

Written evidence from Medical Justice (STI0025)

1. Summary

- a. As a Core Participant in the recent Brook House Inquiry (BHI), Medical Justice welcomes the establishment of the Statutory Inquiries Committee (SIC) and its investigation into the efficacy of the law and practice relating to the Inquiries Act 2005.
- b. Our submission below responds specifically to question 3 (a) of SIC's call for evidence: "The 2014 House of Lords report made 33 recommendations to the Government, of which 19 were accepted. How effectively have the accepted recommendations been implemented?".¹
- c. The submission explains how key recommendations made in 2014 by the Lords Select Committee on the Inquiries Act 2005 (LSCIA), and accepted by the government, on the topic of 'overseeing implementation' have not been adhered to in the government's recent response to the BHI,² published on 19 March 2024.
- d. **The government failure to adhere to the Lords' recommendations makes its response to the BHI opaque and unclear. Medical Justice considers this unacceptable and deeply concerning**, not least given the gravity of the findings made by the BHI, which included 19 credible breaches of Article 3 of the European Convention on Human Rights (no one shall be subjected to torture or to inhuman or degrading treatment or punishment) in a limited time period of only five months in just one of the UK's seven Immigration Removal Centres (IRCs).³

That fact that the government is able to respond in such a way to a public inquiry suggests that the current framework around implementation of inquiry recommendations is wholly inadequate. This is not an area of expertise for Medical Justice; however, **we urge the Committee to look in more detail at this issue in light of the evidence in this submission, to find ways to strengthen powers in this area.**

2. Brook House Inquiry (BHI) – background

¹ Statutory Inquiries Committee, [Call for Evidence](#) (UK Parliament 2024)

² Home Office, [Government response to the public inquiry into Brook House Immigration Removal Centre](#) (Cp 1041, 2024)

³ [Brook House Inquiry Report Volume 1](#), p 3, para 13

- a. The BHI was set up to investigate the decisions, actions and circumstances surrounding the mistreatment of individuals who were detained at Brook House IRC shown in the 2017 BBC Panorama programme ["Under-Cover: Britain's Immigration Secrets"](#).⁴
- b. The government was forced to establish the BHI following a long legal battle brought by affected individuals.⁵
- c. Over £18m of public funds were spent on the BHI.⁶ Twenty-six Core Participants were appointed to the Inquiry, including 12 formerly detained people.⁷ It disclosed more than 9,000 documents, comprising over 100,000 pages of material. It received and reviewed over 90 hours of undercover recordings and video diaries from the BBC. It also obtained closed-circuit television (CCTV), body worn and handheld camera footage relating to specific incidents of abuse, and took oral evidence from 73 witnesses over 46 days of public hearings, along with a further 23 written witness statements.⁸
- d. The BHI report was published on 19 September 2023. Its findings included 19 credible breaches of Article 3 of the European Convention on Human Rights (no one shall be subjected to torture or to inhuman or degrading treatment or punishment) in a limited time period of only five months in just one (Brook House) of the UK's seven IRCs.⁹
- e. The report makes 33 recommendations in total, the vast majority of which are directed to the Home Office or the government more generally.¹⁰

3. Government response to BHI report – concerns

- a. The government's response to the BHI report was published on 19 March 2024.¹¹ The response was accompanied by a short (four paragraph) written statement to Parliament by the Minister for Countering Illegal Migration, Michael Tomlinson MP.¹²
- b. **We are extremely concerned by the government's BHI response for a number of reasons, including the fact that it**

⁴ <https://brookhouseinquiry.org.uk/>

⁵ Lizzie Dearden, 'Public inquiry launched into abuse at Brook House immigration detention centre', *The Independent* (5 November 2019)

⁶ Steve Browning, *Statutory public inquiries: The Inquiries Act 2005* (House of Commons Library 2024) p 62, Table 2

