

Parliamentary Ombudsman Complaint form, additional information for Section 1

NICHOLAS TUFFNEY

Details of your complaint

I. Introduction

1. I was detained in very poor conditions and mistreated during my detention in Panama between 16 May 2013 and 9 September 2014. I was acquitted of all charges against me and deported from Panama on 9 September 2014. I have made a number of complaints to the Consulate/Embassy in Panama, and later to the Foreign and Commonwealth Office (FCO), about the insufficient support offered to me (as a British citizen) by the British Consulate/Embassy in Panama, during and following my detention. A rough timeline is as follows:

16 May 2013	Detained
8 January 2014	Original written complaint by letter to UK Ambassador
9 Sept 2014	Released from detention
12 June 2015	Complaint to UN Special Rapporteur on Torture
26 October 2015	Communication of UN Special Rapporteur on Torture to Panamanian Government
18 November 2015	Instructions to REDRESS to assist with case
15 January 2016	REDRESS makes request for documents under Data Protection Act/Freedom of Information Act
20 October 2016	FCO response to request for documents
8 March 2017	Further complaint to FCO
17 March 2017	FCO response
24 April 2017	Further complaint to FCO
16 June 2017	FCO response

2. The UN Special Rapporteur on Torture (the Special Rapporteur) investigated my case in response to a complaint made on my behalf dated 12 June 2015 **[Annex 2H]**, and sent a report to the Panamanian Government on 26 October 2015 **[Annex 2I]**. Subsequently, the Special Rapporteur published his report on communications transmitted to Governments **[Annex 2J]**:

In the light of the absence of information to contradict what has been argued, the Special Rapporteur concludes that sufficient grounds exist in the arguments presented... 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 (CAT).*¹

3. Following my complaints to the FCO and their responses, I confirm that I am not satisfied with their responses to a number of the complaints and wish to pursue my complaints about the issues set out below. All of these issues have been raised before in my complaint letters (dated 8 January 2014, 8 March 2017, 24 April 2017) and/or in the FCO's responses dated 17 March 2017 and 16 June 2017.
4. I refer below to various documents which are attached to this complaint:

Annex 1: Documents I received from the FCO as a result of a request made under the Data Protection Act/Freedom of Information Act (the FOI documents) – referred to below as follows: **[FOI p. XX]**. The FOI documents are paginated in the bottom right corner. Some of these documents were provided to me with redactions so the documents I have seen are incomplete.

Annex 2:

- A. Consular internal and public guidance (2009) – Chapter 12: Courts and Trials² **[2009 Guidance, Chapter 12]**
- B. Consular internal and public guidance (2009) – Chapter 13: Prisoners and Detainees³ **[2009 Guidance, Chapter 13]**
- C. Consular torture and mistreatment reporting guidance⁴ (undated)
- D. FCO, *Support for British Nationals Abroad: A Guide* (2011)
- E. FCO, *In prison abroad* (2011)
- F. Medical Certificate dated 28 May 2013 (in Spanish)
- G. My emails to the Embassy dated 16 & 17 May 2014
- H. Complaint to UN Special Rapporteur on Torture dated 12 June 2015
- I. Communication of UN Special Rapporteur on Torture to the Panamanian Government dated 26 October 2015 (in Spanish)
- J. UN Human Rights Council, *Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (Addendum: Observations on communications transmitted to Governments and replies received)* dated 24 February 2016
- K. My further complaint to FCO dated 8 March 2017
- L. My additional information sent to the FCO dated 4 April 2017
- M. FCO response dated 12 April 2017 **[FCO's First Response]**
- N. My further complaint to FCO dated 24 April 2017
- O. FCO response dated 16 June 2017 **[FCO's Second Response]**

¹ UN Human Rights Council, Report of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (Addendum: Observations on communications transmitted to Governments and replies received), 24 February 2016, A/HRC/31/57/Add.1, para.244, informal translation from Spanish to English prepared by REDRESS.

² The document was obtained as a result of an FOI request in 2014 (FOI Request, Ref: 0606-14). Available here:

<https://www.gov.uk/government/publications/foi-release-consular-internal-and-public-guidance>

³ Ibid.

⁴ The document is undated but I understand it was obtained as a result of an FOI request in 2011 (FOI Request, Ref: 0710-11). Available from:

<https://www.whatdotheyknow.com/request/78186/response/197468/attach/html/4/Torture%20and%20Mistreatment%20Reporting%20Guidance.doc.html>

II. Complaint 1: Inadequate response to mistreatment allegations

5. I am not satisfied with the FCO's response to my previous complaints about the inadequate response to my mistreatment during my detention in Panama – see for example, the **FCO Second Response**, questions 1, 4, 10 and 14.
6. The FOI documents confirm that I raised mistreatment allegations with Consular/Embassy staff on two specific occasions during my detention. The 2009 Guidance in place at the time stated **[2009 Guidance, Chapter 13, para. 66]** that consular officials shall:
 - *Ask detainee whether they have been mistreated*
 - *Ask detainee's permission to raise any allegations with the authorities*
 - *Ensure detainee is aware of local complaints procedure and has access to local lawyer*
 - *Inform the Human Rights Advisor, the Head of Mission, and Heads of Assistance Group and Human Rights and Assistance Policy Team of any allegations of torture/mistreatment*
 - *With detainee's permission, and after consulting Human Rights Advisor, send a Note Verbale seeking investigation of allegations or support any other action as directed by London*
 - *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 (this could include a further Note Verbale, senior level call on the MFA, or even ministerial engagement in serious cases)*
 - *It may also be possible to coordinate international action, e.g. enlisting the help of EU colleagues to undertake joint lobbying or an EU demarche – or the detainee can approach the European Court of Human Rights, Human Rights Council, Committee Against Torture or UN Special Rapporteur on Torture*
7. In addition, the "Consular torture and mistreatment reporting guidance" **[Annex 2C]**, stated that local Consulates/Embassies should "ensure the detainee is aware of any local complaints procedure..." and "ensure the detainee has access to medical treatment if necessary". It also directed:

Complete the prisoner mistreatment allegation proforma and send to key contacts in London (by email) within 24 hours of receiving the allegation.

