

Case reference: C2036447

Parliamentary Commissioner Act 1967

Report by the Parliamentary Ombudsman to

Ms Helen Whately MP

Into a complaint made by

Mr Chris Esdaile
REDRESS
87 Vauxhall Walk
London
SE11 5HJ

On behalf of

Mr Nicholas Tuffney



Complaint about:

Foreign and Commonwealth Office (FCO)

Summary

1. Mr Tuffney complains that FCO:
 - gave inadequate responses to his allegations of mistreatment between 2013 and 2014;
 - failed to respond to his letter to the Ambassador of 8 January 2014;
 - did not visit him at the detention facility at La Palma Police Station;
 - did not adequately follow up concerns for his health;
 - did not adequately follow up other welfare concerns;
 - failed to answer his emails;
 - did not enquire about his condition after a prison riot (where he was shot in the eye with a rubber bullet);
 - provided inadequate information about what detainees might expect; and

- did not attempt to contact immigration authorities in relation to his impending deportation.

2. Mr Tuffney says that as a result of the failings, he has been caused ongoing anxiety, frustration and increased feelings of isolation adding to an already very stressful and traumatic situation, and has self-harmed. He seeks an explanation, apology and service improvements to prevent other people having similar experiences; that FCO seek to recover his belongings from a detention facility; and a financial remedy of £5,000 for him and his family for the ongoing distress, pain and suffering they have been caused.

Our findings

3. We find that in some of the areas of Mr Tuffney's complaint, FCO's actions were not consistent with the expectations of relevant guidance, and that that was maladministration; and that that caused an injustice to him that has not been remedied. We therefore uphold the complaint.

Evidence we considered

4. We use related or relevant law, policy, guidance and standards to inform our thinking. This allows us to consider what should have happened. The relevant standards in this investigation are in the Annex.

Background

5. On 16 May 2013 Mr Tuffney contacted the British Embassy in Panama (the Embassy) to tell them he had been detained while trying to leave the country in connection with charges of child sexual abuse. FCO records say they talked to him twice to '*check on the charges, his welfare, etc*'. The Embassy understood he was in a detention centre and would be transferred to Darien, a province in the East of Panama, where the eventual hearing would be. The Embassy visited next day and, according to their record, told him what assistance they could provide; and, according to their later correspondence and Mr Tuffney, gave him a '*Prisoner Pack*' (paragraph 11 of the annex). Again according to their record Mr Tuffney told Embassy staff that other prisoners were threatening him, which they took up with '*prison guards and they told me that Nick would be safe*' and separated from a main holding area.

6. On 22 May the Embassy were told by a friend of Mr Tuffney's he had been '*transferred to Darien and falls ill as he had not eaten in days*'. On 23 May they noted that he had been admitted to hospital. The Embassy visited Mr Tuffney in hospital on 24 May. On 27 May the Embassy noted they had found Mr Tuffney '*recovering but remains depressed. He raises his first mistreatment allegations*'. Embassy records say they found him cuffed by his ankle to a hospital bed, '*low in energy. He had an IV in his arm...he was visibly depressed and would*

begin crying every so often. Nick had not eaten since he was arrested and kept repeating that he wanted to die'. Embassy records say that there was a guard in the hospital room as well (who, according to Mr Tuffney, was armed).

7. On 28 May the Embassy noted that a doctor had told them Mr Tuffney was at a police station separated from other detainees; and had said he was *'in improved health...upbeat and in good spirits'* and was eating but would likely need a psychiatric evaluation. Next day FCO noted that Mr Tuffney *'has alleged that he was mistreated by Police. Please find attached completed mistreatment allegation form'*.

8. On 3 June the Embassy noted a conversation with Mr Tuffney's lawyer, who *'told us that Nick is still being held at the Police Station...that a doctor will carry out some exams on Nick to check on his mental and physical health...and that Nick is eating and in better health'*. On 5 June the Embassy sought FCO's *'advice....Colleagues visited [Mr Tuffney] and he expressed suicidal feelings...seemed very depressed...My initial thoughts are that we should try to speak again to Nick to see how he is doing and to ask whether he would like us to pursue (with his lawyer and/or the prison) the request for medical attention. Does this sound appropriate or, given Nick's previous suicidal feelings, is there something else you would recommend?'*. On 6 June FCO said that *'there does appear to be an improvement in his general presentation since our visit on the 24th...I think it would be a good idea to speak with him to check on his wellbeing and his understanding of the process and timescale in relation to his lawyer requesting further medical/psychiatric assessments. Based on our most recent dealings with him I would progress this by asking him if he is happy with this process and timescale or would he prefer us to raise this on his behalf'*.

9. On 12 June staff sought advice on *'how to proceed with this mistreatment allegation. Mr Tuffney has given his permission for us to raise the allegations with the responsible authorities'* but thought they might ask his lawyer *'does he think it would help or hinder his client's case for the allegations to be raised'*. On 24 June the Embassy noted that *'Nick still hasn't been transferred [from the La Palma police station in Darien] because the prisons do not receive inmates during the weekend....we should contact the authorities to request Nick is sent to [a prison] where he would be safer'*.

10. On 4 July the Embassy noted that Mr Tuffney's lawyer had told them that *'he had recently visited Nick...he was very depressed...Nick only had a medical evaluation as there are no psychiatrists in Darien'*. The next day Mr Tuffney's lawyer told the Embassy that he had been transferred to a prison called La Joya. On 8 July FCO noted, in relation to the mistreatment allegations, *'we always want to make sure that individuals make informed decisions, including being aware on [sic] any potential adverse impact of steps taken'*. On 10 July the Embassy visited Mr Tuffney. He *'said he felt weak and was getting sick...complained about the prison conditions...is sleeping on the floor...Nick wanted us to file*

mistreatment allegations against the police at the police station' where, he said, he had been 'chained to a metal pole...and not allowed to walk'.