⁷ *Brook House Inquiry Report Volume 3*, p 4-5, para 4

⁸ *Brook House Inquiry Report Volume 3*, pp 4-5, paras 5-6

⁹ *Brook House Inquiry Report Volume 1*, p 3, para 13

¹⁰ Brook House Inquiry, *The Brook House Inquiry Report – Volume 1* (HC, 2022-23, 1789-I), p 1, para 3

¹¹ Home Office, *Government response to the public inquiry into Brook House Immigration Removal Centre* (Cp 1041, 2024)

¹² *Brook House Inquiry: Government Response* (HCWS356, 19 March 2024)

fails to adhere to key LSCIA recommendations, accepted by the government, in the area of 'Overseeing Implementation'.¹³

The recommendations in question are referred to below as Recommendations 30, 31 and 32 (following the numbering used in the government's response to the 2014 report¹⁴).

c. The failures are as follows:

- i. In its BHI response, the government states that it "accepts the broad thrust" of the Inquiry's recommendations.¹⁵ It only specifically responds to one of the BHI's recommendations, stating that the government "does not accept the recommendation that it should set a time limit on detention".¹⁶ Beyond this, it does not explicitly state which of the Inquiry's other recommendations it accepts, partially accepts or rejects.
- ii. This approach is contrary to LSCIA Recommendation 30 which states that: "In the case of many inquiries, publication of the formal Government response is accompanied by a statement to both Houses. We recommend that this should be the invariable practice. **If a second, more detailed, written response is produced**, as is often the case, it should also be published. **It should say exactly which recommendations are accepted**" [emphasis added].¹⁷
- iii. The Home Office is the public body to whom most of the BHI recommendations are directed. As such, its response is also contrary to LSCIA Recommendation 31, which states that "(i)f particular recommendations are for implementation by particular public bodies, **those bodies should... say** within a specified time **whether they accept the recommendations, and if so, what plans they have for implementation**" [emphasis added].
- iv. The government's response is also contrary to LSCIA Recommendation 32, which states that: "(I)n all cases... **for those (recommendations) which are accepted, details of when and how they will be implemented are essential. The report should include an implementation plan, and a commitment to issue further reports to Parliament at 12-monthly intervals**" [emphasis added].¹⁸

¹³ Ministry of Justice, [Government Response to the Report of the House of Lords Select Committee on the Inquiries Act 2005](#) (Cm 8903, 2014), pp 15-16, paras 85-90

¹⁴ Ministry of Justice, [Government Response to the Report of the House of Lords Select Committee on the Inquiries Act 2005](#) (Cm 8903, 2014), pp 15-16, paras 85-90

¹⁵ Home Office, [Government response to the public inquiry into Brook House Immigration Removal Centre](#) (Cp 1041, 2024) para 3

¹⁶ Home Office, [Government response to the public inquiry into Brook House Immigration Removal Centre](#) (Cp 1041, 2024) para 6.3.2

¹⁷ Select Committee on the Inquiries Act 2005, [The Inquiries Act 2005: post-legislative scrutiny](#) (HL, 2013-14, 143), para 287

¹⁸ Select Committee on the Inquiries Act 2005, [The Inquiries Act 2005: post-legislative scrutiny](#) (HL, 2013-14, 143), para 289

As noted above, the government's BHI response does not explicitly state which of the recommendations it accepts or partially accepts. Even when it appears from Medical Justice's further analysis of the response that a recommendation has in fact been accepted (see Section 4 (b) below), the information provided by the Home Office does not explain when or how it has been implemented. Furthermore, the BHI response does not include an implementation plan, nor any commitment to issue further reports to Parliament at 12-monthly intervals, as required by Recommendation 32.

