

Mr M Pretorius
Undercover Policing Inquiry
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Our Ref: SGI/UM1277016
Your Ref:

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Dear Mr Pretorius

RE: Undercover Policing Inquiry – Position Statement on Attorney General Undertaking

At the time of writing, we act for nine officers and ex-officers granted Core Participant status ('CPs'). These are N10, N14, N15, N16, N123, N26, N58, N519 and N81.

We have been invited to set out our views as to what undertakings should be sought by the Chair from the 'Attorney-General or the Metropolitan Police or anyone else' on behalf of the CPs that we currently represent.

Stated shortly, the position of those CPs whom we represent is that an undertaking should be sought from the Attorney-General that is co-extensive with the privilege against self-incrimination. We set out below a draft undertaking for the Chair's consideration. We do not seek an undertaking from any Appropriate Authority within the meaning of the Police (Conduct) Regulations 2008 (or any succeeding or preceding misconduct regulations) limiting the use to which evidence given to the Inquiry by the CPs whom we represent can be put in discipline proceedings.

We have carefully considered the very full Note on Undertakings prepared by counsel to the Inquiry. Whilst we note that there may be an opportunity to submit skeleton arguments on the undertakings issue in due course should the Chair consider it necessary to conduct an oral hearing, we should indicate that we broadly agree with the analysis set out in that Note.

Accordingly, we would invite the Chair to seek a 'blanket' undertaking (as opposed to a CP by CP undertaking) that is co-extensive with the privilege against self-incrimination. In other words, an undertaking should be sought by the Chair that protects the CPs on whose behalf we make this application from any evidence they give to the Inquiry being used (a) against them in any criminal proceedings; (b) in deciding whether to bring a criminal prosecution; or (c) to commence further investigation which itself produces evidence relied on in criminal proceedings.

Grounds for the position on undertakings submitted on behalf of those CPs we represent

Mindful of the fact that this letter may well be referred to or disclosed in open session and is drafted before the Chair has ruled on anonymity, the basis upon which we make the application is as follows:

- (1) The CPs whom we represent served in undercover units, in particular the SDS of the Metropolitan Police.
- (2) There have been a number of allegations that the CPs have committed serious criminal offences. Those allegations have been the subject of criminal investigations conducted by the IPCC and the Operation Herne team. In some instances, the investigations have concluded, and those CPs concerned have been told that no further action will be taken against them. In others, the criminal investigations are on-going.
- (3) Plainly, there is nothing to prevent an investigator from re-opening a criminal investigation should fresh evidence come to light during the course of the Inquiry. A prosecutor is in no different position. The CPS would be entitled to review any decision to take no further action against any CP on the basis of evidence given by him or her to the Inquiry.
- (4) The serious criminal offences alleged against the CPs concerned arise from conduct during their deployment as undercover officers, including allegations that focus on the personal relationships they are said to have entered into with members of political action groups that they had been instructed to infiltrate. The offences investigated are many and various, but include the 'catch-all' offence of misconduct in a public office.
- (5) Unusually, and by reason of their deployment, the CPs concerned are also alleged to have committed criminal offences as part of their 'cover', including public order offences, criminal damage and offences of violence. This category of offending has also been the subject of a criminal investigation conducted by the IPCC and Operation Herne, which has yet to conclude.
- (6) On the basis of the above, there is a real prospect of a criminal prosecution of one or more CPs whom we represent or whom we have been in contact with in the immediate future.

It would not be appropriate to give an indication as to what advice might be given to a CP whom we represent at the Inquiry about the privilege against self-incrimination should an undertaking not be forthcoming. Nor does it assist to try and anticipate whether or not any CP whom we represent at the Inquiry would exercise their right not to incriminate themselves were they to give evidence. Nonetheless it is difficult to conceive of circumstances in which a CP would give evidence to the Inquiry in the knowledge that what is said may be used against him or her in subsequent criminal proceedings that but for his or her evidence to the Inquiry, would not have arisen. Accordingly, it can be stated with some confidence that it is highly likely that the Inquiry's effectiveness in searching for the truth would be greatly enhanced were an undertaking to be provided.

Suggested wording of Attorney-General's undertaking

We would respectfully suggest the following wording for the undertaking for the Chair's consideration. It is very much based on undertakings provided in past inquiries.

This is an undertaking in respect of any person who provides evidence to the Inquiry relating to the issues within its terms of reference.

The undertaking is that no evidence that any person may give before the Inquiry, whether orally or by written statement, nor any written statement made preparatory to giving evidence, nor any information or document 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.

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 an investigation commenced as a result of the provision by that person of that evidence.

This undertaking does not apply to (i) a prosecution where the person 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) proceedings where the person 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.

It follows from the above that the CPs whom we represent do not seek immunity from prosecution.

Yours sincerely



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