In addition, the FCO's *Support for British Nationals Abroad: A Guide* (2011) **[Annex 2D, pp17-18]** stated as follows:

If 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 with the police or prison authorities.

The FCO's *In prison abroad* (2011) **[Annex 2E, p3]** stated as follows:

...[W]e can... consider approaching the local authorities if you are not treated in line with internationally accepted standards...

...[We can]... with your permission, take up any justified complaint about ill-treatment, personal safety, or discrimination with the police or prison authorities...

II.1. Insufficient response to first mistreatment allegation: 24 May 2013

8. I made the first allegation of mistreatment to Consular officials on Friday 24th May 2013 at the San José de la Palma Hospital in Darién **[Case note dated 27 May 2013, FOI p25; Mistreatment Form dated 24 May 2013, FOI p26]**. The allegations can be summarised as follows:

- Made to remove clothes and made to stand naked in front of other prisoners
- Police and inmates took belongings
- Made to sign documents in Spanish which were not understood
- Guards told inmates the nature of the charges being faced

9. Amongst other things, the Mistreatment Form completed by Consular officials records the following:

Is medical treatment required? N/A

Any additional vulnerabilities...to be aware of? N/A

Have we informed detainee of any local complaints procedures and checked they have a lawyer? We have not informed A/N about local complaint procedures, but he does have a lawyer.

10. The Consular officials responses as recorded in the Mistreatment Form are inadequate for the following reasons:

- (a) Medical treatment is stated to be “N/A”, yet elsewhere the Consular officials report that:

Nick was handcuffed by his ankle to the hospital bed and appeared low in energy. He had an IV in his arm and they were giving medicine for his stomach...Nick was visibly depressed and would begin crying every so often...[He] had not eaten since he was arrested and kept repeating that he wanted to die... [Case note 27 May 2013, FOI p25]

Nick will possibly need a follow up psychiatric evaluation due to depression... [Case note dated 28 May 2013, FOI p27].

[Nick] expressed suicidal feelings... [and] seemed very depressed [Case note dated 5 June 2013, FOI p33].

- (b) Additional vulnerabilities are said to be “N/A”, yet elsewhere the Consular officials report that:

[Nick] also told us that the guards told the inmates what the charges were against him and that caused [sic] him problems... [Case note 27 May 2013, FOI p25]

- (c) Consular officials state that they did not inform me of local complaints procedures, although they note that I did have a lawyer. This is contrary to the 2009 Guidance which I understand was in place at the time (see above) which states:

Ensure detainee is aware of local complaints procedure and has access to a local lawyer [my emphasis].

11. The Mistreatment Form was not forwarded to the FCO mistreatment panel until 5 days later **[Case note dated 29 May 2013, FOI p29]**. This is contrary to the policy, which states that it should have been sent to London within 24 hours (see the “Consular torture and mistreatment reporting guidance” **[Annex 2C]** quoted above). There was a second undated email apparently also sending the mistreatment form **[apparently attached to the Case note dated 6 June 2013, FOI p35]** but it is not clear if this was sent or to whom.
12. Although I disagree with the FCO’s final conclusion that the only mistreatment issue was being required to strip in front of the other prisoners⁵ **[see Case note dated 10 July 2013, FOI p42]**, I do not think it is sufficient for them to take around six weeks (from 24 May until 10 July 2013) to reach this conclusion. In addition, had I been advised of the opportunity to pursue a complaint through the local human rights Ombudsman, I would have done so.

II.2. Insufficient response to second mistreatment allegation: 15 July 2013

13. No Mistreatment Form was completed with regard to this allegation, which is included in the Prison Visit Form dated 15 July 2013 **[FOI p48]**. This appears to be contrary to the policy mentioned above. The second mistreatment allegation can be summarised as follows:
- Police officers in La Palma Police Station kept me chained to metal bars, and would not allow me to walk
 - Police officers in La Palma Police Station would not let me go to the bathroom or wash my clothes.
14. The Case Note dated 19 July 2013 **[FOI p50]** then confirms that there had been a “mistreatment review”, although it is not clear if this relates to the First Mistreatment Allegation or the Second, or both, and it is not clear what the outcome was of the review.
15. Following internal Consular discussions about how to make representations about my mistreatment allegations, a *note verbale* was sent to the Panamanian Ministry of Foreign Affairs (MFA) on 1 August 2013 raising both mistreatment allegations **[Chronology at FOI**

⁵ In fact, female police officers were also present, but this is not reflected in the FCO comments.

p91; draft note verbale at FOI p52]. I think this *note verbale* could and should have been sent much sooner considering the seriousness of the allegations.

16. From the FOI documents, and contrary to the Policy quoted above **[2009 Guidance, Chapter 13, para 66]**, it does not appear that the Consulate/Embassy pressed the MFA for a response in the subsequent months. The MFA's eventual response dated 3 October 2013 denied all the allegations **[FOI pp57-58; chronology in FOI p92]**. It is clear from the MFA's response that the authorities did not investigate the allegations comprehensively, which is also confirmed by the fact that I have never been questioned by Panamanian investigators or examined by doctors to verify the allegations. The Consulate/Embassy do not appear to have taken the other steps contemplated in their own Policy when an "unsatisfactory response" is received. The Policy **[2009 Guidance, Chapter 13, para 61]** states that:

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.