11. On 22 July FCO advised the Embassy on how to make representations about the mistreatment allegations. According to Embassy records, they were *'advised that it was likely that the MFA [Panamanian authorities] would take a month or two to answer our Note Verbale'* (a piece of diplomatic correspondence prepared in the third person and unsigned). On 1 August the Embassy noted that they had raised the allegations with the Panama authorities by way of a Note Verbale: that Mr Tuffney was humiliated by guards who made him strip in front of other prisoners, and told other prisoners the charges against him; and that Mr Tuffney was held at the police station handcuffed to a metal bar without freedom to move, wash himself or use the toilet. The Embassy sought an unbiased investigation into the allegations.
12. According to a newspaper report, on around 8 August there was a riot at the prison where Mr Tuffney was being held in which prison officers opened fire with shotguns and tear gas. On 13 August Mr Tuffney's family told the Embassy they wanted them to seek medical attention for him. The Embassy did so and chased a response early the next month. On 16 September they sent a medical attention request to the Red Cross. On 25 September the Embassy were told by a friend who had visited Mr Tuffney of his condition but *'could not act on this report since we needed to obtain consent from Nick'*.
13. On 3 October the Panama authorities responded to the mistreatment allegations, saying that they abided by legislation and the International Human Right Convention. The Embassy noted an intention to copy the response to Mr Tuffney. On 10 October the Ambassador and other staff visited Mr Tuffney who was noted as weak and having difficulty walking. They noted he asked them for help in relation to medical attention; wanted the Embassy to inspect the prison; and that they *'handed Nick a copy of the response...regarding the mistreatment allegations...He was not content with the response nor with...explanation that we were doing what we could with raising the allegations but that we could not interfere with the local system'*. Although there is no contemporaneous record, FCO say the Embassy chased the medical attention on 15 October.
14. On 7 November the Embassy visited Mr Tuffney and noted that he said he had been on a waiting list to visit a clinic for a number of weeks. The Embassy noted also that day that when they had visited him on 10 October, they had delivered vitamins. On 21 November the Embassy noted that prison authorities said they *'are facing serious difficulties taking ill prisoners to the clinic...police would only transport the seriously ill.'* On 5 December the Embassy chased the medical attention and were promised some would be provided before the end of the week. But by 8 January 2014 it had not been provided and the Embassy contacted the Panama Ombudsman. On 10 January the Panama Prison Service told the Embassy Mr Tuffney had been taken to a clinic that day. The same day the Embassy noted that *'in*

June' *'the acting HMA sent a letter to the Vice Minister of Justice asking for Nick to be transferred to' a particular prison and the 'We were worried that he would suffer mistreatment from other prisoners due to the nature of his charges'*. On 15 January Embassy staff visited Mr Tuffney. He said he had been diagnosed with pneumonia and osteoarthritis.

15. On 8 January 2014 Mr Tuffney wrote to the Ambassador to complain that the Embassy had failed to represent and protect him. Mr Tuffney asked the Ambassador to make representations to the Panama government in order to ensure a timely trial and about their responsibility for his health's deterioration; to help arrange his transport to that trial; to take other action Mr Tuffney considered necessary to ensure a fair hearing; and to copy him correspondence. On 24 January the Embassy agreed to take up that Mr Tuffney had not had medication for the illnesses he had been prescribed with. But the Panamanian authorities responded that they had no record of the diagnosis.

16. On 27 March the Embassy visited Mr Tuffney. Among other things they told him they could arrange transport as he had requested. On 17 April the Embassy visited Mr Tuffney. He *'seemed slender and presented difficulty walking...Nick had the opportunity to meet with an Ombudsman officer'*. The Embassy noted that they were unable to deliver a fan Mr Tuffney's mother had provided because *'not allowed by Director of the Prison'*. On 9 May the Embassy noted a phone call from Mr Tuffney. Among other things he told them that his lawyer had told him that *'immigration resident permit had been cancelled... [meaning] he would be deported on his release...his sons are currently in Panama and he doesn't want to be separated...We told Nick we could check with the Panamanian authorities if he could re-apply for his permit if he was determined not guilty, but we could not interfere'*. The Embassy noted three other issues that they would look into.

17. On 30 July the Embassy visited Mr Tuffney. The Embassy gave him a letter of 28 July about *'progress that has been made with regards to your case, since our last visit: On 9 May, we received a call from you to raise four particular concerns'* that the letter addressed. They said they had made representations to a clinic and to the Panama Ombudsman about medical attention but had been told the latter *'could not promise fast results given that many prisoners were in the same situation'*. They had asked permission for Mr Tuffney to be able to access a prison patio. The Embassy said they had made representations to the authorities about his immigration status should he be found innocent and about a court hearing date, which they said should be arranged soon.

18. According to a later letter the Embassy sent, in August 2014 staff visited Mr Tuffney at a detention centre where they noted *'your wish to remain in Panama'*. In September Mr Tuffney was released and deported.

19. In 2015 the UN Special Rapporteur on Torture sent a report to the Panamanian Government, saying that *'grounds exist... to indicate that the Panamanian Government has*

not complied with its obligation to protect the physical and psychological well-being of Mr Nicholas Tuffney, in subjecting him to prison conditions which constituted inhuman or degrading treatment, as set out in Articles 1 and 16 of the Convention Against Torture'. The report said that the inadequate conditions had had a negative impact on Mr Tuffney's physical and mental integrity.

20. In March 2017 Mr Tuffney complained about the support the Embassy had provided. On 12 April the Embassy replied. The Embassy said they had taken the mistreatment allegations seriously, and had raised them with the Panama authorities in August 2013. The Embassy said that the United Nations Human Rights Council had, in 2015, described prison conditions in Panama as poor and prisons overcrowded. They said the Embassy had worked to secure the support of the Panama Ombudsman, who had written to the authorities in April 2014. The Embassy said that staff had visited, were able to help obtain medical support and hospital visits and ensure that he received vitamins and hygiene items. They said staff had contacted the prison authorities to ensure he received treatment that was at least equivalent to other detainees.

