United Kingdom judgment of 27 September 1995, Series A no. 324, p. 49, § 161, the Kaya v. Turkey judgment of 19 February 1998, *Reports* 1998-I, p. 324, § 86, and the Yaşa v. Turkey judgment of 2 September 1998, *Reports* 1998-VI, p. 2438, § 98). If this were not the case, the general legal prohibition of torture and inhuman and degrading treatment and punishment, despite its fundamental importance (see paragraph 93 above), would be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity.”

Other cases in which a deficient investigation into allegations of ill-treatment have led to a finding of a breach of Article 3 include *Anguelova v. Bulgaria*, (2004) 38 EHRR 31, and, more recently, *Bekos and Koutropoulos v. Greece* App No. 15250/02, 13 December 2005⁴.

The following cases also make the requirements of the investigative obligation clear (although the investigation was characterized in these cases as a requirement under Article 13 ECHR):

Aksoy v Turkey:

“98. The nature of the right safeguarded under Article 3 of the Convention has implications for Article 13. Given the fundamental importance of the prohibition of torture (see para. 62 above) and the especially vulnerable position of torture victims, Article 13 imposes, without prejudice to any other remedy available under the domestic system, an obligation on States to carry out a thorough and effective investigation of incidents of torture.

Accordingly, as regards Article 13, where an individual has an arguable claim that

⁴ In which the Court reaffirmed the need for an investigation into alleged breach of Article 3:

“53. The Court recalls that where an individual makes a credible assertion that he has suffered treatment infringing Article 3 at the hands of the police or other similar agents of the State, that provision, read in conjunction with the State’s general duty under Article 1 of the Convention to “secure to everyone within their jurisdiction the rights and freedoms defined in ... [the] Convention”, requires by implication that there should be an effective official investigation. As with an investigation under Article 2, such investigation should be capable of leading to the identification and punishment of those responsible. Otherwise, the general legal prohibition of torture and inhuman and degrading treatment and punishment would, despite its fundamental importance, be ineffective in practice and it would be possible in some cases for agents of the State to abuse the rights of those within their control with virtual impunity (see, among other authorities, *Labita v. Italy* [GC], no. 26772/95, § 131, ECHR 2000-IV).”

he has been tortured by agents of the State, the notion of an “effective remedy” entails, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible and including effective access for the complainant to the investigatory procedure.”

Tekin v Turkey (2001) 31 EHRR 4:

“66. The Court recalls that the nature of the right safeguarded under Article 3 of the Convention has implications for Article 13. Where an individual has an arguable claim that he has been tortured or subjected to serious ill-treatment by agents of the State, the notion of an “effective remedy” entails, in addition to the payment of compensation where appropriate, a thorough and effective investigation capable of leading to the identification and punishment of those responsible and including effective access for the complainant to the investigatory procedure (see the *Aksoy v Turkey* judgment of 18 December 1996, Reports 1996-VI, p. 2287, para. 98).”

In the case of Harmondsworth and the disturbance, the state has a particular obligation towards our clients because they were in detention at the time of the alleged inhuman and degrading treatment. As put in Clayton & Tomlinson’s *“The Law of Human Rights”*:

“The obligation of the state to carry out a thorough and effective investigation capable of leading to the identification and punishment of those responsible is of particular importance when claims of mistreatment in state custody are made.”

Article 3 threshold

Obviously the obligation to conduct a “thorough and effective” investigation only arises “where an individual raises an arguable claim that he has been seriously ill-treated by the police or other such agents of the State unlawfully and in breach of Article 3” (*Assenov*) or where “an individual makes a credible assertion that he has suffered treatment infringing Article 3 at the hands of the police or other similar agents of the State” (*Bekos and Koutropoulos*).

It is submitted that the material in the enclosed witness statements self-evidently gives rise to the necessary “arguable claim” or “credible assertion” of breach of Article 3. However, it is recognised that inhuman and degrading treatment must attain a minimum level of severity if it is to fall within the scope of Article 3⁵. While it is also well established that “it depends on all the circumstances of the case, such as the duration of the treatment, its physical and/or mental effects and, in some cases, the sex, age and state of health of the victim”⁶, there is significant precedent indicating circumstances in which that minimum level of severity will be reached.

The Court explained the interplay between detention and Article 3 in the case of *Valasinas v Lithuania* App No. 44558/98, 24 July 2001:

“102. The Court has consistently stressed that the suffering and humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment. Measures depriving a person of his liberty may often involve such an element. Under [Article 3] the State must ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured.”

More specifically, in the case of *Hilton v UK* App No 5613/72, 5 March 1976 the European Commission of Human Rights declared admissible on Article 3 grounds a complaint brought by a prisoner alleging that he had suffered from harassment, bullying, verbal and physical abuse, including racist abuse, and unreasonable punishment including excessive time in solitary confinement and loss of privileges. All of this had caused the applicant “severe mental strain and degradation”.