17. It does not appear that the flat denial made by the MFA has been questioned in any way by the Consulate/Embassy. I was handed a copy of the MFA response during the Consular visit on 7 November 2013 **[FOI p64]**, although I didn't understand the details of the letter as my Spanish is not good. I expressed my concerns at the time at the lack of follow-up by the Consulate/Embassy.
18. The Consulate/Embassy did not apparently seek the involvement of the local Ombudsman (*Defensoria del Pueblo*) until 8 January 2014 **[Chronology in FOI p93]**, that is, over 7 months after I had first raised my mistreatment with Consulate officials. Even then, the Ombudsman didn't visit until 17 April 2014 **[Prison Visit report at FOI p109-112]**.
19. Regarding the Ombudsman's involvement, the **FCO's Second Response** (June 2017, question 4) was that:

In April 2014, the Panama Ombudsman's office stated that they provided you with a copy of their recommendations and assistance regarding your claims.

20. I was not provided with any copy of the Ombudsman's office's recommendations and assistance regarding my mistreatment in April 2014. 17 April 2014 was the first time the Ombudsman had visited me in prison, which is also confirmed by the Consulate's records of the prison visit on 17 April 2014 **[FOI pp109-112]**, stating that "[the Ombudsman's representative] would be opening a file under the allegations [Nick] had made in regard the mistreatment and torture experienced...". I was never provided with any report from the Ombudsman around this time (during the prison visit on 30 July 2014 I informed the Consulate/Embassy that I had not heard from the Ombudsman again **[FOI p121]**), and the first time I received a copy of any report from the Ombudsman was when the FCO sent one to me attached to the **FCO's Second Response** in June 2017 (the Ombudsman's report is dated April 2014).

21. I do not understand why it took the Consulate/Embassy so long to get the Ombudsman involved. They should have done this straight after my initial complaint in May 2013 (or I could have done it myself if they had informed me of the relevant local complaints procedures) or even after the MFA's denial was received in October 2013. Furthermore, the Consulate / Embassy failed to follow up with the Ombudsman after I had informed them in July 2014 that I did not have any response from the Ombudsman following his visit in April 2014. Indeed, it was only in June 2017 that the FCO sent me a copy of the Ombudsman's report.

III. Complaint 2: Failure to respond to my letter to the Ambassador dated 8.1.14

22. On 8 January 2014, I sent a letter to the Ambassador from La Joya where I was detained [FOI pp76-78]. I requested the Ambassador to do the following:

- "Confront" the Panamanian Government to ensure that I receive a fair trial
- "Confront" the Panamanian Government as to their responsibility for my health, treatment and compensation
- Ask Consular staff to arrange transport and other logistics for any trial, along with a translator and Consular attendance at the hearing
- Ask Consular staff to provide copies of all correspondence

23. On 9 May 2014 I called the Consulate/Embassy to raise several separate concerns (missing X-rays, patio time at the prison, immigration assistance, and repeated trial postponements) [FOI pp124-5].

24. I am not happy with the FCO's response to question 2 of the **FCO's Second Response**, where it states:

2. Explanation as to why the Embassy did not respond to my letter dated 08/01/2014 dated to the Ambassador.

Your letter was received on 22 January 2014 and you received a response from the Deputy Head of Mission on 28 July 2014. Our Ambassador was fully aware of your case. I am sorry for the delay in response; unfortunately, the Embassy needed more time to look into the points you raised. I recognise that it would have been more helpful for our staff to keep you updated on the progress of the Embassy's response, and I have reminded our consular colleagues of the importance of timely communication with detainees.

25. The FCO suggests in this response that they replied to my letter of 8 January 2014 with their letter of 28 July 2014, but the letter of 28 July 2014 [FOI p124] is stated to be specifically in response to a phone call from me on 9 May 2014 and makes no mention of the letter of 8 January 2014. I confirm that I did receive the FCO's letter of 28 July 2014 during their visit on 30 July 2014 [Case Notes dated 4 August 2014, FOI p119, and 7 August 2014, FOI p123]. The four points raised in my letter of 8 January 2014 [FOI pp76-77] are not those responded to in

the Embassy letter of 28 July 2014. The Embassy's letter of 28 July 2014 was clearly not a response to my letter of 8 January 2014, and I maintain that I have never received a response to my letter of 8 January 2014. The FCO response to my complaint in the **FCO's Second Response** is therefore misleading and inaccurate.

26. My original complaint letter dated 8 January 2014 **[FOI pp76-77]** included, amongst other things, a request for a consular representative to be present at my court hearing. Whilst I understand that the 2009 Guidance in place at the time **[2009 Guidance, Chapter 12, para 1]** states that Consular staff "do not normally attend court hearings", I am also aware that in "exceptional cases" court hearings may be attended. I would expect that my request for such attendance would be considered, that consideration would be given as to whether mine was an "exceptional case", and that the policy and any decision would be explained to me. It is clear that they thought that my situation was "exceptional" because the Ambassador made representations (by way of a letter to the Panamanian Vice Minister of Justice) in this period about where I should be transferred to (for example, see **[FOI pp41, 69, 91]**), and their 2009 Guidance **[2009 Guidance, Chapter 13, para 42]** says that such support for a prison transfer will be offered "only in exceptional circumstances". I also think that my situation should have been treated as exceptional because of (a) the concerns I had expressed to Consular officials about my ex-wife's political connections to Panamanian judicial bodies **[Case note dated 17 May 2013, FOI p15]**; (b) the multiple hearings which had been cancelled; and (c) my previous complaints about mistreatment.

IV. Complaint 3: Lack of visit to detention facility at La Palma Police Station, Darién

27. I had made allegations of mistreatment, was in poor health, in need of psychiatric follow up, and facing charges which left me at greater risk compared to other detainees. In spite of these vulnerabilities, I was not visited or contacted at all by Consular officials to check on my well-being in the six weeks or so whilst I was detained at La Palma Police Station (from around 28 May 2013⁶ to 5 July 2013).
28. The **FCO's Second Response** in this regard lists a number of other visits to other institutions, but does not mention La Palma:

6. Why the Embassy only visited me once in La Palma and did not communicate directly with me in any way.

Our records show that consular staff visited you on 17 May 2013 in Ancon, 24 May 2013 in Darien and made their first visit to you in La Joya on 11 July 2013.

