



FACULTY OF ADVOCATES

03 December 2020

Chris Philp MP
Minister for Immigration Compliance
and the Courts
2 Marsham Street
London SW1P 4DF

By Email Only: Public.Enquiries@homeoffice.gov.uk

Dear Minister

Thank you for your letter of 3 December 2020. I am grateful for the acknowledgements contained therein. However, if I might address your penultimate paragraph:

Firstly, I have never suggested that the legal profession is, or should be, immune from criticism. Lawyers performing a public service are open to scrutiny, and this is essential – much as is the case with politicians.

Secondly, I find, with great respect, much difficulty in the concept of “legitimate and legal returns” being frustrated by unfounded challenges. If the challenge is unfounded, it will fail. If the challenge succeeds, *ex hypothesi* it was not unfounded.

Finally, I am also confused by the notion that immigration lawyers are “taking advantage of their position”; “playing politics through the claims”; or, most worryingly, “abusing the court process”. These are serious allegations. The last, in particular, involving an assertion of abuse of process, amounts to an allegation that immigration lawyers have been acting in a way that is fundamentally incompatible with duties owed to the court. That is not an allegation that should be made lightly. Moreover, if any application is an abuse of process, then of course – as the Court of Appeal recently held in *R. (on the application of FB (Afghanistan)) v Secretary of State for Home Department* [2020] EWCA Civ 1338 at [103], “the court may refuse to determine the merits of an application for interim relief in the form of a stay on removal because it considers the application to be an abuse.”

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Where there has been an abuse of process, the court will so find. If the court does not so find, that will be because there has been no abuse. It is, I would respectfully suggest, entirely unhelpful for the Government of this country to make generic allegations of abuse of process against an entire sector of the legal profession. Where individual Members of that profession abuse the process, the appropriate way of dealing with it is to move for dismissal on grounds of abuse, and then raise a complaint to the relevant regulator. That way, the person accused of abuse can defend him- or herself. It is not an abuse of process simply because the Home Office does not like the challenge. Suggesting widespread abuse when there is absolutely no evidence of that at all is not only unhelpful, it damages public confidence in the legal profession and in its practitioners. In extreme cases, it may engender violence.

I thus repeat my entreaty: by all means call out individual wrongdoing in the (mercifully very rare) instances where it occurs. I make no plea for immunity from criticism. But please bring an end to the prevailing culture of populist attacks on an entire sector which in the vast majority of cases is simply doing its job, in accordance with the law, in the interests of justice and of some of the most vulnerable people in our society.

Yours sincerely

A handwritten signature in black ink, appearing to be 'R.W. Dunlop', written in a cursive style.

R.W. Dunlop Q.C.

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