

Secretary of State for the Cabinet Office

Cabinet Office

70 Whitehall

London SW1A 2AS

BY COURIER

Direct Dial: 020-7650-1313

Email: bburrows@leighday.co.uk

Your Ref: Unknown

Our Ref: BBU/WSH/00167835/1

Date: 14 February 2018

Dear Sir/Madam

**PRE ACTION PROTOCOL LETTER BEFORE CLAIM
OUR CLIENT: BAIL FOR IMMIGRATION DETAINEES**

This letter has been prepared under the Pre-Action Protocol for Judicial Review (the Protocol) and accordingly adopts the form set out in the Annex to the Protocol.

1. **To:** The Secretary of State for the Cabinet Office (**Cabinet Office**).
2. **The Claimant:** Bail for Immigration Detainees (**BID**) of 1B Finsbury Park Road, London N4 2LA.
3. **Reference details:** As per the above letterhead.
4. **Details of the matter being challenged:**
The Cabinet Office's believed decision not to designate G4S as a 'High Risk' supplier under its Strategic Supplier Risk Management Policy (**SSRM Policy**), and the Cabinet Office's decision so far to maintain secrecy over this aspect of its approach to discharging its public law functions.

Leigh Day

London office: Priory House, 25 St John's Lane, London EC1M 4LB
DX 53326 Clerkenwell

T 0207 650 1200
F 0207 253 4433

E postbox@leighday.co.uk
W www.leighday.co.uk

Manchester office: Central Park, Northampton Road, Manchester M40 5BP

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We note that, in correspondence between BID and the Cabinet Office, the Cabinet Office has refused to confirm or deny whether or not G4S has been designated a High Risk supplier. This letter has therefore been prepared on the basis that G4S has, following consideration, not been so designated. As set out in paragraph 6 below, BID seeks confirmation of the status accorded to G4S under the SSRM Policy in response to this letter.

5. The issue:

- 5.1 G4S has been designated by the Cabinet Office as a 'Strategic Supplier' for the purpose of the SSRM Policy. This means that G4S holds contracts across a number of government Departments with revenue exceeding £100m per annum and/or is deemed a significant supplier in its sector. The Government contracts held by G4S include contracts with the Ministry of Justice for the operation of five prisons and one Secure Training Centre (STC) and with the Home Office for the operation of two immigration removal centres.
- 5.2 The SSRM Policy provides that a Strategic Supplier may be designated "High Risk" if the following conditions are met: *"it is considered to have seriously and / or persistently underperformed on one or more contracts with Government and its under-performance has not been resolved in the course of "business-as-usual" contract management"* (SSRM Policy, §5.5.1). The purpose of designation of a Strategic Supplier as High Risk is to *"ensure that the risks to delivery [of public law functions] posed by these suppliers are proactively identified and managed"* (SSRM Policy, §6.1).
- 5.3 On 4 September 2017, the BBC broadcast a programme entitled *Panorama: Undercover: Britain's Immigration Secrets*, concerning the treatment of immigration detainees in the UK. The programme provided evidence of serious maltreatment of detainees by G4S at Brook House Immigration Removal Centre (IRC), including physical and verbal abuse. The programme documented, in particular, wholly inadequate and abusive treatment of vulnerable detainees, including juvenile detainees and those suffering from mental illness. Further, it

demonstrated a pattern of behaviour in which the approach of G4S staff was to falsify incident reports in order to cover up their unacceptable conduct.

- 5.4 The revelations concerning Brook House IRC are the latest in a series of serious issues regarding G4S's work on behalf of the government, by which the government discharges its public law functions. These include (but are not limited to) the minimum acceptable level of treatment of prisoners and detainees. By way of example, a 7 March 2017 Ofsted report into Oakhill Secure Training Centre¹ found that G4S staff was "*struggling to maintain order and control*" and documented an "*over-reliance on more extreme measures ... including a high level of the use of force*"; a follow-up report of 21 November 2017² rated the facility "*inadequate*", criticising the failure to meet the recommendations of the earlier report and raising serious concerns that G4S's failures "*significantly affect the safety of young people.*" Serious concerns were also raised in respect of G4S's similarly "*inadequate*" running of Medway Secure Training Centre³ and Rainsbrook Secure Training Centre⁴ – responsibility for both STCs has since had to be transferred to the National Offender Management Service. Similarly, significant criticism was also directed at the G4S-run prison in Birmingham, which experienced a serious prison riot in December 2016.⁵ Cumulatively and individually, such failings by G4S cannot be regarded as anything other than