21. On 24 April Mr Tuffney wrote to FCO. He was not satisfied with the response. He said it was inaccurate and glossed over the seriousness of human rights' violations. He said the Embassy had accepted the Panamanian authorities' assurances. Mr Tuffney cited a two-month period when, he said, he had been chained to bars without a visit.

22. On 16 June FCO replied. They accepted that prison conditions in Panama in some cases did not meet international standards and said that they Embassy had raised that; but '*there is a limit to what we can do*'. FCO accepted that there had been only one exchange of correspondence with the Panamanian authorities about the mistreatment allegations. FCO said the Embassy had contacted the Panamanian Immigration Department but only the Immigration Director had the power to determine whether he stayed or was deported.

23. FCO said that the Embassy had received Mr Tuffney's 8 January 2014 letter to the Ambassador on 22 January, and had replied to it on 28 July. They were sorry for the delay, which they attributed to the time it took to look into the points raised. They acknowledged that it would have been more helpful to have kept Mr Tuffney updated in the meantime and said they had reminded staff of the importance of timely communication. FCO had no record of being told Mr Tuffney had been hit with a plastic bullet in the eye. They said they had involved the Panama Ombudsman as a way of getting help regarding detention conditions and would have expected the Panama Ombudsman to provide any follow up direct to him. FCO said that frequent changes in prison rules prevented them from always providing vitamins but said they had done so on 10 October 2013. Mr Tuffney had asked why he was not allowed a fan given other prisoners were, and FCO replied that prison authorities told them that that was because of concerns about potential voltage overload at the prison, and that other prisoners' permission was withdrawn. As far as not having a bed was concerned, FCO said the

Embassy was aware of the shortage of bedding. They said they had made a number of requests that Mr Tuffney and other prisoners have beds but *'ability of the prison authorities to do this is not within our control'*. There is no evidence of those requests in FCO's records. FCO said they had no control over what the Panamanian authorities said was local law that *'detainees...be chained when in public areas'*. FCO said the Embassy could not inspect sleeping arrangements at the prison; and said the Embassy had received *'few'* emails from Mr Tuffney and had prioritised letters from him.

Mr Tuffney's comments to us

24. Mr Tuffney highlighted that he made his first mistreatment allegation on 24 May 2013; and that the mistreatment form completed by officials said *'Is medical treatment required? N/A'* whereas prison visit forms noted that he *'had an IV in his arm...was visibly depressed and would begin crying every so often... had not eaten since he was arrested and kept repeating that he wanted to die'* on 23 May; *'will possibly need a follow up psychiatric evaluation due to depression'* on 28 May; and *'seemed very depressed'* on 5 June.

25. Mr Tuffney said he did not believe that there were reasonable grounds to keep him handcuffed to the hospital bed, and nor was that compliant with the United Nations Standard (paragraph 13 of the annex). He said that it was unnecessary given an armed guard was in the room. He said that Embassy staff should have recognised that handcuffing him to the bed was possibly mistreatment, and considered making representations about it.

26. Mr Tuffney highlighted that the Embassy sent that form to the mistreatment panel on 29 May, whereas policy stated it should have been sent within 24 hours; and that contrary to guidance, the Embassy did not press Panamanian authorities for a response to the 1 August Note Verbale.

27. Mr Tuffney said that there was a well-publicised riot at La Joya in early August 2014 in which he was shot in the eye with a rubber bullet; and that the Embassy would have known what happened because another British inmate told them of the riot by email and/or the Panama Ombudsman office or Chief of Police for Prisons would likely have told them of it. Mr Tuffney said that because of the circumstances under which he was held, he could not say exactly how many emails he sent that went unanswered. He gave three examples, sent on 16 and 17 May 2014. Mr Tuffney said that until FCO's June 2017 reply to his complaint he had never had an explanation as to why a fan could not be provided, and he was sceptical about it given, he said, other prisoners were allowed fans. Mr Tuffney said that the Embassy could and should have done more to ensure he had a bed.

28. Mr Tuffney said that FCO's response to his concerns at the time was characterised by an unwillingness to become involved, an unwillingness they attributed at the time to an inability to intervene in the judicial process and he attributed to a desire to protect trade. In

that context, he thought that the Embassy had regarded him as a '*hindrance*' and that they had wanted to do only the absolute minimum for him. Mr Tuffney referred to his experience as a warden¹ because he had gotten to know Embassy staff through it and thought that their attitude to detainees was not compassionate or sympathetic.

29. Mr Tuffney said that although Embassy records were that they visited on 17 May and said what assistance they could provide, they had only given him the '*Prisoner pack*' and did not explain what assistance they could give. Mr Tuffney quoted the account in the pack about what prisons were like: for instance, it said that '*incoming calls can be received [by prisoners] once a week...each cell has a toilet and wash basin. Showers are mostly separate and shared....Clothes washing is possible at large outside sinks*'. Mr Tuffney showed a video of the area where prisoners were supposed to wash and highlighted that there was no water supply; and a photo of a room where he said roughly 150 prisoners were kept sleeping on mattresses with one, non-flushing, toilet. He contended that the pack gave a misleadingly positive description of prisons.

30. Although the Embassy noted that on 17 May he told them that other prisoners were threatening Mr Tuffney, which they took up with '*prison guards and they told me that Nick would be safe*' and separated, Mr Tuffney disputed that and said that although a consul had assured him they would act on his concern, the consul had left and once he had gone Mr Tuffney was humiliated in front of other prisoners and people by being made to strip. Mr Tuffney disputed the accuracy of the Embassy's 28 May understanding (that he was '*in improved health...upbeat and in good spirits*' and was eating) and highlighted how at odds it was with what the Embassy had seen only a few days before.