In *Dougoz v Greece* (2002) 34 EHRR 61 a violation of Article 3 was found in relation to conditions of detention.

⁵ See, amongst others, *Ireland v United Kingdom* and *Costello-Roberts v United Kingdom*

⁶ See, amongst others, *Tekin v. Turkey*

“45. In the present case the Court notes that the applicant was first held for several months at the Drapetsona police station, which is a detention centre for persons held under aliens legislation. He alleges, *inter alia*, that he was confined in an overcrowded and dirty cell with insufficient sanitary and sleeping facilities, scarce hot water, no fresh air or natural daylight and no yard in which to exercise. It was even impossible for him to read a book because his cell was so overcrowded. In April 1998 he was transferred to the police headquarters in Alexandras Avenue, where conditions were similar to those at Drapetsona and where he was detained until 3 December 1998, the date of his expulsion to Syria.

The Court observes that the Government did not deny the applicant’s allegations concerning overcrowding and a lack of beds or bedding.

46. The Court considers that conditions of detention may sometimes amount to inhuman or degrading treatment. In the “Greek case” (applications nos. 3321/67, 3322/67, 3323/67 and 3344/67, Commission’s report of 5 November 1969, Yearbook 12) the Commission reached this conclusion regarding overcrowding and inadequate facilities for heating, sanitation, sleeping arrangements, food, recreation and contact with the outside world.”

Importantly, the Court added:

“When assessing conditions of detention, account has to be taken of the cumulative effects of these conditions, as well as of specific allegations made by the applicant.”

In the case of *Peers v Greece* (2001) 33 EHRR 51 the Court found a breach of Article 3 in relation to conditions of detention and cited the following as crucial factors:

- “the applicant had to spend a considerable part of each 24-hour period practically confined to his bed in a cell with no ventilation and no window, which would at times become unbearably hot”
- “He also had to use the toilet in the presence of another inmate and be present while the toilet was being used by his cell-mate.”

The Court concluded by saying that it “is of the opinion that the prison

conditions complained of diminished the applicant's human dignity and aroused in him feelings of anguish and inferiority capable of humiliating and debasing him and possibly breaking his physical or moral resistance."

The degrading nature of being forced to "to use the toilet in the presence of other inmates and be present while the toilet was being used by his cellmates" was again noted by the Court in *Kalashnikov v Russia* (2003) 36 EHRR 34. This case also saw the court acknowledge that overcrowding of cells alone could give rise to a breach of Article 3:

"The Court notes that the Government, for their part, acknowledged that, due to the general overcrowding of the detention facility, each bed in the cells was used by 2 or 3 inmates. The figures submitted suggest that that any given time there was 0.9-1,9 m² of space per inmate in the applicant's cell. Thus, in the Court's view, the cell was continuously, severely overcrowded. This state of affairs in itself raises an issue under Article 3 of the Convention."

Detainees 'K' and 'N' and RR allege that that they were strip-searched in front of several immigration officers before being removed from Harmondsworth. In *Valasinas* the Court considered

"117. The Court considers that, while strip-searches may be necessary on occasions to ensure prison security or prevent disorder or crime, they must be conducted in an appropriate manner. Obliging the applicant to strip naked in the presence of a woman, and then touching his sexual organs and food with bare hands showed a clear lack of respect for the applicant, and diminished in effect his human dignity. It must have left him with feelings of anguish and inferiority capable of humiliating and debasing him. The Court concludes, therefore, that the search of 7 May 1998 amounted to degrading treatment within the meaning of Article 3 of the Convention.

118. Accordingly, there has been a violation of Article 3 in this respect."

In relation to the allegations made by the various witnesses of racist abuse,

arbitrary punishments and psychological bullying being commonplace in Harmondsworth prior to the disturbance taking place, it is important to recall that

“in considering whether a treatment was 'degrading' within the meaning of art 3, regard was to be had to whether its object was to humiliate and debase the person concerned and whether, as far as the consequences were concerned, it adversely affected his personality in a manner incompatible with art 3, although even the absence of such a purpose would not conclusively rule out a finding of a violation of that provision.” (*Valasinas v Lithuania*)

As the Court made clear in the *Dougoz* judgment cited above, when considering whether there has been a violation of Article 3 account has to be taken of the cumulative effect of the conditions to which the victims have been subjected. Thus the specific factual circumstances revealed by the evidence attached, particularly in relation to the disturbance itself, must not be considered in isolation, but rather together with the ongoing experience of detainees held at Harmondsworth.