¹ Ofsted, Inspection of Oakhill Secure Training Centre, 7 March 2017, available at: [https://reports.ofsted.gov.uk/sites/default/files/documents/secure-training-centre-reports/oakhill/OakhillSTC January2017.pdf](https://reports.ofsted.gov.uk/sites/default/files/documents/secure-training-centre-reports/oakhill/OakhillSTC%20January2017.pdf)

² Ofsted, Inspection of Oakhill Secure Training Centre, 21 November 2017, available at: <https://reports.ofsted.gov.uk/sites/default/files/documents/secure-training-centre-reports/oakhill/Oakhill%20STC%20October%202017%20report.pdf>

³ Ofsted, Inspections of Medway STC, 8 August 2016 and 13 June 2017, available at: <https://reports.ofsted.gov.uk/sites/default/files/documents/secure-training-centre-reports/medway/Medway%20STC%20Ofsted%20report%20June%202016.pdf>; <https://reports.ofsted.gov.uk/sites/default/files/documents/secure-training-centre-reports/medway/Medway%20STC%20Ofsted%20report%20March%202017.pdf>

⁴ Ofsted, Inspection of Rainsbrook Secure Training Centre, 20 May 2015, available at: <https://reports.ofsted.gov.uk/sites/default/files/documents/secure-training-centre-reports/rainsbrook/Rainsbrook%20STC%20Ofsted%20report%20February%202015%20%28PDF%29.pdf>

⁵ Independent Monitoring Board, Annual Reports into HMP Birmingham 2016 and 2017, available at <https://s3-eu-west-2.amazonaws.com/imb-prod-storage-1ocod6bqky0vo/uploads/2016/10/Birmingham-2015-16.pdf>; <https://s3-eu-west-2.amazonaws.com/imb-prod-storage-1ocod6bqky0vo/uploads/2017/10/Birmingham-2016-17.pdf>

systematic and serious under-performance.

- 5.5 There is no indication that this has been resolved in the course of normal contract management with G4S, in particular by the implementation of new protocols and monitoring mechanisms, and the dismissal or reassignment of staff showing systematic or serious misbehaviour. Nor has the Cabinet Office suggested otherwise, although this would be expected both in order to restore basic public confidence, and to ensure that serious failures by the government to perform its public law functions adequately do not recur.
 - 5.6 BID sought by its enclosed letters of 16 November 2017, 2 January 2018 and 22 January 2018 to obtain further information from the Cabinet Office about the steps that the Cabinet Office has been taking, including through the Crown Representative Network and the Commercial Relationships Board, to review, manage and improve the ongoing provision of services, and particularly detention services, by G4S across government. Such action is necessary in order to ensure, in accordance with the SSRM Policy, that the risks posed by G4S (including in particular to vulnerable prisoners and detainees) are properly managed. The Cabinet Office has refused to provide a proper response to this request and has refused to confirm whether or not G4S has been designated a High Risk supplier.
 - 5.7 In these circumstances, BID has no choice but to assume that G4S has not been designated as High Risk. For the reasons set out above, the conscious decision not to designate G4S as a High Risk supplier under the SSRM Policy is contrary to the Cabinet Office's published policy, irrational and unlawful. Further, the decision so far to maintain secrecy over the Cabinet's Office's approach to discharging public law functions that can have a devastating impact on those affected is also wrongful, as outlined below.
6. Details of the action expected:
 - 6.1 In the light of the above, please confirm whether or not G4S has been designated

a High Risk supplier in accordance with section 5 of the Cabinet Office's SSRM Policy. Further:

6.1.1 If G4S has been designated a High Risk supplier, please confirm whether G4S has agreed to an Improvement Plan in accordance with paragraph 6.1 of the SSRM Policy and describe the contents of that plan/provide a copy of the same.

6.1.2 If G4S has not been designated a High Risk supplier, please explain the reasons supporting that decision, by reference to section 5 of the SSRM Policy.

