



Government Legal Department

Ellis Pinnell
Brook House Inquiry
IDRC
70 Fleet Street
London
EC4Y 1EU

Litigation Group
102 Petty France
Westminster
London
SW1H 9GL

T 020 7210 3000

DX 123243, Westminster 12 www.gov.uk/gld

Your ref: **STI/HO/020420**
Our ref: **Z1918877/FMI/HOI4**

2 September 2020

Dear Ellis

Brook House Inquiry

We write in response to your letter of 14 August 2020 and the Note from the Chair of the same date. This letter sets out the Home Office's written submissions on the proposal of undertakings from the Attorney General and Home Secretary. Please note that, for obvious reasons, these submissions are not a response on behalf of the Home Secretary who will have to separately consider any final proposed undertaking.

The Home Office's position can be stated briefly. If the Inquiry considers it necessary to seek undertakings from the Attorney General and Home Secretary of the type envisaged in the Note from the Chair, the Home Office is supportive of such requests being made.

We do, however, wish to draw to the Inquiry's attention some potential difficulties with the current drafting of the proposed undertaking in respect of immigration decisions:

1. The current wording does not set out explicitly who is providing the evidence etc. to the Inquiry. This is presumably "by a current or former detainee", and it may be helpful to set this out explicitly. The intention behind the undertaking presumably does not extend to preventing the Home Office from subsequently relying on its own documents and other information that it provides to the Inquiry.
2. The current wording refers to "evidence provided to the Inquiry" and other things "produced to the Inquiry", but the Home Office will not be aware of all that has been provided to the Inquiry. It may be more appropriate to refer to evidence disclosed to the Home Office in the Inquiry and oral evidence given to the Inquiry, or similar wording.
3. Whilst it is implicit that the Home Secretary (or Home Office) will be able to use information that is the same as evidence, documents, information or other things that are provided to the Inquiry but obtained by other means (whether pre-existing or only later coming into possession), it would seem appropriate to make this explicit as part of the proposed wording.

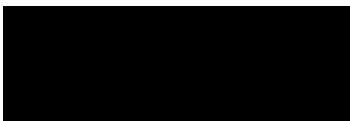
Lee John-Charles - Head of Division
Leonie Hackett - Deputy Director, Team Leader Immigration 4



4. Finally, the current wording does not prevent a current or former detainee from making selective use of their own evidence from the Inquiry, whether intentionally or unintentionally, which may require correction or contextualisation. This has the potential to leave a Court or Tribunal without submissions from one party at best, and at worst to lead to conflict between the undertaking on the one hand and the duty of candour and duty not to mislead the Court or Tribunal on the other. For example, were a former detainee to rely in proceedings on part of a witness statement that they provided to the Inquiry, it would be unhelpful for the Court or Tribunal if the Home Office representative was prevented by the undertaking from assisting with any submissions on the same document or correcting any misleading impression that is given. It may therefore be appropriate to make it clear that the undertaking does not apply if an individual themselves chooses to introduce into the decision making process, or into proceedings, documents or evidence that they provided to the Inquiry (and which is not otherwise available to both parties).

Counsel to the Home Office will be present at the hearing of 25 September 2020 to address any questions that the Chair may have in respect of the above.

Yours sincerely



Madeleine Lamond
For the Treasury Solicitor

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