29. Following my arrest and detention on 16 May 2013, I was held in the Ancón detention facility. From there I was transferred to the San José de la Palma Hospital in Darién on 24 May 2013, where I remained until I was transferred to the La Palma Police Station, Darién on 28 May 2013 **[Case Note dated 28 May 2013, FOI p27]**. On the same day of my transfer, the Consulate/Embassy were made aware of my transfer to the La Palma Police Station **[Case**

⁶ I am not sure of the date I was transferred from the San José de la Palma Hospital to La Palma Police Station, but the Case Note dated 28 May 2013 **[FOI p27]** suggests that it was on 28 May 2013.

Note dated 28 May 2013, FOI p27]. I remained in La Palma Police Station, Darién, for 38 days, until 5 July 2013 when I was transferred to La Joya **[Case Note dated 5 July 2013, FOI p41].**

30. The FCO Case Notes during this period confirm:

[REDACTED] told me that they believe Nick will possibly need a follow up psychiatric evaluation due to his depression, something his lawyer would probably request...He told me Nick was now speaking more and eating...Nick was upbeat and in good spirits. [Case Note dated 28 May 2013, FOI p27]

[Nick] expressed suicidal feelings... [and] seemed very depressed [Case note dated 5 June 2013, FOI p33⁷].

...Nick's attorney...explained that Nick needs to be transferred for his own welfare given that the facilities in Darién are not fit for purpose and keeping him there would be a violation of his human rights [Case note dated 20 June 2013, FOI p38].

31. Whilst the FCO Case note dated 11 July 2013 **[FOI p44]** states that "[Nick's] lawyer never told us of [the poor conditions] at La Palma", the last point above shows that this is quite clearly not the case.

32. The 2009 Guidance in place at the time **[2009 Guidance, Chapter 13]** states:

We are publicly committed to ensuring that British nationals are treated in accordance with international standards and that their welfare needs are met. Consular staff may also be asked to assist EU or Commonwealth nationals. Consular staff should keep in regular contact with prisoners, either by visiting personally or by telephone/letter. The frequency of visits should depend on local conditions and the prisoner's circumstances...(para 14)

We will ... visit all prisoners in the EU states, EEA countries, North America and Australasia once after sentencing, unless real need arises. We must visit prisoners in other countries at least once a year and posts may visit as frequently as twice per month where conditions are extremely poor. Do not visit more than is necessary (para 18).

33. In addition, the FCO's *In prison abroad* (2011) **[Annex 2E, p3]** stated as follows:

...[W]e can... visit you in prison and keep in touch with you by telephone or letter. In some countries, especially those where conditions are difficult, consular staff will aim to make regular visits. In other countries, where prison conditions generally meet

⁷ This observation in the Case Note dated 5 June 2013 refers back to Case Note No31 which was not disclosed in the FOI documents, but is assumed to be dated on or before 28 May 2013 (Case Note No32 is dated 28 May 2013). Therefore the observation made in the Case Note dated 5 June 2013 does not imply that any visit took place to the La Palma Police Station on or around that date.

international standards, regular visits may not be considered necessary. In such countries, the Consulate will aim to keep in touch with you by letter or telephone.

34. There is no indication in the FCO documents that the Consular officials even considered a visit during the 6 weeks or so that I was detained in the La Palma Police Station. I feel that I was in an extremely vulnerable situation and was in particular need of visits at that vital time. I understand that the poor conditions at the La Palma Police Station were well known, that regular inspections of the facility by the Ombudsman confirmed this, that attempts had already been made in 2012 to close the prison completely, and that plans had been made to build a new prison to replace it.⁸ It is clear that the Consulate/Embassy thought I was in a vulnerable situation because the Ambassador made representations (by way of a letter to the Panamanian Vice Minister of Justice) in this period about where I should be transferred to (for example, see **[FOI pp41, 69, 91]**), and their 2009 Guidance **[2009 Guidance, Chapter 13, para 42]** says that such support for a prison transfer will be offered “only in exceptional circumstances”.
35. I do not understand how the Consulate/Embassy can assess without visiting me whether my treatment was in accordance with international standards. The Consulate/Embassy appear to have been relying on information provided to them by my Panamanian lawyer as to my well-being. However, my lawyer only saw me once at La Palma Police Station, and I believe that the Consular officials should have checked by speaking to me and/or undertaking a personal visit and not relying solely on what my lawyer said. Whilst the Consulate records that I had daily conversations with my lawyer **[Case Note dated 3 June 2013, FOI p30]**, this would have been impossible since I was chained to the front bars of the police station and had no phone or charging point for a phone. In any event, there does not appear to be any record of the Consulate having attempted to find a way to contact me directly during this period, confirming their failure to comply with their own guidance.

V. Complaint 4: Failure adequately to follow up health concerns

36. The Consulate/Embassy were aware of my health concerns by 22 May 2013 **[Case note dated 22 May 2013, FOI p19]**, but they did not adequately follow up the serious health concerns that were at that stage identified by the doctors, and this contributed to my having to wait until late January 2014 (some 8 months later) for a further medical consultation.
37. I am not satisfied with the FCO’s response to my complaint about this – see the **FCO’s Second Response** at question 17:

⁸ For example, see story from Ombudsman’s website dated 1 October 2014: http://www.defensoria.gob.pa/index.php?option=com_k2&view=item&id=5145:defensoria-del-pueblo-en-darien-entrega-donacion-a-privados-de-libertad&tmpl=component&print=1; Government announcement dated 26 January 2015: <http://www.mingob.gob.pa/darien-contara-con-nueva-carcel/>; Report on Human Rights: <https://photos.state.gov/libraries/panama/11567/reports/hrr13ptys.pdf> at p8

17. Why it took 18 months for the embassy to arrange for one doctors visit

You made consular staff aware of your health problems during a prison visit on 11 July 2013. Consular staff sent a medical request to Prison Services on 12 July 2013 and followed up on 13 August 2013 with calls to Prison Services. Prison

Services assured us you were scheduled to be seen by a doctor. An additional request was sent on 12 September 2013.