31. Mr Tuffney emphasised that his lawyer represented him only in the criminal case (not in concerns about his treatment or deportation) so he did not accept the Embassy's reliance on him, which he instead described as '*passing the envelope*'. More generally he said the Embassy would have known Panamanian lawyers were often '*charlatans*'.

32. When on 3 October the Panama authorities responded to the mistreatment allegations, the Embassy noted an intention to copy the response to Mr Tuffney and consider what, if any, other action to take. But Mr Tuffney said there was no contact about the response other than his being given a copy of it. Mr Tuffney highlighted a 24 January 2014 entry in Embassy records that '*actions pending*' included arranging a visit to where '*foreign prisoners are being held*' so did not accept FCO's response to the complaint that they could not have done so.

¹ a warden's role is to act as a link between a diplomatic post and the British community so that important information about safety and security can be communicated quickly and efficiently during a crisis. In exceptional cases wardens might be asked to assist in emergency consular assistance.

33. Mr Tuffney said that his 10 January 2014 visit to a clinic was prompted by the Red Cross (whom the Embassy contacted in September). He said the diagnosis of pneumonia and osteoarthritis had been made by another prisoner, a doctor. He disputed that Embassy staff had ever provided him with vitamins as FCO said they had.

34. Mr Tuffney said that writing his 8 January letter 2014 to the Ambassador had been time consuming and difficult; that he had not received a response, and that the action the letter had asked be taken was not considered or done. He accepted that some of what he was asking the Embassy to do (for instance to arrange transport to hearings and for a consular representative to be at hearings) was not normal practice; but contended that his circumstances were such that his case should have been considered exceptional (and FCO guidance acknowledged that in exceptional circumstances they might take different actions). He said that the exceptional circumstances included his ex-wife's political connections, the publicity around the case and the time the proceedings were taking. He said that his case had already been treated as '*exceptional*' when, in June 2013, the Embassy had made representations about where he should be transferred to (something guidance said would be undertaken '*only in exceptional circumstances*'). Mr Tuffney said that although FCO said that the 28 July 2014 letter was the response to his 8 January one, that letter was said at the time to be on account of a '*9 May...call*'.

35. Turning to Mr Tuffney's complaint that FCO did not attempt to contact immigration authorities in relation to his deportation, Mr Tuffney argued that his deportation was inhumane given it meant he would be (and still is) separated from family. He highlighted that the Embassy had made no record of the (by his account 24) August visit where, he said, he had expressed his concern about his pending deportation.

36. More generally Mr Tuffney considered that FCO staff did not have a sufficient training and understanding of human rights and that addressing that shortcoming might be an important way of preventing other people having the same experience he had. Mr Tuffney emphasised that his sense of isolation had been exacerbated by the lack of support from the very people he looked to for help. As far as the ongoing impact was concerned, he highlighted the separation from his children; said that his mother had been caused distress too, including in that she could not see her grandchildren; and said that he continued to self-harm. Mr Tuffney said that before his detention, he had never self-harmed but had started to do so in frustration with FCO actions that he considered had made matters worse for him. Mr Tuffney became upset at this point.

37. Mr Tuffney acknowledged the difficulty in disentangling the impact of FCO's actions from those of the events generally, but said that the issues raised in the complaint caused him anxiety and frustration, especially while in detention increasing his feelings of isolation and adding to the difficulties of dealing with a very stressful situation. He said that a better response to his concerns might have reduced the trauma of his experience because '*(a) I*

wouldn't have felt so isolated and b. their representations might have led to improvements in the conditions in which I was held'.

Our findings

38. We have carefully considered information and evidence provided by the parties. We find that in some of the areas of Mr Tuffney's complaint, FCO's actions were not consistent with the expectations of relevant guidance, and that that was maladministration; and that the maladministration would likely have added to his anxiety, frustration and sense of isolation. We find that that was an injustice to him that has not been remedied. We therefore uphold the complaint.

Response to the mistreatment allegations

39. Mr Tuffney complains that FCO gave inadequate responses to his allegations of mistreatment between 2013 and 2014. On 27 May the Embassy noted that, on 24 May, he raised '*mistreatment allegations*'. On 29 May FCO noted that Mr Tuffney '*has alleged that he was mistreated by Police. Please find attached completed mistreatment allegation form*'. But guidance was (paragraph six of the annex) that that action should have been taken within 24 hours rather than the five days that it took.

40. On 12 June the Embassy noted '*Mr Tuffney has given his permission for us to raise the allegations*'. On 8 July FCO noted '*we always want to make sure that individuals make informed decisions, including being aware on [sic] any potential adverse impact of steps taken*'. On 10 July the Embassy visited Mr Tuffney and noted he '*wanted us to file mistreatment allegations*'. But he had already asked them to do that, as they had noted on 12 June.

41. On 1 August the Embassy noted that they had raised the allegations via a Note Verbale, an approach that was consistent with guidance (paragraph eight of the annex). But guidance was also that '*If no response received within 1 week (urgent cases) or 3-4 weeks (less urgent cases)...agree follow up action with London*'; and FCO advised the Embassy in July that they might wait '*a month or two*' for reply. But there is no evidence of such action being taken between August and October 2013. On 3 October the Panama authorities responded. The Embassy noted an intention to copy the response to Mr Tuffney and consider what other action to take. On 10 October the Embassy '*handed Nick a copy of the response...He was not content*'. Relevant guidance includes (paragraph eight of the annex) that staff should '*Take any further follow-up action, in consultation...if unsatisfactory response received, agree follow up action with London*'. Mr Tuffney said there was no contact about the Panama response other than his being given a copy of it, and there is no evidence of the Embassy deciding whether to take any further action such as another Note Verbale, or other representations; or of FCO's mistreatment panel considering what to do.