6.2 We note that the Cabinet Office has adopted the position in its previous correspondence with BID that it will not disclose the status of G4S under the SSRM Policy, nor any other information about the action that is being taken in relation to G4S, for two reasons. The first is that this is "*commercially confidential*" (letter from Oliver Dowden MP dated 23 January 2018). The second is that releasing this information would be contrary to the terms of the SSRM Policy (letter from Caroline Nokes MP dated 6 December 2017), and that there is "*no clear reason to justify deviation from the policy in this instance*" (letter from Oliver Dowden MP dated 23 January 2018).

6.3 The Cabinet Office's approach in this regard is unsustainable in law, and is contrary to the principle that decisions by the Executive on public law matters should be open to public law scrutiny, save to the extent that there is a compelling basis for secrecy in a particular case or type of case. The only justification given in the SSRM Policy for keeping secret the designation of High Risk suppliers is that the policy is "*not a "name and shame" policy*" (SSRM Policy, §6.4). This rationale has no application in this case. The conduct of G4S and its suitability to carry out important Government contracts, particularly working with vulnerable individuals in prisons and detention centres, is a matter of public record and active debate. This applies with particular force in circumstances

where there are repeated credible allegations of serious human rights violations being committed. The Cabinet Office has not responded to this point, simply asserting vaguely that there is no reason to deviate from its policy in this case. This assertion does not bear scrutiny.

- 6.4 Further, and in any event, the application of the SSRM Policy to G4S is not purely a private law matter between the government and G4S. The issue of the designation of G4S goes to the proper discharge by G4S of very important public law functions exercised on behalf of the State with a major impact on the lives of the individuals affected, and in return for significant amounts of public funds (see para 5.2 above). The designation itself is therefore a decision that must be taken in accordance with public law.
- 6.5 To this end, the SSRM Policy is a published policy that sets out clear criteria for the designation of a Strategic Supplier. The Cabinet Office is generally required as a matter of public law to take decisions in accordance with its published policy (*Lumba v Secretary of State for the Home Department* (2011) UKSC 12). The effect of the Cabinet Office's refusal to confirm or deny whether a Strategic Supplier has been designated High Risk is to preclude any scrutiny, even by the courts, of the lawfulness of its application of and decision-making pursuant to the SSRM Policy.
- 6.6 This approach cannot be justified on grounds of commercial confidentiality either. At this stage, the Cabinet Office has not identified on what basis it is said that the information sought by BID is commercially sensitive to G4S (in the correct sense recognised by the law, rather than simply meaning something that is embarrassing, even if deserved), particularly given the nature of the information already in the public domain; nor has it explained why any concerns in relation to commercial confidentiality are sufficient to outweigh the clear public interest in disclosure so that Government can be held to account for its management of suppliers who hold numerous and large contracts, exercising important public functions and in return for significant sums of public money. Further, as you will

be aware, even true commercial confidentiality is not a legitimate basis to withhold disclosure of information in the context of litigation in any event (albeit that arrangements may, where this properly justified, be put in place to offer some protection to the confidentiality asserted).

7. Details of the legal advisers dealing with this claim: As per above letterhead.
8. Details of any interested parties: G4S Plc, Southside, 105 Victoria Street, London SW1E 6QT.
9. Details of any information sought: See paragraph 6 above. In the event that you intend to contest this claim, please provide us with all documents relevant to the issues set out above.
10. Details of any documents considered relevant and necessary: See paragraph 9, above.
11. Address for reply and service of court documents: As per above letterhead.
12. Proposed reply date: We look forward to hearing from you as soon as possible and by 14 days at the latest. We note that, given G4S's ongoing responsibility for vulnerable individuals, and the fact that it is at present bidding for further government contacts in this area, the issue is urgent.

Yours faithfully


LEIGH DAY

Encs

cc: G4S Plc, Southside, 105 Victoria Street, London SW1E 6QT.

November 16th 2017

Minister for the Cabinet Office, The Rt. Hon. Damian Green MP
Cabinet Office
70 Whitehall
London
SW1A 2AS

Dear Sir

I am writing to you in my capacity as Director of the charity Bail for Immigration Detainees, which provides legal advice and representation on release from detention to individuals held in immigration centres and prisons across the UK. I write in relation to the terms of the government's ongoing relationship with G4S.