On 16 September 2013 consular staff contacted the Red Cross who stated they would undertake a medical support visit on 26 September 2013. On 22 November 2013, consular staff met in person with the Head of Prison Services as well as the Head of the Prison's Health Department, expressing concern about the lack of medical attention and the delays to appointments. They stated that several requests were sent for you to be seen by a doctor, however they have no control over missed appointments even where these may be due to lack of transportation and/or guards being unavailable to act as escorts.

Between December 2013 and January 2014, Consular staff made several more calls to raise this with the prison authorities and I understand you were finally seen by a doctor later in January. I am sorry that you had to wait so long for medical assistance but I am satisfied that consular staff did as much as they could to press the prison authorities on this matter.

38. The 2009 Guidance in place at the time **[2009 Guidance, Chapter 13, para 74]** states:

Many prisoners will suffer some form of illness. If a prisoner claims to be ill, or their family claims that the health of the prisoner is deteriorating:

DO

- *Take all issues of ill health seriously. Get as many details of the condition as you can and keep them on file. This is crucial for any action we take later on.*
- *With the prisoner's consent, keep records of any medical treatment a prisoner receives, including, if possible, the drugs they have been prescribed. This is extremely helpful for UK doctors when a prisoner is repatriated.*
- *Refer all requests from British Citizens for money to cover emergency medical treatment to PA*
- *Refer similar requests from BN(O)s to the BN(O) Assistance Unit in Hong Kong, which may be able to help.*
- *Discuss mental health cases with the Social Work Advisers.*

DO NOT

- *Provide any medication, prescription or otherwise, directly to prisoners. You are putting yourself and the prisoner at risk. A prisoner may misuse genuine medicine or have a bad reaction. We are not medically trained.*
- *Provide medication that is illegal or banned by the authorities.*

CONSIDER

- *Raising complaints about poor conditions with the prison authorities. Consult Assistance Policy & Prisoners Section.*

39. In addition, the FCO's *Support for British Nationals Abroad: A Guide* (2011) [Annex 2D, p18] provided as follows:

...[W]ith your permission, we can make sure that any medical or dental problems you might have are brought to the attention of any police or prison doctor.

40. The FCO's *In prison abroad* (2011) [Annex 2E, p3] stated as follows:

...[We can]... with your permission, ... ensure that any medical or dental problems you might have, and of which we are made aware, are brought to the attention of any police or prison doctor.

41. Although the FCO states in the **FCO's Second Response** (question 17, quoted above) that they were made aware of my health problems during a prison visit only on 11 July 2013, the FOI documents demonstrate that this is manifestly untrue. The Consulate/Embassy were aware of my health problems by 22 May 2013, at which point I had been taken to hospital in Darién [Case note dated 22 May 2013, FOI p19]. The Consular officials visited me in the hospital on 24 May 2013 and recorded the following information about my ill-health based on that one visit:

Nick was handcuffed by his ankle to the hospital bed and appeared low in energy. He had an IV in his arm and they were giving medicine for his stomach...Nick was visibly depressed and would begin crying every so often... [Case note 27 May 2013, FOI p25]

Nick will possibly need a follow up psychiatric evaluation due to his depression... [Case note dated 28 May 2013, FOI p27].

[Nick] expressed suicidal feelings... [and] seemed very depressed...A Doctor at the hospital told us that he may need a follow up psychiatric evaluation but has generally improved over recent days... [Case note dated 5 June 2013, FOI p33⁹].

42. In addition, the Certificate provided by the "Hospital San José - La Palma" [dated 28 May 2013, Annex 2F] confirms that I was seen by Dr Rolando Jiménez on 22 May 2013 and was diagnosed with a range of health problems including depression, attempted suicide, malnutrition, dehydration, stomach inflammation, urine infection and anaemia. The Certificate recommended "*seguimiento a sus patologías de fondo y evaluación por Salud Mental*" (follow-up of his underlying conditions and a mental health evaluation).

⁹ This observation in the Case Note dated 5 June 2013 refers back to Case Note No31 which was not disclosed in the FOI documents, but is assumed to be dated on or before 28 May 2013 (Case Note No32 is dated 28 May 2013).

43. The Case Note dated 28 May 2013 **[FOI p27]** states as follows:

I spoke with [REDACTED] at the hospital in La Palma regarding Nick Tuffney's condition. A colleague at the Embassy, [REDACTED] came to let us know that Nick has been transferred. We had not been told of this, so we called [REDACTED]. He told me that Nick was transferred today to the La Palma Police Station. An external doctor had come in to examine Nick and found him to be in improved health. [REDACTED] told me that they believe Nick will possibly need a follow up psychiatric evaluation due to his depression, something his lawyer would probably request.

44. This suggests that Consular officials spoke to a doctor at the hospital but it is not clear whether the Consulate has ever seen the Certificate, or considered the range of diagnoses which it lists. Contrary to the policy quoted above, they did not ask me for my consent to "keep records of any medical treatment". I believe they should have done this and should have requested a copy of the medical certificate from the hospital. The medical certificate does not appear in the FOI documents. I only obtained a copy myself after I had returned to the UK, when an Embassy employee requested a copy of the report on my behalf direct from the Hospital.

45. Rather than follow up themselves the need for further medical evaluation, the Consulate appear to have relied on information provided second hand by my lawyer on my health condition, and even they conclude that they should try to make direct contact with me:

...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 **[Case note dated 5 June 2013, FOI p33]**.

46. However, by this stage I had been moved to La Palma Police Station, and (as explained in Complaint 3 above) no visits or calls were made to me whilst I was there to undertake this follow up.

47. On 4 July 2013, the Consulate's Case Note recommends that I be transferred to another facility "where conditions are better in order to support [my] mental health" **[Case note dated 4 July 2013, FOI p40]**.