- d. As such, it appears the government's response to the BHI report is an example of how the LSCIA's recommendations are not being effectively implemented. **The result is a response to the BHI that is opaque and unclear. Medical Justice considers this unacceptable and deeply concerning, not least because of the gravity of the findings made by the BHI, noted above.**¹⁹
- e. In addition to these issues, we echo the concerns raised in oral evidence to SIC by the Chair of the BHI, Kate Eves, about the appointment of the Home Office's Director of Detention Services as the Senior Civil Servant tasked to oversee consideration of the BHI recommendations.²⁰ The civil servant in question has been a member of the Home Office's Detention and Escorting Services (DES) – the team to which many of the criticisms in the BHI report are directed – since 2014,²¹ and was a senior policy lead in the Home Office at the time when the mistreatment investigated by the BHI occurred. They were also involved in defending a judicial review into the BHI taking place.²² We therefore do not believe that they can provide a sufficiently independent perspective to ensure the BHI's recommendations are appropriately considered and implemented.
- f. Furthermore, Medical Justice wishes to highlight to the Committee that the Home Office has used the BHI Chair Kate Eves' lack of legal qualifications as part of its grounds of defence against not having implemented certain recommendations from the Inquiry. We have been aware of this development via one of the legal teams involved in the case.
- g. The Home Office's grounds of defence document is not yet publicly available, but we have been told that the relevant section states: *"A report of a public inquiry is not a legal authority. The*

¹⁹ [Brook House Inquiry Report Volume 1](#), p 3, para 13

²⁰ Statutory Inquiries Committee, [Corrected oral evidence: Statutory inquiries](#) (HL, 2023-24) p 46. See also [Letter from Rt Hon James Cleverly MP to Kate Eves](#) (4 January 2024)

²¹ Brook House Inquiry, [First Witness Statement of Frances Hardy](#), para 4

²² [MA & Anor v The Secretary of State for the Home Department \[2019\] EWHC 1523 \(Admin\) \(14 June 2019\)](#)

recommendations are not binding and do not purport to be based on legal standards or requirements (indeed, the Chair of that particular inquiry had no legal qualifications and was not purporting to set legal standards)”.

- h. It is important to note that Ms Eves was appointed by the former Home Secretary Rt Hon. Priti Patel MP, as the person with the right qualifications to undertake the BHI, with full knowledge of Ms Eves’ professional expertise as an experienced investigator at the Prison and Probation Ombudsman but which did not include formal legal qualifications.²³

4. Further analysis of government’s BHI response

- a. **Medical Justice has conducted an analysis of the government’s response to the BHI report in an effort to better what it does (and does not) contain.**
- b. The BHI made 33 recommendations across ten sub-topics. **Thirty-one of these recommendations are directed to the Home Office or the government more generally.**²⁴
- c. Medical Justice’s analysis, a full copy of which is published on our website,²⁵ shows that **of the Inquiry’s 31 recommendations directed to the government across ten sub-topics:**
 - i. Only **one recommendation** appears to have been **fully accepted** (Recommendation 14). It is important to note that this recommendation only requires the Home Office to ensure staff are aware of a current policy (that the technique of handcuffing detained people with their hands behind their back while seated is not permitted, given its association with positional asphyxia). It does not require any change to policy or practice.
 - ii. **One recommendation** (Recommendation 7) has been **explicitly rejected** by the government, as noted above.
 - iii. For **five recommendations** (Recommendations 5, 16, 19, 22, and 27), **no information is provided at all.**
 - iv. For **one recommendation** (Recommendation 30) **the information provided suggests the recommendation has been rejected.**

²³ See [Written Statement by Rt Hon. Priti Patel MP](#), HC Deb 5 November 2019, vol 667. In the written statement, Mrs Patel states that Ms Eves “is an experienced and highly qualified investigator within custodial environments”.

