Brook House Inquiry
IDRC
70 Fleet Street
London
EC4Y 1EU

26 MAY 2021

Minister Philp
Home Office
2 Marsham Street
London, SW1P 4DF

BY EMAIL

Dear Minister Philp,

Brook House Inquiry – Update on request for Home Secretary's Undertaking

Thank you for your letter dated 21 May 2021.

I regret that the new wording that you have proposed for your undertaking would, in my view, still be likely to inhibit current and formerly detained persons from providing evidence to the Inquiry.

As you are aware, the purpose of undertakings such as these is to encourage witnesses to speak freely, without concern as to the consequences in other proceedings. The underlying general principle is that no evidence that a witness gives to the Inquiry should ever be used against him or her. However, I recognise that a balance has to be struck, and that it would be an affront to public conscience if an Inquiry witness could subsequently in immigration proceedings rely on some part of his Inquiry evidence while the Secretary of State remained unable to rely on the fact that the witness had said something to the opposite effect in another part of his evidence.

It was for this reason that I proposed that the Secretary of State should be able to rely on an individual's Inquiry evidence if that person had himself relied on such evidence and that it was "necessary for the Secretary of State to correct a false impression or assertion thereby made". Your initial proposal indicated that the Secretary of State was content to be able to use Inquiry evidence to correct a false impression or assertion, and did not seek to use it for any other purpose. Your new proposal represents a significant change of position; the Secretary of State now

seeks a power to use any part of an individual's Inquiry evidence for any purpose. Further, the new wording would permit the Secretary of State to rely on any aspect of the individual's Inquiry evidence, even if he had referred only to one minor element of it.

Such a power goes very considerably beyond the limited exception that I proposed. I have no doubt that current or formerly detained persons will take the same view as I do of the new proposal, and that some will not be willing to give evidence to the Inquiry under such conditions.

I respectfully disagree with your view that the wording that I have proposed "lacks clarity", and indeed this is not a view that you appeared to hold when you wrote to me on 20 April 2021. The wording indicates clearly that the Secretary of State may use an individual's Inquiry evidence in order to correct a false impression or assertion. Whether an impression or assertion is false is surely a judgment that immigration decision-makers have to make daily, when assessing the factual basis of applicants' claims. Equally, whether there is evidence to correct such a false impression or assertion is a judgment that such decision-makers must make on a regular basis. That must be true whether the decision-makers are Home Office officials or tribunal judges.

My proposed wording would permit the Secretary of State to use evidence to correct a misleading impression or assertion only where it was "necessary" to do so. Again, I respectfully disagree that this condition lacks clarity. The word "necessary" is an ordinary English word, and one that public law decision-makers and judges have to interpret on a daily basis, particularly in the immigration field. With respect, it seems highly unlikely to me that the interpretation of the words "necessary to correct a false impression or assertion" is going to lead to confusion or to satellite litigation.

In your letter of 20 April 2021, you wrote:

> *I am satisfied that the material impact on the Home Office's ability to pursue necessary immigration action will be mitigated by: the fact that new information made available to the Inquiry that might give rise to immigration consequences would not ordinarily have been volunteered to the Home Office; by retaining the ability to act on evidence obtained from a different source, which for the avoidance of doubt would include evidence already held by the Home Office; and by our ability to correct the record.*

I respectfully agree entirely with the points that you made in this paragraph. The purpose of the exception that I proposed was to give the Home Secretary the ability to “correct the record”. You acknowledged very fairly that information provided to the Inquiry would not usually be volunteered to the Home Office. That is perhaps another reason for which it would be wrong to permit the Secretary of State to rely for any purpose on any aspect of an individual’s Inquiry evidence, with the only condition being that the individual himself must first have relied on one element of that evidence.

However, the key factor that concerns me is the chilling effect that an undertaking in the terms you propose is likely to have on a very vulnerable group of key Inquiry witnesses. In these circumstances, I would be most grateful if you would again consider my request for an undertaking in the terms that I have proposed.

I would also be grateful if you could give this matter your urgent consideration. As you know, I first requested an undertaking from the Secretary of State on 23 November 2020, six months ago. Continuing delays in obtaining the undertaking are impeding the work of the Inquiry; any consequential delays to the substantive hearings, currently planned for November 2021, would not only involve a loss of time but would lead to significant additional public expense.

I am copying this letter to all Core Participants in the Inquiry and look forward to hearing from you.

Yours sincerely,

Kate Eves
Chair
Brook House Inquiry