48. The Prison Visit report from the visit on 10 July 2013 confirms that I was "weak and...getting sick" **[Case note dated 15 July 2013 attaching Prison Visit Report, FOI pp46-49]** and the narrative report from the same visit confirms:

Nick told us that his knees and his legs were in bad shape due to the fact that while he was held in the police station in La Palma, Darién he was chained to a metal pole next to his cot and was not allowed the freedom to walk... **[Case note dated 11 July 2013, FOI p44]**

49. Later on, the Prison Visit report from the visit on 7 November 2013 states:

Nick seemed slender and presented difficulty walking...He ...complained that he had been on the list to be taken to the clinic for weeks and he had not been taken [Case note dated 7 November 2013 attaching Prison Visit Report, FOI pp62-65]

50. Despite this awareness, and the fact that there had still been no medical attention given to me to follow up on the concerns they had expressed as to my mental health as far back as May 2013, the FCO appear to agree that, once I had been transferred to La Joya (on 5 July 2013), I was not seen by a doctor until late January 2014. I accept that the Consulate/Embassy did make some efforts to contact the Panamanian authorities to try to secure medical treatment for me during that period, but my complaint remains that not enough was done, and the follow up could and should have been more rigorous. From the FOI documents, it appears that the following contacts were made to press for medical attention. However, it appears that there was only one effort per month from August to December 2013 by the Consulate to seek medical attention on my behalf, and I do not think this is adequate in the light of my precarious health situation as recognised by the consular staff themselves. It is evident that the following interventions did not result in me receiving the necessary medical attention:

Date	From	To	Nature of contact	Source
13.8.13	FCO Panama	Panama Prison Service	Telcon	FOI p54; FOI p91
12.9.13	FCO Panama	Prison Service	Email	FOI p55; FOI p92
15.10.13	FCO Panama	Prison Service	Unclear - "follow up"	FOI p92
21.11.13	FCO Panama	Prison Service	Face to face	FOI p67 & p70 [date different]; FOI p92
5.12.13	FCO Panama	Prison Service	Telcon	FOI p73; FOI p92
8.1.14	FCO Panama	Prison Service Clinic	Telcon	FOI p71; FOI p92
10.1.14	FCO Panama	Clinic	Telcon	FOI p75
10.1.14	FCO Panama	Prison Service	Unclear - "follow up" (twice)	FOI p92

51. I am surprised that around 25 September 2013 the Consulate/Embassy "[stopped] chasing the authorities" regarding the medical treatment, on the basis of advice they had received from the FCO in London to "obtain consent before requesting medical attention for prisoners" [FOI p92]. They say I confirmed this consent during their visit on 10 October 2013 [FOI p92] but they did not make the next request to the Prison Service until 15 October. Given that during the visit on 10 October 2013 they had noted that was "visibly weak" and with "difficulty walking" [FOI p92], I do not think they should have waited a further five days before pressing the Panamanian authorities again for medical attention. I do not think the Consulate/Embassy was dealing with my situation with the urgency my condition warranted.
52. I made an additional complaint related to the medical concerns, regarding the lack of follow-up to the Red Cross visit to La Joya on 26 September 2013 (see **FCO's Second Response** at Question 9):

9. Why was nothing done after the visit by the Red Cross of Panama whilst in the La Joya Facility.

The Red Cross visited you on 26 September 2013, a visit requested by the Embassy to facilitate your medical care. You did not provide us with any information following their visit or any agreements you had reached with them. We would not expect the Red Cross to discuss their visit to you directly with the Embassy, as this would be a breach of the Data Protection Act 1998.

53. I understand that the Red Cross may not be able to discuss their visit with the Consulate/Embassy, but as part of their general follow-up of my medical care I would have expected the Consulate to have asked me about the Red Cross visit, and particularly about what contacts the Red Cross might have intended to have with the Panamanian authorities.
54. Given my poor health at the time and the poor diet whilst in detention, the provision of vitamins would have helped my medical condition and general physical health. The Consulate/Embassy say that they did provide vitamins (see **FCO's Second Response** at Question 11):

11. Why were no vitamins ever provided?

Due to frequent changes in prison rules and regulations, we were not always able to provide the vitamins you requested. We were able to provide you with some vitamins on 10 October 2013. When consular staff were made aware that vitamins could not be provided, the Prisoners Abroad funding for this was instead given directly to you.

55. The Case Note dated 7 November 2013, for example, confirms that vitamins were supposedly provided to me on 10 October 2013 **[FOI p59]**. However, I did not receive any vitamins from the Consular officials who visited on that occasion, or indeed on any other occasion. Many other Embassies did provide vitamins on a regular basis to their detained nationals with whom I was incarcerated. I did receive Prisoners' Abroad funding (about \$90 every 4 months) via the Consular Officials of but my priority was to buy black market medication with this money for my health conditions, along with the purchase of water, toilet paper, cleaning supplies, bribes to prison staff so I could have exercise, cockroach spray, and paying for my clothes to be washed. Paying for all these things meant that I did not have money left to buy vitamins, which were particularly expensive to buy in the prison. If I had bought vitamins, I would not have had enough money left to buy anything else.
56. The Consulate's failure adequately to follow up the health concerns, combined with the long wait for a medical appointment, increased my feelings of isolation, added to the difficulties of dealing with a very stressful situation, and resulted in my medical conditions not being properly treated. I think that a better response from the Consulate/Embassy might have reduced the trauma of my experience, because (a) I wouldn't have felt so isolated, and (b) their representations might have led to more rapid treatment.

VI. Complaint 5: Failure adequately to follow up other welfare concerns

Failure to provide fan

57. A fan could have alleviated Panama's searing heat, especially given that I was detained (at La Joya) in a communal, overcrowded, metal- roofed building. I have seen the FCO's response to my concerns about their failure to provide me with a fan – see **FCO's Second Response** at Question 5:

5. Explanation as to why the Embassy did not stand up to the prison authorities when a fan they brought to the prison for me was refused; all other British detainees had a basic fan for free flowing air, a basic human right.

