

SUBMISSIONS ON UNDERTAKINGS
ON BEHALF OF PETER FRANCIS

Introduction

1. These submissions are made on behalf of Peter Francis ('PF') in response to the Chairman's invitation to the parties to provide 'position statements' on the question of undertakings. They are served late with the Chairman's permission because of the difficulties with funding about which he is aware.
2. As is now well known, PF is a former police officer who was recruited to the Special Demonstration Squad ('SDS') in 1993. He was deployed as an undercover officer for four years under various different pseudonyms including 'Peter Black'. He left the SDS in 1997. He left the Metropolitan Police Service ('MPS') on medical grounds in 2001. In 2010, he began publicly exposing MPS policies and practices used in undercover policing which he considered to be harmful to the officers concerned as well as to the public. Thus he is in the unique position of being a dedicated police officer who found himself morally compelled to comprehensively whistle-blow on the inner workings of the SDS.
3. In January 2015 he assisted Mark Ellison QC's inquiry ('The Stephen Lawrence Independent Review') by giving evidence. Given the risk he believed he faced of being prosecuted (largely but not exclusively for offences under the Official Secrets Act), he only did so after he had secured an undertaking from the Attorney-General.

The Attorney-General, having consulted with the Crown Prosecution Service, gave him an undertaking on 21 November 2014 in the following terms:

“This is an undertaking provided to Peter Francis in respect of his provision of evidence to the Stephen Lawrence Review being carried out by Mark Ellison QC. ‘Evidence’ includes oral evidence, any written statement made by Mr Francis preparatory to giving evidence to the Review or during the course of his testimony to the Review, and any document or information produced to the Review by him.

This undertaking applies only to evidence given about matters which are within the terms of reference of the Review and limited to what has been published in the media as to what Mr. Francis has said regarding his tasking and reporting connected to the Lawrence campaign.

No evidence Mr Francis may give before the Review, nor any evidence as defined above, will be used against Mr Francis in any criminal proceedings”.

4. At PF’s request, further clarification was provided by the Attorney-General on 12 December 2013, in the following terms:

“I can confirm that the undertaking will cover any evidence given by him that supplements the issues already published in the media and is within the terms of reference of the inquiry”.

The necessity of an undertaking

5. We understand Counsel to the Inquiry (‘CTI’) to be saying in their note dated 8 January 2016 that it is necessary to seek an undertaking from the Attorney-General.

For the reasons set out below, we submit that an undertaking which is slightly wider than the privilege against self-incrimination is both necessary and appropriate. Such undertakings were provided in both the *Baha Musa* and *Azelle Rodney* public inquiries. Further, we submit that in order to remove a very significant disincentive to serving police officers from making full disclosure to the Inquiry, an appropriate undertaking should also be sought from the relevant police disciplinary bodies (such as the MPS and the IPCC).

6. The reasons for seeking an undertaking from the Attorney-General are as follow: the Chairman has stated that he is required, *inter alia*, to examine the scope of undercover policing as it has been conducted in practice since 1968 as well as its effects on individuals and the public in general. He has said that Module 1 will investigate and consider evidence about the past conduct of undercover police operations with specific attention to be given to the SDS¹. The conduct that the Inquiry wishes to examine includes conduct that could amount to misconduct in public office as well as other crimes. The Chairman has already noted that a number of police officers face criticism for alleged involvement in one or more the following activities: making close personal relationships while working undercover; using the personal details of deceased children to create an undercover identity; participating in offences without authorisation; proving personal information to third party blacklisting agencies; reporting on the family of Stephen Lawrence and those close to them; managing and supervision of undercover officers².

Terms of the undertaking

7. We are grateful for CTI's summary of the undertakings that have been granted in other statutory inquiries over the last twenty years.

¹ CP Ruling, para 5, 16 December 2015

² Ibid; para 28

8. Given the nature of this Inquiry, with its particular emphasis on the past (improper) conduct of undercover police officers, and the fact that some criminal investigations are on-going following Operation Herne (and the fact that those that are closed, could be resurrected if a witness gives full and frank testimony to the Inquiry), we submit that a broad undertaking should be sought by the Chairman in this Inquiry. We submit that such undertakings (as were given in *Baha Mousa* and *Azelle Rodney*) strike the right balance between encouraging openness / allowing the inquiry to discover the truth and holding people to account. As CTI point out in their note at para 65, such an undertaking in *Azelle Rodney* did not prevent a prosecution of one of the police officers for murder after the conclusion of that inquiry.

9. Adapting the *Baha Mousa / Azelle Rodney* wording for these purposes, we suggest the following:

“1. No evidence a person may give before 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 (including any proceedings for an offence or offences under the Official Secrets Act 1989), save as provided in paragraph 2 herein:

“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

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

10. We also suggest that the definition of “evidence” provided by the Attorney-General in the undertaking previously given to PF (as set out above) be adopted and included in the undertaking as follows:

“‘Evidence’ includes oral evidence; any written statement made by a witness preparatory to giving evidence to the Inquiry or during the course of his evidence to the Inquiry, and any document or information produced to the Inquiry by him”.

Ben Emmerson QC

Maya Sikand

26 February 2016