42. We find that there was delay in taking up Mr Tuffney's allegations; inaction between August and October 2013; and a failure to consider further action after then. We find that that was not consistent with FCO guidance, and was maladministration.

Letter to the Ambassador of 8 January 2014

43. Mr Tuffney complains that FCO failed to respond to his letter to the Ambassador of 8 January 2014. FCO said in their 16 June 2017 letter that the Embassy replied on 28 July. They acknowledged that it would have been helpful to have kept Mr Tuffney updated in the meantime. As he highlighted, the letter was in part a request that exceptional action (such as that a consular representative to be at hearings) be considered. As well, the 28 July letter was said to be written on account of a 9 May phone call from Mr Tuffney, rather than a reply to his letter and there is no contemporaneous record that the Embassy were working on the reply to the 8 January 2014 letter. FCO highlighted to us three visits (15 January, 27 March and 17 April) and a phone call (9 May) before the 28 July letter. In the record of the 27 March visit the Embassy noted that they could not help secure transport to a hearing. Neither the rest of that record or those of the other two visits or of the 9 May phone call address the other issues in the letter. There is no evidence that the Embassy considered the 28 July letter to be the substantive response at the time. In the context of Mr Tuffney's then isolation, some indication that the Embassy were considering the extent to which they might help him in the immediate term would have been important. Our Principles of Good Administration (paragraph two of the annex) include '*Being customer focused*', which in turn includes dealing with people helpfully, promptly and sensitively, bearing in mind their individual circumstances. We find that the Embassy's handling of the 8 January letter was not sufficiently sensitive and did not take account of his circumstances; and that that was maladministration.

Failure to visit Mr Tuffney at La Palma police station

44. Mr Tuffney complains that FCO did not visit him at the detention facility at La Palma Police Station in Darien. He was there from 28 May until 5 July 2013. The Embassy saw him in hospital on 24 May and found him '*low in energy...visibly depressed and would begin crying every so often. Nick had not eaten since he was arrested and kept repeating that he wanted to die*'. On 28 May the Embassy noted that Mr Tuffney was at a police station separate from other detainees; and that a doctor had said he was '*upbeat and in good spirits*' but would likely need psychiatric evaluation. On 3 June the Embassy noted a conversation with Mr Tuffney's lawyer, who '*told us that a doctor will carry out some exams on Nick to check on his mental and physical health...Nick is eating and in better health*'. On 5 June the Embassy sought FCO's '*advice....[Mr Tuffney] expressed suicidal feelings...seemed very depressed*'. On 6 June FCO said that '*it would be a good idea to speak with him to check on his wellbeing*'.

45. Mr Tuffney had in May made his first allegation of mistreatment, and relevant guidance (paragraph four of the annex) includes that '*we are publically committed to ensuring that*

British nationals are treated in accordance with international standards'. The Embassy had also noted a number of concerns about his wellbeing; and guidance includes that *'posts may visit as frequently as twice per month where conditions are extremely poor'*, that they should *'continue to visit as often as you consider necessary during the remand period'* and that vulnerable prisoners might include those where the nature of the offence may put them at risk. Although in the meantime the Embassy noted (arguably surprisingly) positive updates on Mr Tuffney's wellbeing, given the charges, what Embassy staff had seen for themselves and the 6 June FCO advice, we find that the Embassy's decision not to visit Mr Tuffney in that period was not consistent with FCO's advice and guidance and was maladministration.

Failure to adequately follow-up concerns for health

46. Mr Tuffney complains that FCO did not adequately follow up concerns for his health. We have already found that the Embassy failed to act, including by visiting him, on their own concerns about his wellbeing between 28 May and 5 July 2013.

47. After that, on 13 August his family told the Embassy they wanted them to seek medical attention. The Embassy did so and chased a response early the next month. On 16 September they sent a medical attention request to the Red Cross. On 10 October staff visited Mr Tuffney and noted he asked them for help in relation to medical attention. Although there is no contemporaneous record of it, FCO say the Embassy chased that attention on 15 October. On 7 November the Embassy visited Mr Tuffney and noted that he said he had been on a waiting list to visit a clinic for a number of weeks. On 21 November they noted that prison authorities said they *'are facing serious difficulties taking ill prisoners to the clinic...police would only transport the seriously ill.'* On 5 December the Embassy chased medical attention and were promised some would be provided before the end of the week. But by 8 January 2014 it had not been provided and the Embassy contacted the Panama Ombudsman office. On 10 January they were told that Mr Tuffney had been to a clinic.

48. Relevant guidance includes (paragraph 10 of the annex) that *'staff should take all issues of ill health seriously'*. In Mr Tuffney's case, after July 2013, Embassy staff regularly chased the provision of medical attention, including in that they explored other avenues (Red Cross and the Panama Ombudsman) when direct representations were proving unsuccessful. We are satisfied that FCO's actions after 5 July were consistent with relevant guidance. Given the passage of time since the events in the complaint, we are unable to reconcile the conflicting accounts as to whether Embassy staff gave Mr Tuffney vitamins as they recorded and he disputed.

Failure to adequately follow-up other welfare concerns

49. Mr Tuffney complains that FCO did not adequately follow up other welfare concerns. In particular he first complains that Embassy staff did not provide him with a fan. He said that until FCO's June 2017 reply to his complaint he had never had an explanation as to why a fan could not be provided, and he was sceptical about it given that, he said, other prisoners were

allowed them. According to records made at the time, on 17 April Embassy staff were told the fan was not allowed by the Director of the Prison. There is no record that Mr Tuffney or anybody else gave them grounds to doubt that explanation or pursue the matter at the time.