All electronic goods entering prison need to be officially approved by the Panamanian Prison Service. Although approval was initially granted, this was later rescinded. Prison authorities told us that this was due to concerns about potential voltage overload at the prison. The authorities explained to consular staff that this was a decision sent from the Prison Service and that all similar permissions were subsequently cancelled.

58. Whilst I understand that Prison Service decisions/policies may affect the Consulate's ability to provide requested items to inmates:

- a. Until the **FCO's Second Response** in June 2017, it had never been explained to me why the fan could not be provided. I think the Consulate should at least have explained this to me in April 2014 when permission to deliver the fan was supposedly refused.
- b. All other British inmates had fans which were supplied by the Embassy on previous visits; on every visit the Embassy brought fans in to British inmates. Some of the inmates sold the fans to other inmates to make money. On the day my fan was to arrive every British inmate received a fan except me, whereas my fan was refused by the authorities. I am sceptical about the FCO's response for this reason, and do not understand why they didn't question the authorities further.

Failure to ensure bed provided

59. The Consulate was aware of my need for a bed, and this is confirmed in the Case Note and report from the Prison Visit on 10 July 2013:

Nick told us that in La Joya he is sleeping on the floor [Case note dated 11 July 2013, FOI p44].

60. All the other British inmates had beds (which were not supplied by the Embassy). Most had bought them off other prisoners, or done deals to secure them. I have seen the FCO's response to my concerns about their failure to ensure that I was provided with a bed – see **FCO's Second Response** at Question 12. I understand that the Embassy may have asked in general terms for beds for the British prisoners, and that provision of the bed is not

ultimately within their control. But I believe that the Consulate/Embassy could and should have pursued my request more vigorously especially given my poor health condition at the time.

Failure to act on being handcuffed to hospital bed

61. Consular officials visited me on Friday 24th May 2013 at the San José de la Palma Hospital in Darién, and their report notes that I was “handcuffed by [my] ankle to the hospital bed” **[Case note dated 27 May 2013, FOI p25]**. There was a Guard posted inside my room with an AK47, Sergeant Luis Caisamo, and he was also in the room when the Consular/Embassy officials arrived.

62. I am not satisfied with the FCO’s response to my complaint regarding their failure to pursue this issue with the Panamanian authorities. Their response is at **FCO’s Second Response**, question 16:

16. Explanation as to why the consul did not object to authorities seeing me chained to a Hospital bed in La Palma, it is a Human Rights violation for any one being chained to a fixed obstacle, and my duration lasted 2 weeks chained to the same bed that my charity had donated.

The Panamanian authorities have told us that local law requires that all detainees, held by the Police be chained when in public areas or when being escorted. Unfortunately, this practice extends to hospitals where detainees are chained to their beds. We have no control over this policy.

63. The UN’s Standard Minimum Rules for the Treatment of Prisoners (Article 33)¹⁰ states that:

Instruments of restraint, such as handcuffs, chains, irons and strait-jackets, shall never be applied as a punishment. Furthermore, chains or irons shall not be used as restraints. Other instruments of restraint shall not be used except in the following circumstances:

- (a) As a precaution against escape during a transfer, provided that they shall be removed when the prisoner appears before a judicial or administrative authority;*
- (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; in such instances the director shall at once consult the medical officer and report to the higher administrative authority.*

64. I do not believe that, especially as an untried detainee, there were any reasonable grounds to keep me handcuffed to my hospital bed, and nor was this in compliance with the relevant international standard above. It was also totally unnecessary given that an armed Guard was also inside the hospital room. Whilst I accept that the Consulate/Embassy may have no

¹⁰ Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977

control over the Panamanian policy, it does not even appear to have been recognised as “mistreatment” by the Consular officials, and I believe that in the circumstances:

- a. It should have been dealt with as mistreatment, with the possibility of representations being made to the Panamanian authorities (as described under Complaint 1 above); and
- b. If a decision was made that such representations were not (for whatever reason) appropriate, this should have been explained to me.

65. The issue was not apparently raised in the *note verbale* sent to the Panamanian MFA on 1 August 2013 [Chronology at FOI p91; draft *note verbale* at FOI p52].

Failure to inspect sleeping accommodation (La Joya)

66. The FCO failed to inspect the poor conditions in my sleeping accommodation at La Joya. I do not accept the FCO’s explanation as to why they did not inspect my sleeping accommodation – see **FCO’s Second Response** at question 18:

18. Explanation as to why the Embassy refused to inspect my sleeping accommodation.

We were unable to comply with this request because The Prison Services grant permission only for access to the open area for Consular visits. The Ombudsman is able to inspect sleeping accommodation.

67. In the light of this response, it is unclear why it is noted in the Case Note dated 24 January 2014 that the “actions pending” on my case included:

Organise a visit to the quarters were [sic] the foreign prisoners are being held [FOI p89].

68. This would appear to suggest that a visit to our sleeping accommodation was being planned. A planned visit to our “quarters” would not be surprising, since many other Consulates/Embassies visited their nationals in the sleeping accommodation. Indeed, for countries with a lot of nationals in La Joya, there would not have been room to conduct the visits in the administration block. British and US nationals had their consular visits in the administration block because our numbers were small. Other Embassies, church groups and TV channels regularly came into our sleeping accommodation. I can see that the Consulate says that a request for such access was denied in April 2013 [Email of 6 December 2013, FOI p74]. However, it is not clear from the FCO response whether or not any request was made after this for access beyond the “open area”. If no request was made for such access during my detention, I think it should have been.

General concerns

69. I am aware of the fact that a number of other British inmates have raised (in writing) concerns about their treatment by the Consulate/Embassy in Panamá. These complaints relate to issues similar to those which I have raised such as lack of support, lack of guidance, and general maladministration.