I am sure that you are aware of the programme *Panorama: Undercover: Britain's Immigration Secrets*, first broadcast by the BBC on 4 September 2017, concerning the treatment of immigration detainees in the UK. That programme provided evidence of critical failings by G4S at Brook House Immigration Removal Centre, including serious maltreatment of individual detainees (physical and verbal abuse), a widespread culture of disrespect, and the falsification of incident reports by staff in order to cover up their conduct. It is the latest revelation bringing to light a number of serious issues regarding G4S's conduct in the running of immigration detention centres and prisons.

These must now be regarded as systematic deficiencies. These are not one-off incidents.

In the light of these distressing revelations, I wrote to your colleague, the Secretary of State for the Home Department, on 11 September 2017 asking her to take specific action in relation to immigration detention facilities operated by G4S. While I have received a telephone call acknowledging that the letter has been received, I have not received a substantive response.

The specific purpose of this further letter is as follows.

I understand that, in addition to its contractual relationships with the Home Office, G4S has been designated by the Cabinet Office as a 'Strategic Supplier'. This means that G4S has contracts across a number of Departments with revenue exceeding £100m per annum and/or is deemed a significant supplier in its sector. I note that in addition to the services it provides at Brook House IRC, G4S operates one other immigration removal centre on behalf of the Home Office and it holds contracts with the Ministry of Justice to operate a number of prisons. As a 'Strategic Supplier', the relationship between the government and G4S is managed by a Crown Representative, and ultimately overseen by the Cabinet Office. In view of these matters:

1. Please explain what steps the Cabinet Office is taking, including through the Crown Representative Network and Commercial Relationships Board, to review, manage and improve the ongoing provision of services by G4S across government in light of the repeated concerns regarding underperformance and mismanagement by the company, and especially



the recent and compelling evidence of the serious failings in its management of Brook House IRC.

2. Please confirm whether or not G4S has, in consequence, been designated as a "High Risk" supplier in accordance with section 5 of the Cabinet Officer's Strategic Supplier Risk Management Policy. If G4S has not been designated as "High Risk", please explain why not.

G4S continues to operate Brook House IRC as well as operating other detention facilities on behalf of the government. In the light of the evidence of abuse and misconduct by G4S, there is a real risk that other individuals in detention are being, and will continue to be, similarly mistreated by G4S. This matter is therefore of utmost urgency. I would be grateful if you would therefore provide answers to the questions set out in this letter within 14 days, i.e. by 30 November 2017.

I look forward to hearing from you.

Best wishes
Yours sincerely



Celia Clarke
Director

cc. Crown Commercial Service London Managed Service Team
2nd Floor
Aviation House
125 Kingsway
London
WC2B 6NH





Cabinet Office

Caroline Nokes MP
Minister for Government Resilience and
Efficiency
Cabinet Office
70 Whitehall
London
SW1A 2AS

Web www.cabinetoffice.gov.uk

Our Ref: PSNMP/0029

Ms Celia Clarke
Director
Bail for Immigration Detainees
1b Finsbury Park Road
London
N4 2LA

6 December 2017

Dear Ms Clarke

Thank you for your letter of 16th November to the Minister for the Cabinet Office regarding the Government's relationship with G4S. I have been asked to respond to your specific questions as the Minister for Government Resilience and Efficiency.

The Crown Representatives regularly monitor the performance of Government contracts with strategic suppliers through the Commercial Relationships Board. The Board meets on a six weekly basis. The terms of reference for this board, and how performance is specifically monitored, is contained in our Strategic Supplier Risk Management Policy:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/80222/20121108_Strategic_Supplier_Risk_Management_Policy.pdf

Whilst I understand your concerns about G4S, we do not publish the names of strategic suppliers that are designated high risk, in accordance with the Strategic Supplier Risk Management Policy.

Nevertheless, we are determined to improve our supplier management by monitoring suppliers' performance for the Crown as a whole. We are strengthening our contract management by focusing on the performance of strategic suppliers and sharing the information across Government. We have also appointed a number of Crown representatives, experienced business leaders, who bring a wide range of commercial knowledge to ensure that government gets the best possible value from contracts.

We have also published a Supplier Code of Conduct, which sets out the standards we expect of those companies supplying goods and services to government:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/646497/2017-09-13_Official_Sensitive_Supplier_Code_of_Conduct_September_2017.pdf

I hope this information is helpful, and reassures you that we take very seriously the issues you have raised.