50. Second, Mr Tuffney said that the Embassy could and should have done more to ensure he had a bed at la Joya prison. On 10 July the Embassy noted that Mr Tuffney was sleeping on the floor, and, as set out, were aware of his then health problems. FCO's June 2017 letter said that the Embassy had repeatedly lobbied *'on issues such as the lack of beds'* with no success. But there is no evidence of that lobbying in the records they sent us. In the absence of that evidence and given Mr Tuffney's then health, we find that the Embassy did not comply with relevant guidance (paragraph ten of the annex) that *'staff should take all issues of ill health seriously'*, and that that was maladministration.

51. Third, Mr Tuffney said that although FCO said that the Embassy were unable to inspect sleeping accommodation, the 24 January 2014 record of an intention to *'organise a visit'* indicated otherwise. Nevertheless, there is nothing in FCO's guidance to suggest that that was an option for the Embassy.

52. Mr Tuffney's fourth welfare concern is that Embassy staff failed to act on (as they recorded) seeing him handcuffed to a hospital bed on 24 May 2013. In their June 2017 response to the complaint FCO said that they had no control over what Panamanian authorities said was local law that *'detainees...be chained when in public areas'*. Mr Tuffney did not believe that there were any reasonable grounds to keep him handcuffed to the hospital bed, and said that it not compliant with relevant standards (paragraph 13 of the annex). He said that it was unnecessary given an armed guard was in the room. He said that Embassy staff should have recognised that handcuffing him to the bed was possibly mistreatment. The relevant standard indicates that such restraint could be used only in specific circumstances; and there is nothing in the records made at the time to show that Embassy staff considered making enquiries about the reason for Mr Tuffney's restraint. Relevant guidance includes (paragraph four of the annex) that *'we are publically committed to ensuring that British nationals are treated in accordance with international standards'*. We find that FCO's failure to consider taking any action was not consistent with that commitment and was maladministration.

Failure to answer emails

53. Mr Tuffney complains that FCO failed to answer his emails. Mr Tuffney could not say exactly how many emails he sent that went unanswered. He sent evidence of three, sent on 16 and 17 May 2014. FCO's response to the complaint to them said the Embassy had received *'few'* emails from Mr Tuffney without specifying when or how they had dealt with them. There is no evidence in their records of emails from him. Given the passage of time since the events in the complaint, we are unable to confirm whether the Embassy received the only three emails Mr Tuffney can evidence, and we do not uphold this part of the complaint.

Failure to act on account of prison riot

54. Mr Tuffney complains that FCO did not enquire about his condition after a prison riot. Mr Tuffney explained various possible means by which the Embassy could have known about the riot; but FCO's June 2017 response to the complaint to them said that they had no record of being told of any cause for concern in relation to that and nor have we seen such evidence in the records. Although Mr Tuffney's suggested means seem plausible, in the absence of evidence that the Embassy did not act on information about him that should have prompted action, we see no evidence of maladministration in this part of the complaint.

Inadequate information about what detainees might expect

55. Mr Tuffney complains that FCO provided inadequate information about what detainees might expect. The Prisoner pack Mr Tuffney was given (paragraph 12 of the annex. Although dated September 2011, FCO told us that it was updated in March 2013) includes, under prison conditions, that *'Prisoners say that...things can change on a whim, so the advice of more experienced prisoners, plus your own common sense, is essential'*. It says that over-crowding is a major problem; that conditions at La Joya prison are *'very poor'*; and that *'incoming calls can be received [by prisoners] once a week...each cell has a toilet and wash basin. Showers are mostly separate and shared....Clothes washing is possible at large outside sinks'*. Mr Tuffney showed us a video of the area where prisoners were supposed to wash and highlighted that there was no water supply; and a photograph of a room where he said roughly 150 prisoners were kept sleeping on mattresses with one, non-flushing, toilet. We note that in April 2017 the Embassy said the United Nations Human Rights Council had, in 2015, described prison conditions in Panama as poor; and FCO's 16 June 2017 letter accepted that prison conditions in Panama in some cases did not meet international standards. Although the United Nations' comment was after Mr Tuffney's detention, the Prisoner Pack was unchanged since 2013. Relevant guidance is that organisations should ensure that information and advice is clear, accurate and complete. We find that the failure to update the Prisoner Pack to more accurately reflect prison conditions was maladministration.

Failure to contact immigration authorities in relation to deportation

56. Mr Tuffney complains that FCO did not attempt to contact immigration authorities in relation to his impending deportation. On 9 May 2014 the Embassy noted that he told them his lawyer had told him that his immigration permit would be cancelled meaning *'he would be deported...he doesn't want to be...We told Nick we could check with the Panamanian authorities if he could re-apply for his permit if he was determined not guilty, but we could not interfere'*. In July the Embassy told Mr Tuffney they had made representations to the authorities about his immigration status should he be found innocent (but did not send us direct evidence of the representations). According to a later letter they sent, in August staff visited Mr Tuffney at a detention centre where they noted *'your wish to remain in Panama'*. But there is no record of that meeting, of any action being taken on account of Mr Tuffney's wish, or of any decision not to take any action. Relevant guidance includes (paragraph 10 of

the annex) that the government reserve the right to make representations and *'if the person concerned requests that representations be made, it should be considered whether to make them'*. Given the lack of evidence of any consideration, we conclude on the balance of probabilities that there was no such consideration and that that was maladministration.

