Note from the Speaker's Counsel **21st March 2016**

Thank you for showing me the submissions made by the elected representatives.

I am, of course, more than willing to assist the Inquiry in any way I can, but- having considered the submissions- I do not feel I can assist on the question of the applications for restriction orders. This is very much a question of law for the Inquiry, applying the tests in section 19 of the Inquiries Act 2005. No question of Parliamentary privilege would seem to be engaged in the making (or refusal) of any order under section 19. It is not for me to offer any view on whether such order should be made or refused.

I have two comments of an adjectival nature on the submissions which I offer on the hope they may be helpful.

Scope of Parliamentary privilege

I would not generally take issue with the description of the scope of Parliamentary privilege which is made in paragraphs 38 to 42. The reference in paragraph 39 to the ability to communicate with constituents must, I think, be understood in the context of Parliamentary proceedings. The generality of communications with constituents would not be privileged unless there was a sufficiently close link with Parliamentary proceedings (cf Erskine May Parliamentary Practice 24th ed. p.270-271 and *Rivlin v. Bilainkin* [1953] 1QB 485). In 1958, in what is usually known as the *Strauss* case, the House did not agree that a letter written by a Member to a public authority on behalf of a constituent was a "proceeding in Parliament" (cf. paragraph 11 of the Report of the Joint Committee on Parliamentary Privilege Session 1998-99 HC 214 –I).

The reference in paragraph 42 to briefings received by MPs being 'covered by Parliamentary privilege' must also be understood in the same light. Indeed, the submission itself calls attention to the need for these to be 'closely relating to the business of Parliament'.

Article IX of the Bill of Rights

The Elected Representatives make a number of references to Parliamentary proceedings, notably at paragraphs 43 to 47, and 51 to 53. The Elected Representatives make clear (at paragraph 47) that the passages referred to in 43 to 47 do not concern issues which are a matter for determination at this stage. This is a helpful indication, since it tends to assuage any concern that the passages recording a debate in the House are being relied on to prove the truth of their content. As the Inquiry is statutory and has power to compel the production of evidence it would be likely, in my view, to be construed *ejusdem generis* with a 'court or place outside Parliament' for the purposes of Article IX of the Bill of Rights. In such a case, it would be of concern here if the Inquiry were to sit in judgment on whether those passages are true or not.

The passages referred to in 51 to 53 describe the genesis of the Inquiry. In particular, there is a statement by the Policing Minister as to the reasons for establishing the inquiry. In my view, this is sufficiently close to what happened in *R v. Secretary of State for the Home Department ex parte Brind* [1991] AC 696 for the Inquiry not to feel inhibited by Article IX of the Bill of Rights in taking account of the reasons explained by the Minister in Parliament for the decision to institute the Inquiry.

Moreover, the Inquiry will be aware of the passages in the judgment of Lord Browne-Wilkinson in *Prebble v. Television New Zealand* [1995] 1 AC 321 which would allow parties to allege the occurrence of events or the saying of certain words in Parliament without any accompanying allegation of impropriety or any other questioning.

Michael Carpenter

Speaker's Counsel