VII. Complaint 6: Failure to answer my emails

70. I do not accept the FCO's explanation as to why my emails were not answered – see **FCO's Second Response** at question 13:

13. Explanation as to why my emails were never answered.

Consular staff received very few emails from you during your detention. All requests came via your family, lawyer or during consular visits. Most of your communication was by letter. I understand that consular staff prioritised your written communications and whenever a letter was received, contacted the relevant authorities for the information you requested. This information was passed to you during their next visit.

71. The FCO does not specify which emails it did receive from me, although it does appear to accept that it did receive a few. I do not understand why they prioritised my letters over any emails. The FCO does not explain why it did not respond to my emails and have therefore not answered the complaint.
72. Given the circumstances under which I was held, I cannot say exactly how many emails I sent to the Consulate/Embassy during my detention. However, I attach the following emails to this complaint (at **[Annex 2G]**) as examples of the emails which I did send. I never received a response to any of these emails:

Date	From	To
16 May 2014 15.24	Nick Tuffney [REDACTED]	britemb@cwpanama.net
16 May 2014 23.48	Nick Tuffney [REDACTED]	britemb@cwpanama.net
17 May 2014 02.48	Nick Tuffney [REDACTED]	britemb@cwpanama.net

73. I do not recall ever providing the Consular officials with my email address. It may be that they tried to copy my email address from other emails they received from me. The FOI documents do contain a few emails from Maria Gabriela Lopez at the Consulate to me dated 14 May 2014 **[FOI p114]** and 11 June 2014 **[FOI p166]**. However, I never received the emails from her since they were sent to [REDACTED] whereas my email address is [REDACTED]. It appears that, somehow, an error was made on my email address and I would like to understand how this error occurred.

VIII. Complaint 7: Failure to follow up my condition following prison riot in which I was shot in the eye

74. There was a well-publicised riot at La Joya in early August 2014 in which many inmates were injured, and which was reported on national TV. I was shot in the eye with a rubber bullet whilst trying to run for cover.

75. I am not satisfied with the FCO response to my complaint about their failure to follow up on my condition following this riot – see **FCO's Second Response** at question 15:

15. Explanation as to why no action was taken after being shot by the National Police.

We have no record of a conversation with you, your lawyer or members of your family in which you allege you were shot. I am therefore unable to answer this question.

76. I do not believe that it should have been necessary for me or my family to raise this issue with the Consulate/Embassy. The Consulate/Embassy would have been aware of what happened as a result of the following:

- a. I understand that one of the other British inmates, Ben Pasternak, informed the Consulate/Embassy of the riot by email on around 8 August 2014.
- b. Ramon Orriola, from the Ombudsman's office, came to the prison afterwards and may have advised the Consulate/Embassy of what had happened in the light of the prior allegations which I had made to the Ombudsman.
- c. Commissioner Zambrano, the chief of police for prisons visited me personally on the day after the riot – he is a good friend of one of the Embassy employees and I would have expected them to know about what happened from him as well, either directly or indirectly.

77. Even if they hadn't been informed separately, I think the Consulate/Embassy could and should have proactively checked on the well-being of British detainees at the facility in the immediate aftermath of such a riot. This was not done. I spoke to the Embassy about the incident myself during their visit to me on 24 August 2014.

IX. Complaint 8: Inadequate information about detention expectations

78. The FCO confirm (**FCO's Second Response**, question 19) that I was given by them in May 2013 a "Prisoner Pack and information about prison conditions". I agree that I received such a 'pack'.

79. The 2009 Guidance in place at the time [**2009 Guidance, Chapter 13, page 5**] states:

All posts should have a prisoners pack, whether or not you have prisoners at the present time, and these should be updated on a regular basis and loaded onto your external website.

80. The version of the Prisoner Pack for Panama on the FCO website (available here: <https://www.gov.uk/government/publications/panama-prisoner-pack>) states that it was published on 20 March 2013 (prior to my detention), although the document itself is dated 20 September 2011. I still have the front page of the Prisoner Pack which was given to me, and this is dated 17 May 2013, so I am not sure if this had the same content as the one currently on the website.
81. In any event, I found that the Prisoner Pack created false expectations as to the conditions I should expect, and was in many respects inaccurate. This may be because it had been produced in 2011, several years previously, and had not been updated since. I am surprised to find that the version dated 2011 is still on the website. This would appear to be against FCO policy.

X. Complaint 9: Lack of attempt to contact immigration in relation to my impending deportation away from my son

82. I am not satisfied with the **FCO's Second Response** (question 7) in this regard, in which they state as follows:

7. Why did the Embassy make no attempt to contact immigration in relation to my deportation away from my son?

The consular section did contact the Immigration Department and were informed that, if you were found innocent, you would be transferred to the immigration shelter upon your release. Only the Immigration Director has the power to determine your stay or deportation from Panama. The Embassy is unable to interfere in this process.

83. The 2009 Guidance in place at the time [**2009 Guidance, Chapter 13, para 119**] states as follows:

The British 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.

84. I accept that the Consulate may have contacted Major David Rios, at the Panamanian Immigration Authority sometime between 9 May 2014 and 28 July 2014 [**Letter from Embassy to me dated 28 July 2014, FOI p124**]. However, this was in relation to my immigration permit rather than specifically in relation to my impending deportation and separation from my son.

85. When I had a visit from a Consular official Ana Jones on 24 August 2014, at the deportation removal centre, I expressed my concerns about my situation, and in particular my impending deportation away from my son. Unfortunately, for reasons which are not clear, there does not appear to be amongst the FOI documents a copy of a Case Note or Prison Visit report from their visit to me on 24 August 2014. This would appear to be a departure from their usual practice of preparing reports following each visit to me. My requests to Ms Jones during that visit included a request for their intervention regarding my deportation, and to help in any way from stopping me being separated away from my British son.
86. I realise that the Consulate/Embassy cannot “interfere” in the deportation process, but their policy quoted above confirms that they can make representations. I think that they should have at least considered whether to make representations, and if they decided that they could not, they should have informed me of this and the reasons for their decision.