As discussed above, the experience of detainees at Harmondsworth in the months prior to the disturbance were reported on by the Chief Inspector of Prisons, Anne Owers, following her visit to Harmondsworth in July 2006. The attached report found that over 60% of detainees said that they felt unsafe at Harmondsworth, and an appalling 44% said that they had been victimised by staff. The detail of the report makes equally disturbing reading. It is vitally important that the experience of the detainees during the disturbance is seen in the wider context of their treatment at Harmondsworth.

Even apart from the serious problems identified by the Chief Inspector of Prison's report, the simple fact that Harmondsworth contained individuals deprived of their liberty for significant periods of time for immigration purposes supports the argument that “the particular circumstances of this case” give rise to a violation of Article 3.

The majority of those held at Harmondsworth in November 2006 were asylum seekers - individuals who have fled to the UK from persecution or human rights abuses in their countries of origin. While you might respond that these claims

for asylum were not genuine, according to estimates by the organisation Bail for Immigration Detainees (“BID”), at least 150 of the 484 individuals held at Harmondsworth were being held as part of the ‘fast-track’ process. This means that they had not yet even had their asylum claim determined. Many of these individuals will have a successful asylum claim, meaning that they have already suffered persecution or human rights abuses outside the UK before being detained at Harmondsworth. For those detainees whose claims had been determined and presumably rejected, this fact alone does not mean that anxiety and, indeed, stark fear of prospective removal were not daily realities. On top of all this is the undoubted stress and pressure caused by detention itself.

In short, detainees in Harmondsworth were already in a particularly vulnerable position even before they were subjected to the Article 3 treatment highlighted in the attached witness statements.

To summarise, when taking into account the attached witness evidence, the background situation at Harmondsworth (as detailed in the Prison Inspectorate’s report), the vulnerable position of immigration detainees generally and the case law on Article 3 set out above, it is clear that there is the “arguable claim” or “credible assertion” that Article 3 has been breached required to trigger the investigative obligation.

Requirements of an Article 3 investigation

Once it has been established that there has been an arguable breach of Article 3 ECHR, and therefore that the investigative obligation arises, the question is what is necessary to satisfy that investigative obligation.

The judgment of the ECtHR in *Assenov* para 102 (“[t]his investigation, as with that under Article 2, should be capable of leading to the identification and punishment of those responsible”) and in *Bekos and Koutropoulos* para 53 (“[a]s with an investigation under Article 2, such investigation should be capable of leading to the identification and punishment of those responsible”) make it clear that the content of an Article 3 investigation is essentially the same as that for an Article 2 investigation.

As referred to in para 102 of *Assenov*, the principles governing the content of the Article 2 investigative duty are traceable to the comments of the Strasbourg Commission and Court in *McCann v UK* (1996) 21 EHRR 97, para 161. These principles are more fully set out in *Jordan v UK* (2003) 37 EHRR 2, paras 102-109, from which the following points can be taken by way of summary:

1. “The essential purpose of such investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility.” – para 105
2. “What form of investigation will achieve those purposes may vary in different circumstances. However, whatever mode is employed, the authorities must act of their own motion, once the matter has come to their attention.” – para 105
3. “Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as for example in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries and death which occur. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation”. – para 103
4. “For an investigation into alleged unlawful killing by State agents to be effective, it may generally be regarded as necessary for the persons responsible for and carrying out the investigation to be independent from those implicated in the events... This means not only a lack of hierarchical or institutional connection but also a practical independence”. – para 106
5. “The investigation must also be effective in the sense that it is capable of leading to a determination of whether the force used in such cases was or was not justified in the circumstances... and to the identification and punishment of those responsible... This is not an obligation of result, but of means.” – para 107
6. “A requirement of promptness and reasonable expedition is implicit in this context” – para 108
7. “For the same reasons, there must be a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory.

The degree of public scrutiny required may well vary from case to case.” – para 109

Further guidance on the content of an Article 2/3 compliant investigation can be gained from domestic case law. In *R (on the application of Amin) v Secretary of State for the Home Department* [2003] UKHL 51, Lord Bingham explained:

“The purposes of such an investigation are clear: 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 wrongdoing (if unjustified) is allayed; that dangerous practices and procedures are rectified; and that those who have lost their relative may at least have the satisfaction of knowing that lessons learned from his death may save the lives of others.”

While the reference to the loss of a relative clearly applies only to an investigation flowing from an alleged breach of Article 2, there can be no doubt that the need to learn lessons to prevent future breaches of rights applies equally to instances of inhuman and degrading treatment.

Need for public inquiry

As was made clear at the beginning of this letter, Liberty’s clients request that an independent public inquiry be held into the circumstances leading up to and during the disturbance at Harmondsworth.

As Home Secretary, you have the power to order a public inquiry. It is submitted that it is not necessary to order this inquiry under the Inquiries Act 2005. Nevertheless, it is clear that the requirements of s1(1) of that Act are met on the facts as described above:

1(1) A Minister may cause an inquiry to be held under this Act in relation to a case 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 may have occurred.

