

IN THE MATTER OF THE INQUIRIES ACT 2005
AND IN THE MATTER OF THE INQUIRY RULES 2006

THE UNDERCOVER POLICING INQUIRY

SUBMISSIONS ON
UNDERTAKINGS

1. These are the written submissions on behalf of Mark Kennedy, in response to the invitation from the Chairman for position statements on any undertakings to be sought. These have been prepared at short notice and without counsel being able to take instructions from Mr Kennedy due to the position regarding interim funding having only recently been resolved.
2. There is a real and appreciable risk that privilege against self-incrimination will be invoked by Mr Kennedy during this Inquiry absent any undertaking on the use of his evidence in any subsequent proceedings.
3. In order to ensure the Inquiry can hear all relevant evidence, in a full and frank manner, an undertaking should be sought from the Attorney General in the following terms:

“1. No evidence a person may give before the Inquiry, whether orally or by written statement, nor any written statement made preparatory to giving evidence, nor any document or information produced by that person to the Inquiry, will be used in evidence against that person in any criminal proceedings or for the purpose of deciding whether to bring such proceedings, save as provided in paragraph 2.

2. Paragraph 1 does not apply to:

- (i) A prosecution where he or she is charged with having given false evidence in the course of this Inquiry or having conspired with or procured others to do so, or*
- (ii) In proceedings where he or she is charged with any offence under section 35 of the Inquiries Act 2005 or having conspired with or procured others to commit such an offence”.*

4. In addition, further guarantees are required where criminal investigations into a witness's behaviour are ongoing or have not yet commenced and information received during the Inquiry may give rise to further avenues for investigation. Mr Kennedy has recently been notified that investigators wish to question him under caution. The risk that evidence obtained as a consequence of any disclosure made by Mr Kennedy during this Inquiry's proceedings could be used to further these or other investigations is highly likely to impact upon Mr Kennedy's evidence.
5. It is appropriate in these circumstances to go beyond the undertakings outlined above and request further assurances regarding the derivative use of witnesses' evidence. In this respect, in a similar manner to the undertakings that were provided in the Baha Mousa Public Inquiry and the Azelle Rodney Inquiry, the following undertaking is sought:

“3. Where any such evidence is provided to the Inquiry by a person, it is further undertaken that, as against that person, no criminal proceedings shall be brought or continued in reliance on evidence which is itself the product of any investigation(s) commenced or undertaken as a result of the provision by that person of that evidence”.

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