²⁴ The Inquiry’s recommendations directed to the Home Office or government more generally are Recommendations 1-24, 26, 27 (part), 28-32. Recommendation 25 is directed at contractors, and Recommendation 33 is directed at HM Inspectorate of Prisons and the Independent Monitoring Boards. Part of Recommendation 27 is also directed at contractors. See [Brook House Inquiry Report Volume 2](#)

²⁵ See: <https://medicaljustice.org.uk/governments-response-to-the-brook-house-inquiry-report-analysis-for-parliamentarians/>

- v. For the **remaining 23 recommendations**, the information provided **either appears to simply state already existing policy** (Recommendations 2, 4 and 20), **does not relate to Home Office activity** (Recommendations 8 and 20,) and/or **does not offer enough detail to allow a conclusive assessment** (Recommendations 1-3, 6, 9-13, 15, 17, 18, 21, 23, 24, 26, 28, 29, 31, and 32).
- d. Medical Justice is extremely concerned by how few of the Inquiry's recommendations appear to have been fully accepted, and how little information has been provided by the government in its response. When establishing the Inquiry, the government committed to ensuring "that lessons are learnt to prevent these shocking events happening again".^{5F26} **The government's response to the Inquiry suggests that this commitment to learning lessons is not being upheld.**

5. Home Office response to Freedom of Information request

- a. We also wish to highlight the Home Office's response to a recent Freedom of Information (FOI) regarding the BHI response.²⁷ This was submitted by the law firm Duncan Lewis, who represented a number of the BHI Core Participants. Duncan Lewis have given Medical Justice permission to share details from the FOI response with SIC.
- b. The FOI request from Duncan Lewis reads:

*"The government produced its response to the Brook House Public Inquiry report on 19 March 2024:
https://assets.publishing.service.gov.uk/media/65f84540fc7fcf0011c6482d/E03077278+-+Resp+Brook+House+Inquiry+report_Accessible.pdf*

"Unlike with most public inquiry reports or other independent reports giving recommendations to the government, the response does not publish individual responses to each of the Brook House Inquiry report's 33 recommendations to confirm whether they are accepted, partially accepted or rejected and how/why.

*"Please can you confirm if:
 1. An equivalent table or document exists internally that confirms whether the Home Office accept, partially accept or reject each of the 33 recommendations; and
 2. If so, please provide a copy".²⁸*

²⁶ <https://questions-statements.parliament.uk/written-statements/detail/2019-11-05/hcws99>

²⁷ Email from Home Office to Duncan Lewis regarding FOI 2024/02980, 28 March 2024. FOI

²⁸ Response from Home Office to Duncan Lewis regarding FOI 2024/02980, 28 March 2024, Annex A. Copy available on request.

- c. In its response to the FOI request, the Home Office states the information requested by Duncan Lewis is “*being withheld*”.²⁹ It states that this is because it “*considers the information... to be exempt from disclosure on the grounds that the information relates to the formulation or development of government policy. The information is thereby exempt from disclosure under section 35(1)(a) of the FOI Act*”.³⁰

The Home Office’s decision to withhold the information requested by Duncan Lewis is a further example of the untransparent approach adopted in its response to the BHI recommendations. We ask that the Committee requests the Home Office to disclose the information to it, so that it is publicly available.

6. Conclusion

- a. In its response to the 2014 LSCIA report, the government stated that public inquiries are a “well-regarded and valued... means of holding public bodies to account, investigating matters of concern and maintaining confidence in just and transparent government... Confidence is built by getting to the truth”.³¹ As laid out above, **this alleged commitment to accountability, transparency and truth is sorely lacking in the government’s own response to the BHI.**
- b. **That fact that the government is able to respond in such a way to a public inquiry suggests that the current framework around implementation of inquiry recommendations is wholly inadequate.** This is not an area of expertise for Medical Justice; however, **we urge the Committee to look in more detail at this issue in light of our evidence, to find ways to strengthen powers in this area.**

19th April 2024

²⁹ Response from Home Office to Duncan Lewis regarding FOI 2024/02980, 28 March 2024. Copy available on request.

³⁰ Response from Home Office to Duncan Lewis regarding FOI 2024/02980, 28 March 2024, Annex B. Copy available on request.

³¹ Ministry of Justice, [Government Response to the Report of the House of Lords Select Committee on the Inquiries Act 2005](#) (Cm 8903, 2014) p 3