



Kate Eves  
Chair  
Brook House Inquiry  
IDRC  
70 Fleet Street  
London  
EC4Y 1EU

21 May 2021

Dear Kate,

## **BROOK HOUSE INQUIRY**

Thank you for your letter of 6 May and enclosed letter of 28 April from Deighton Pierce Glyn on behalf of the legal teams instructed by the victims and NGO core participants. The Home Secretary and I are completely committed to ensuring the Inquiry is able to establish the facts of what took place at Brook House. I note you are concerned that the amended terms for the immigration undertaking set out in my letter of 20 April will not offer the protection you intended, which was to ensure that the Home Secretary could not deploy in immigration proceedings any evidence that an individual had provided to the Inquiry, unless that individual chose to rely on such evidence in the immigration proceedings, and there was a risk of the immigration decision-maker being misled as a result.

It was not the Home Office's intention to negate or undermine the terms of the undertaking and I should emphasise that internally we have maintained a separation between the role of the Home Secretary in establishing the Inquiry and maintaining effective immigration control, and the Home Office's status as a core participant. Advice on the undertaking has been provided by different officials to those advising on the Home Office's position as a core participant. The change to the original wording was intended as clarification, to be clear that where necessary the Home Secretary could use a detainee's or former detainee's evidence to correct a false impression or assertion. However, on further consideration, I can see how that could create lack of certainty on the part of the detainee or former detainee as to when their evidence might be used in immigration proceedings, and that such uncertainty could provide a disincentive to come forward to give evidence. On that basis, therefore, I agree we should revise the terms of clause (i).

After further consideration, though, I continue to be worried that the original terms of clause (i) lack clarity, and I am concerned that it is not possible to preclude circumstances in which (a current or former detainee having chosen to refer in immigration proceedings to evidence given to the Inquiry) it may be necessary or desirable for the Home Secretary to

rely or act on the evidence but where such action may not amount to action “*necessary for the Secretary of State to correct a false impression or assertion thereby made*”.

The use of the words “*and it is necessary for the Secretary of State to correct a false impression or assertion thereby made*” suggest once the individual has chosen to refer to the information in immigration proceedings, there is an additional test for the Secretary of State to meet before she may utilise that evidence, even if the facts of that evidence are uncontested between the Secretary of State and the individual. It would be preferable to avoid such uncertainty, which could give scope for costly and time-consuming litigation. By placing the decision entirely in the hands of the detainee or ex-detainee as to whether they choose to use the evidence in immigration proceedings, I would suggest the protection you seek is delivered and further qualification is unnecessary. It will be entirely up to the individual whether they decide to put the information before the Home Secretary, but should they do so then it will be clear she may act upon it.

On that basis, I suggest an undertaking on the following terms:

*An undertaking in respect of any current or former immigration detainee who provides evidence to the Inquiry relating to a matter within its terms of reference, including oral evidence, any written statement made for the purposes of the Inquiry, and any document, information or thing made preparatory to giving evidence or otherwise created for the purposes of the Inquiry.*

*1. No evidence provided to the Inquiry by such a person may be used against that person by the Secretary of State for the Home Department:*

- a) in the course of any immigration proceedings within the jurisdiction;*
- b) in any immigration decision made by the Secretary of State for the Home Department;*
- c) in any decision to detain or to seek to impose conditions in respect of immigration bail;*
- d) for the purpose of investigating any immigration matter or deciding whether to bring immigration proceedings.*

*Save that, the Secretary of State may use in immigration proceedings, including those listed in (a) to (d) above:*

- (i) such evidence provided to the Inquiry by a current or former detainee where that person has themselves chosen to rely on that evidence in immigration proceedings; and*
- (ii) evidence of a similar nature to that provided to the Inquiry by a current or former detainee, where the evidence on which the Secretary of State relies was obtained from a different source.*

I trust this is acceptable but would be happy to discuss further should you continue to have concerns.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'C. Philp', with a horizontal line extending to the right.

**Chris Philp MP**  
**Minister for Immigration Compliance and Justice**