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12 March 2019

Dear Sirs

Unlawful Retention of travel documents

We write in response to your letter of claim dated 21st June 2018 in which you assert that your clients are entitled to damages:

(1) Due to a wrongful interference with goods under s.2 of the Torts (Interference with Goods) Act 1977 (TIGA);

(2) Due to a breach of the Article 8 family and private lives due to the interference with his and his family's ability to work, travel and live together;

(3) Due to a breach of a common law duty not to hand over their passports (negligence).

We confirm that our client will defend any claims if issued and it is our view that this claim is so misplaced that if issued, it will be susceptible to a strike out application.

In relation to the TIGA and negligence claims, your clients have the following insurmountable difficulties:

(1) In *Ataputtu*, no point appears to have been taken as to the question of whether the Torts (Interference with Goods) Act 1977 has extra-territorial jurisdiction. Had that point be taken there can be no doubt that the court would have concluded that the Act has no application to Bangladesh. We refer you to the decision of the Supreme Court in *Cox v Ergo Versicherung AG* [2014] AC 1379. That case involved the question of whether the Fatal Accidents Act 1976 had extra-territorial jurisdiction in Germany. The Supreme Court held that it did not and that the applicable law under the Private International Law (Miscellaneous Provisions) Act 1995 (PILMP) was German law. One of the reasons for this conclusion was that the 1976 Act did not disclose any reason why Parliament had intended it to apply to foreign accidents with no connection to England or English law.

(2) In this case the alleged torts on which you rely were committed entirely in Bangladesh and it follows that it is the Bangladeshi law of tort which will be applicable (see by analogy the position taken in §§36-37 of *Alseran & Others v MOD* [2017] EWHC 3289 (QB) in which your firm acted).

(3) It follows that the Torts (Interference with Goods) Act 1977 cannot be applicable in this case (there is nothing in that Act which suggests that Parliament intended it to apply to such torts committed abroad) and any tortious claim will be addressed applying applicable law in Bangladesh.

(4) Your letter of claim does not set out any evidence of the applicable law in Bangladesh but such evidence would have to take account of the law in Bangladesh on diplomatic immunity which will be governed by the Vienna Convention. The only route to liability of the Home Office in tort in Bangladesh is likely to be through vicarious liability of the Embassy officials concerned. On that basis, diplomatic immunity would appear to provide a complete defence under Article 31(1) of that Convention.

(5) Even if TIGA could somehow be applied to this claim, the facts are materially distinguishable from those in *Atapattu*. In that case, the passport that was not returned was a valid passport which the Mr Atapattu had a right to possess. In the case of your clients, their passports had been rendered invalid by the issuing state. It is therefore the case that unlike Mr Atapattu, your clients did not have a right to immediate possession of a passport which had been rendered invalid and that any such right was defeated by the superior right to possession of the passport by the country which had decided to withdraw the passport.

(6) Your clients' claims in negligence are similarly unsustainable. Your contention that the facts gave rise to a private law duty of care is plainly wrong and contrary to the judgments in *Mohammed v Home Office* and *Atapattu*.

(7) Both the TIGA claim and negligence claims would require causation of loss. The contents of paragraphs 28 to 30 of your letter of claim readily demonstrate that none of your claimed losses were caused by your clients' passports being returned to the Turkish Embassy. On their own case, they felt compelled to flee Bangladesh due to the complicity of the Bangladeshi authorities with the Turkish authorities in their persecution. It must follow that all of the losses that you alleged flowed from those actions and not from the withholding of an invalid passport. It is evident that the Bangladeshi authorities were provided with a list of Turkish citizens in Bangladesh whose passports had been cancelled in June 2017. Given the alleged complicity of the Bangladeshi authorities, it is self-evident that your clients could not have used their invalid passports to exit the country, even if they had possessed them. Furthermore, you claim to be entitled to the costs of obtaining what were presumably false travel documents will without doubt be refused by a court on public policy grounds.

Your claims arising out of alleged breaches of Article 8 are also unsustainable for the following reasons:

(1) *Atapattu* is authority for the proposition that deprivation of a passport does not give rise to an Article 8 breach.

(2) No Article 8 breach could be found on the facts of this case in any event. First, the demand by the Turkish Embassy for return to it of an invalidated passport is plainly a lawful one. Where a passport is no longer valid, the bearer no longer has a right to use it for the purpose of international travel or for any other purpose. It follows that the UK was not 'complicit' in any persecution of your clients.

(3) Second, it is impossible to see how the passing of that passport to the Turkish Embassy caused any interference with family or private life. That action did not require your clients to leave Bangladesh or to give up their employment or associations with others. As set out above, your clients' inability to remain living and working in Bangladesh was not the result of their passports being returned to the Turkish authorities. It was the product of alleged persecution in Bangladesh by the Turkish authorities assisted by the Bangladeshi government.

(4) The ECHR has no application in Bangladesh. The case of *Al-Skeini* which you cite in paragraph 45 of your letter of claim is of no assistance, since it confines the exceptional instances where Article 1

of the Convention can have extraterritorial effect to cases where 'victims' were under the control and authority of the diplomats concerned (see §134 of that judgment). Your clients were never subject to the authority and control by the officials in the British Embassy and your argument in this regard is in reality no more than an attempt to argue that anyone adversely affected by the actions of a contracting state can thereby bring into play Article 1 of the convention. Such an argument was rejected in *Bankovic v Belgium & Others* (application 52207/99) at §75:

> ... The Court considers that the applicants' submission is tantamount to arguing that anyone adversely affected by an act imputable to a Contracting State, wherever in the world that act may have been committed or its consequences felt, is thereby brought within the jurisdiction of that State for the purpose of Article 1 of the Convention.

For all the above reasons our client intends to apply to strike out any issued claims and will in any event robustly defend this case at trial if such an application is unsuccessful.

In regards to disclosure, we are still taking instructions and hope to provide an update shortly. Please note there are potential litigation privilege, security and sensitivity, and Data Protection Act reasons why my client needs further time to disclose relevant documents.

We look forward to receiving confirmation that your clients' claims are withdrawn.

Yours faithfully

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For the Treasury Solicitor

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