Injustice

57. In order to uphold a complaint, we need to consider whether an injustice arose in consequence of maladministration we identify. Mr Tuffney said that as a result of the failings, he has been caused ongoing anxiety, frustration and increased feelings of isolation adding to an already very stressful and traumatic situation, and has self-harmed. Mr Tuffney emphasised that his sense of isolation had been exacerbated by the lack of support from the very people he looked to for help. He highlighted the separation from his children; and said that his mother had been caused distress too, including in that she could not see her grandchildren. He acknowledged the difficulty in disentangling the impact of FCO's actions from those of the events generally, but said that a better response to his concerns might have reduced the trauma of his experience because *'(a) I wouldn't have felt so isolated and b. their representations might have led to improvements in the conditions in which I was held'*. He seeks an explanation, apology and service improvements to prevent other people having similar experiences; that FCO seek to recover his belongings from a detention facility; and a financial remedy of £5,000 for him and his family for the ongoing distress, pain and suffering they have been caused. We find:

- that the Embassy's actions in relation to the mistreatment allegations were not consistent with FCO guidance, and that that was maladministration.
- that the Embassy's handling of the 8 January letter was not sufficiently sensitive and did not take account of Mr Tuffney's circumstances; and that that was maladministration.
- that the Embassy's decision not to visit Mr Tuffney between 28 May and 10 July 2013 was maladministration.
- that the Embassy could and should have done more to ensure he had a bed at la Joya prison.
- that Embassy staff failed to act on seeing Mr Tuffney handcuffed to a hospital bed on 24 May 2013.
- that FCO provided inadequate information about what detainees might expect.
- that FCO did not attempt to contact immigration authorities in relation to his impending deportation.

58. Mr Tuffney acknowledges that disentangling the impact of FCO's actions from the impact of the circumstances he was in is extremely difficult. Given the response to the August 2013 Note Verbale about the mistreatment allegations, it would be difficult to confidently and robustly say that further representations about those and other mistreatment allegations and deportation would have achieved more. Given the poor conditions in Panama prisons, it is also uncertain that representations about the lack of a bed would have been

successful; and nor can we say that the Embassy would have taken the action he sought in his 8 January 2014 letter to the Ambassador had they considered the action the letter asked for at the time.

59. But as Mr Tuffney says, FCO's lack of support would have added to his anxiety, frustration and sense of isolation throughout his 16 months in custody and perhaps especially between 28 May and 10 July 2013; and he might have been better prepared for what to expect had information been better. The UN Special Rapporteur said that inadequate conditions had a negative impact on Mr Tuffney's physical and mental integrity. As well, Mr Tuffney is separated from his children; and says that he continues to self-harm. He visibly found discussing the events with us upsetting. As far as the separation is concerned, we cannot say that that would have been avoided had FCO done any more but there remains uncertainty for Mr Tuffney about the potential lost opportunity. Turning to the self-harm, Mr Tuffney said that before his detention, he had never self-harmed but had started to do so in frustration with FCO actions, and we have already said that FCO's lack of support would have added to his frustration. We find therefore that FCO's lack of support likely contributed to his beginning to self-harm. We find these were and are injustices to him.

Recommendation

60. In considering recommendations, we have referred to our Principles for Remedy (paragraph two of the annex). These state that where maladministration or poor service has led to injustice or hardship, the public body responsible should take steps to provide an appropriate and proportionate remedy; should 'put things right' and, if possible, return the person affected to the position they would have been in if the poor service had not occurred. If that is not possible, they should compensate them appropriately.

61. Our view is that FCO should offer a financial remedy in respect of the non-financial loss Mr Tuffney was caused. In order to determine a level of financial remedy, we review similar cases where similar injustice has arisen. Following our review, we recommend that within a month of the final report, FCO:

- write to Mr Tuffney to apologise for the impact of the failings we have identified and explain what they have done or will do to prevent a repeat;
- consider what might be done to recover his belongings from a detention facility;
- update the Panama Prisoner Pack; and
- make a payment of £2,950 to compensate him and his family for that impact.

Our conclusion

62. We find that in some of the areas of Mr Tuffney's complaint, FCO's actions were not consistent with the expectations of relevant guidance, and that that was maladministration; and that that caused an injustice to him that has not been remedied. We therefore uphold the complaint.



Colin Jacobson
Senior Caseworker

28 October 2019

Our role and approach

1. Our role is to investigate complaints that individuals have been treated unfairly or have received poor service from organisations. When we investigate a complaint, we establish the facts of what happened and compare them with what should have happened. We reach a standard for what should have happened by looking at the Ombudsman's Principles, the law and internal policy and guidance relevant to the case. We decide whether there was a difference between what happened and what should have happened, and, if there was, whether it was so serious it was maladministration. If we think there were failings, we look at how they affected the individual and what, if anything, the organisation should do, to put that right.

The relevant standards in this investigation

Our Principles

2. Our Principles of Good Administration, of Good Complaint Handling and for Remedy² are broad statements of what public organisations should do to deliver good administration, provide good customer service and respond properly when things go wrong. The Principles of Good Administration particularly relevant to this complaint are '*Getting it right*', which includes acting in accordance with recognised quality standards, established good practice or both; '*Being customer focused*', which includes dealing with people helpfully, promptly and sensitively, bearing in mind their individual circumstances; and '*Being open and accountable*', which includes ensuring that information, and any advice provided, is clear, accurate and complete. The Principles for Remedy include that where maladministration or poor service has led to injustice or hardship, the public body responsible should take steps to provide an appropriate and proportionate remedy; should 'put things right' and, if possible, return the person affected to the position they would have been in if the poor service had not occurred. If that is not possible, they should compensate them appropriately.

FCO

3. According to then FCO guidance '*Courts and Trials*' and '*Prisoners and Detainees*' British nationals in custody should be advised that staff can offer support, but cannot '*get special treatment...can offer basic information about the local legal system...give you a list of local interpreters and local lawyers if you want, although we cannot pay for either*'; and '*If*

² you can find more detail about our Principles at <http://www.ombudsman.org.uk/improving-public-service/ombudsmansprinciples>.

appropriate, we will consider approaching the local authorities if you are not treated in line with internationally-accepted standards...With your permission, we can take up any justified complaint about ill treatment, personal safety, or discrimination...make sure that any medical or dental problems you might have are brought to the attention of any police or prison doctor'. It says that 'local authorities may have a policy of deporting foreign nationals after they have completed a prison sentence and we cannot prevent them from doing this'.