Yours sincerely
Caroline Nokes

CAROLINE NOKES MP

2nd January 2018

Caroline Nokes MP,
Minister for Government Resilience and Efficiency
Cabinet Office
70 Whitehall
London SW1A 2AS

Dear Ms Nokes

I write further to your letter of 6 December 2017.

Your letter correctly acknowledges that we hold legitimate concerns regarding the appointment of G4S to fulfil very sensitive public law functions on behalf of the State. These concern the treatment and welfare of some of the most vulnerable people in society.

We emphasise that the designation by you of a Strategic Supplier as “High Risk” is made with a view to the proper discharge of these public law functions. It is not a purely private law matter. It is itself a decision that the Government must take in accordance with law. The purpose of designating a Strategic Supplier as “High Risk” is to ensure that the risks to delivery posed by these suppliers are proactively identified and managed (Policy, para 6.1).

Despite this, and despite the evidence that G4S suffers from severe systemic failings that prima facie make it unsuitable for re-appointment, at least without special measures, you have declined to respond to our query as to whether G4S has been designated “High Risk”. You do not give any good reason for this that applies to the case in hand, and we find it impossible to see that there could be one.

All you say is that you do not publish the names of suppliers designated “High Risk” in accordance with the Strategic Supplier Risk Management Policy. You treat this as a blanket rule. But the Policy itself makes clear that “we expect [it] to evolve and be supplemented as the policy is put into practice” (para 1.2). And the only justification that the Policy offers for keeping secret the designation of High Risk suppliers in a given case is that “the new policy is not a “name and shame” policy” (para 6.4). We are not seeking the information with a view to “naming and shaming”, but with a view to ensuring that the vital processes needed to ensure the respectful and humane treatment of detained individuals, in accordance with law, are followed by the Government. The questions surrounding the suitability of G4S are a matter of public record and active debate already, as you know.

We ask you therefore to reconsider your position, which is unlawful, and to answer directly the two Questions which were set out in our letter of 16th November 2017.

For ease of reference, those two unanswered Questions are:

1. Please explain what steps the Cabinet Office is taking, including through the Crown Representative Network and Commercial Relationships Board, to review, manage and improve the



ongoing provision of services by G4S across government in light of the repeated concerns regarding underperformance and mismanagement by the company, and especially the recent and compelling evidence of the serious failings in its management of Brook House IRC?

2. In particular, please confirm whether or not G4S has, in consequence, been designated as a "High Risk" supplier in accordance with section 5 of the Cabinet Officer's Strategic Supplier Risk Management Policy. If G4S has not been designated as "High Risk", please explain why not.

We look forward to hearing from you.

Best wishes



Celia Clarke
Director





Oliver Dowden MP
Parliamentary Secretary
Cabinet Office
70 Whitehall London SW1A 2AS

RECEIVED

24 JAN 2018

BAIL FOR
IMMIGRATION DETAINEES

Our Ref: PSNMP/0036

Ms Celia Clarke
Director
Bail for Immigration Detainees
1b Finsbury Park Road
London N4 2LA

23rd January 2018

Dear Ms Clarke,

Thank you for your letter of 2nd January in response to one from my predecessor, Ms Caroline Nokes MP, regarding the Government's relationship with G4S.

This Government recognises the importance of managing relationships with Strategic Suppliers and their performance on a cross-Government basis, and has developed a range of strategies to do this, including the Commercial Relationships Board mentioned previously.

Officials from the Cabinet Office hold regular meetings with G4S and with colleagues from other departments to discuss specific contracts and to ensure a co-ordinated approach across government.

We have a Crown Representative for G4S who meets regularly with their senior management, and we conduct a thorough annual review of all strategic suppliers.

In addition, the respective government departments that are responsible for delivering specific contracts have their own schedule of meetings and an Executive Oversight Board, designed to maintain and further good contract performance.

I am sorry that I cannot go into more specific details, but you will appreciate that all these meetings discuss information that is commercially confidential.

I understand that you are disappointed that we refuse to disclose the risk status of any strategic supplier, but this is in accordance with our stated policy and practice, and there is no clear reason to justify deviation from the policy in this instance. I reject the allegation that our position is unlawful.

Nevertheless, I would like to assure you in the strongest possible terms that we do take supplier performance – including the issues you raise - very seriously, and that we are committed to ensuring that our suppliers deliver the best possible services to the public.

Oliver Dowden MP