A public inquiry is the necessary form for the Article 3 compliant investigation to take because:

- The authorities “must act of their own motion”, ruling out a civil claim on the part of the detainees.
- An internal review, such as that carried out by Mr Robert Whalley on behalf of the Immigration and Nationality Directorate, cannot satisfy the need for “a lack of hierarchical or institutional connection [and] also a practical independence”. Nor does such a review satisfy the need for “public scrutiny”.
- A criminal investigation could only establish individual culpability, it could not ensure that “dangerous practices and procedures are rectified” and “lessons [are] learned”. As the Divisional Court put it in the case of *R (Al-skeini & others) v Secretary of State for Defence* [2004] EWHC 2911 (Admin) an Article 2/3 compliant investigation must be “capable of achieving objective accountability of the state agents and thus of leading, as appropriate, to conclusions about all the circumstances, including the background issues, leading to the death, as well as about responsibility for it” (my underlining). Furthermore, some of the behaviour that, when taken cumulatively, amounts to treatment in breach of Article 3 may not in of itself amount to a recognised criminal offence. Lastly, there is little role for the victim, whose involvement is required by implication (the involvement of the family of the deceased being necessary in an investigation into a death).

It is submitted that the terms of reference for the independent public inquiry should be as follows:

1. To inquire into the circumstances leading up to the disturbance at

Harmondsworth Immigration Removal Centre that began on 28 November 2006, including the conditions of detention and treatment of detainees by immigration staff, with the aim of establishing the underlying reasons why the disturbance took place.

2. To investigate the manner in which the disturbance was managed, including the treatment of detainees by immigration officers, contract personnel, prison service officers, police and any other non-detained persons during the disturbance and its aftermath.
3. To investigate into the adequacy of the systems and procedures put in place by the Home Office to deal with disturbances in immigration detention centres.
4. To recommend what steps should be taken to prevent such a disturbance happening again and to ensure that the safety of immigration detainees is not compromised in the future, and to report its findings as soon as possible.

The public inquiry should be chaired by a senior member of the judiciary.

Additional requirements

Clearly the public inquiry will need to gather evidence from witnesses. Since a significant portion of that evidence must be provided by individuals who were detained at Harmondsworth prior to and at the time of the disturbance, it is imperative that those individuals are not removed from the country against their will before they are given an opportunity to speak to the inquiry.

Not only would the removal of all the witnesses to the events in question entirely undermine the inquiry, it would also give rise to an appearance of bias. The Home Secretary is ultimately responsible for the management of Harmondsworth (including the disturbance) but would also be responsible for any decision to remove those who might be able to give evidence to the public inquiry. Clearly a situation in which a party which is subject to investigation

takes steps that prevent witnesses from giving potentially important and damaging evidence to that investigation is extremely dubious.

This is particularly important for the named individuals on whose behalf this letter is written and who have already provided witness statements. In *R v SSHD, ex p Quaquah* [2000] INLR 196 the Secretary of State's decision to remove an individual from the UK was quashed owing to the failure to take into account properly that individual's right to a fair trial under Article 6 (and particularly the requirement of equality of arms) in relation to pending civil litigation against the Home Office and Group 4 in relation to disturbances that took place at Campsfield House immigration detention centre. The judgment of Turner J stressed the significance of the fact that the case involved allegation of breach of duties by agents of the state:

“This was not just a simple straightforward case of infringement of a private right by a private individual. The case may be one in which the agencies of the state (the Group 4 custodians) have breached, in the public sphere, duties which they owed to those who were held in the Detention Centre and for which the respondent (the decision maker) had the overall legal responsibility... If the decision [to refuse to set aside removal directions] was to be maintained, then there was a necessity for there to be identified countervailing circumstances which would have compellingly outweighed the applicant's rights which are presently under discussion. The countervailing circumstances would have to be that the grant of leave would have to be significant disturbance to the system of immigration control for which the Secretary of State has the legal responsibility. As I have already indicated, it is not obvious how a decision to grant exceptional leave to remain would imperil immigration policy.”

It is submitted that an attempt to remove any of the named individuals above against their will before the public inquiry has taken place would violate their rights and give rise to the “appearance of bias” identified in the *Quaquah* case. The above named individuals should be granted exceptional leave to remain for the duration of the public inquiry. Any difficulties raised by so doing would be minor and far outweighed by the value of an effective investigation. They would also be lessened by a prompt and speedy inquiry.

It is thus requested that, in addition to providing confirmation that the public inquiry will take place you also provide an undertaking that no steps will be

taken to remove from the UK against their will any of the named individuals who have provided witness evidence for the duration of the inquiry, nor will any steps be taken to remove against their will other witnesses until they have been given an opportunity to provide evidence to the inquiry.

Liberty anticipates a swift response to this request.

Yours sincerely,

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