4. The guidance goes on that 'we are publically committed to ensuring that British nationals are treated in accordance with international standards' and 'We will visit...prisoners...at least once a year and posts may visit as frequently as twice per month where conditions are extremely poor'; and elsewhere that staff should 'continue to visit as often as you consider necessary during the remand period' and that vulnerable prisoners might include those where the nature of the offence may put them at risk.

5. The guidance says staff can intervene when they have concerns for the health, welfare or human rights of British nationals or fear they are being unlawfully or unjustifiably discriminated against; but 'do not have to intervene even if we have grounds to do so. There may be many reasons not to do so, not least because we may judge intervention to be likely to be counterproductive. Where we have the grounds and decide upon a course of action, interventions should be appropriate and as effective as possible. We should decide who we should intervene with...and how to do so (eg a discreet phone call, a note verbale, a ministerial letter). We should not do anything that constitutes interference in the internal affairs of a sovereign state'.

6. The guidance says that 'Treatment which does not amount to torture may still constitute cruel, inhuman or degrading treatment or punishment, which is prohibited under international law...You should report to the Human Rights Adviser...all cases where allegations of torture or mistreatment are brought to your attention...complete the prisoner mistreatment allegation proforma and send to key contacts in London (by email) within 24 hours of receiving the allegation'.

7. Under the heading 'Action for consular officers' the guidance says that 'action we can take in response to claims of torture or mistreatment is to bring the case urgently to the attention of the relevant authority, with the individual's consent, demanding an end to the torture or mistreatment, and that the incident is investigated and the perpetrators brought to Justice. Only the local or national authorities are in a position to take this action...If a British national asks you to take up their complaints, you should consult the Human Rights Adviser urgently on next steps, which will generally be to make representations to the relevant authorities. There will be a strong presumption that allegations of torture or mistreatment should be raised vigorously... One option is to do so formally through a Note Verbale. The Note should not imply that we are offering any view as to the substance of the allegations but should express concern at the allegations and request that a prompt,

impartial investigation be undertaken...You should raise our concerns if it appears that the process was not comprehensive or impartial'.

8. A summary of how to deal with allegations of torture/mistreatment includes that staff should *'Inform the Human Rights Adviser, the Head of Assistance Department, the Head of Mission, Post's political section, and your CCT desk officer of any allegations of torture/mistreatment; With detainee's permission, and after consulting Human Rights Adviser, send a Note Verbale seeking investigation of allegations; If no response received in reasonable timeframe, depending on circumstances of the case and on in-country norms or if unsatisfactory response received, send a follow up Note Verbale; Take any further follow-up action, in consultation'*. It says *'You should always follow up the request for an investigation to ascertain the outcome. You should raise our concerns if it appears that the process was not comprehensive or impartial...If no response received within 1 week (urgent cases) or 3-4 weeks (less urgent cases), or if unsatisfactory response received, agree follow up action with London'*. The guidance says that a FCO mistreatment panel will carry out a monthly review of all cases partly *'to identify cases that we will pursue/continue to pursue (and to consider our method of lobbying'*; and that a Pro Bono Lawyers Panel provides advice *'where we have concerns about due process and human rights violations'* or more generally if it appears there may be something the lawyer can assist with.

9. The guidance says, under prison transfer, that *'only in exceptional circumstances would we consider supporting or resisting an internal prison transfer. If Post consider that there were humanitarian or welfare reasons to do so they should consult'* FCO.

10. Under Deportation of British nationals the guidance says that the government reserve the right to make representations in individual cases *'if the manner in which the power to deport or to exclude is exercised would cause hardship. If the deportation would be or is carried out in an arbitrary or inhumane manner, and if the person concerned requests that representations be made, it should be considered whether to make them'*. Under ill health the guidance says that *'staff should take all issues of ill health seriously and consider raising complaints about poor conditions with the prison authorities'*.

11. The guidance says that on the first visit to a detainee, staff should take a copy of a Prisoner Pack that is regularly updated and that includes information on the prison system. An Information Pack for British Prisoners in Panama dated September 2011 says that consular officers *'can answer questions about your welfare and about prison regulations but you must ask your lawyer or the court about legal matters'*. It says that the charity Prisoners Abroad offers practical support and advice. The pack goes on that *'it can take up to a year and sometimes more for case hearing....The Court is responsible for arranging the appointment of an interpreter. Consular staff cannot act as interpreters... The Ministry of Foreign Affairs should arrange a hearing in order to authorise or refuse a request for deportation. At this*

stage, the prisoner (and/or lawyer) could present a bid to remain in Panama, usually on humanitarian grounds (if family involved)'.

12. Under prison conditions, the pack says that 'Prisoners say that...things can change on a whim, so the advice of more experienced prisoners, plus your own common sense, is essential'. It says that over-crowding is a major problem; that conditions at La Joya prison are 'very poor'; and that 'incoming calls can be received [by prisoners] once a week...each cell has a toilet and wash basin. Showers are mostly separate and shared....Clothes washing is possible at large outside sinks'. It says that 'If you experience serious harassment, threats or violence you should report this to the Embassy as soon as possible. We are able to take up allegations of mistreatment against a British national with the prison authorities. However, we will only raise concerns if you request that we do so'. Under medical and dental treatment, it says that prisoners can ask to see doctors but 'prisons have only few doctors and very often medicine is not available...If medicine is not available at the prison, you or the prison doctor should contact the Embassy. The cost of prescribed medication has to be covered either by the prisoner or, if a prisoner qualifies, through Prisoners Abroad'.

13. The United Nations Standard Minimum Rules for the Treatment of Prisoners was first adopted in 1955. Article 33 includes 'instruments of restraint [which are said to include handcuffs] shall not be used except in the following circumstances: (a) As a precaution against escape during a transfer...(b) On medical grounds by direction of the medical officer; (c) By order of the director, if other methods of control fail, in order to prevent a prisoner from injuring himself or others or from damaging property'.

