

UNDERCOVER POLICING INQUIRY

Note in respect of Undertakings: Ruling on 26 May 2016

This note has been provided to assist in understanding the Chairman's Ruling on Undertakings, issued on 26 May 2016. It does not form part of the reasons for the Ruling. The full Ruling is the only authoritative document. The Ruling is a public document and is available on the Inquiry's website, [here](#).

Undertakings

1. This Ruling concerns the evidence that witnesses will give to the Inquiry. To ensure the best chance at getting at the truth the Chairman has decided to invite the Attorney General to undertake not to use witnesses' evidence against them (or against their spouse or civil partner) in any criminal proceedings, or when investigating or deciding whether to bring criminal proceedings.
2. Without such an undertaking, a witness would be entitled to refuse to answer the Inquiry's questions on the basis of the protection against self-incrimination. The undertaking is therefore being sought in order to encourage witnesses to come forward and give uninhibited and frank evidence, in the best interests of discovering the truth.

Extended undertaking

3. The Ruling also considers the case for an 'extended undertaking', following an argument put forward by the non-police, non-state ('civilian') core participants. The case for a similar extended undertaking was not, at this time, put forward in respect of police officers or state employees.
4. If an extended undertaking was granted it would prohibit the Attorney General from using a civilian witness' evidence in a prosecution against (or when investigating or deciding whether to prosecute) any other civilian.
5. The Chairman accepts that there may be occasions where civilian witnesses will not be able to explain an undercover officer's role in the activities of their group without implicating other civilians in criminal offences. Without an extended undertaking, such witnesses may be reluctant to provide a complete account of events, in which case the Inquiry would not receive the best available evidence on which to base its conclusions.
6. The Chairman therefore accepts that there may be some circumstances in which it would be in the public interest to seek an extended undertaking from the Attorney General, in order to reach the truth on an important issue. However, the Chairman does not accept that such an extended undertaking should be given for all civilians, in respect of all

UNDERCOVER POLICING INQUIRY

offences, no matter how serious, at the outset of the Inquiry. He has agreed to keep the matter under review.

7. The Chairman does not currently foresee circumstances in which it would be appropriate to seek an extended undertaking for the benefit of police officers or state employees, but he does not rule it out.

Disciplinary proceedings

8. On 11 May 2016 Mark Kennedy's solicitors submitted that an undertaking should be sought from the Metropolitan Police Service to the effect that his evidence to the Inquiry would not be used in any future misconduct or disciplinary proceedings taken against him.
9. The Inquiry will issue directions to progress this application in due course.

UNDERCOVER POLICING INQUIRY

Questions and Answers

Q: Who makes a decision on what evidence is used to investigate and prosecute crimes?

A: The Chairman has no power in relation to the future use in criminal proceedings of evidence given during an inquiry. The practice in public inquiries has been to seek an undertaking from the Attorney General in relation to the use of evidence to investigate and prosecute crime. Any attempt to breach an undertaking by the Attorney General would be likely to amount to an “abuse of process” meaning that the courts would prevent the use of the evidence in criminal proceedings.

Q: Will people who have committed a crime be immune from prosecution?

A: If the undertaking sought from the Attorney General is granted, a suspected offender will not be investigated or prosecuted using evidence which he or she has given to the Inquiry. This protection is not the same as an immunity. A suspect may still be investigated, in the normal way, if there is incriminating evidence from other sources. In any Inquiry it is possible that people giving evidence could be asked questions which, if answered truthfully, could leave them open to prosecution or implicate others. If the Inquiry is to get to the truth, it is important that people provide open and honest evidence to it.

Q. How will the undertaking sought assist the Inquiry if it is granted?

A: It will encourage people to provide self-incriminating evidence to the Inquiry and thus help the Inquiry to get to the truth. People will know that if they give self-incriminating evidence to the Inquiry it cannot be used against them in criminal proceedings.

Q: Are all crimes covered?

A: Yes.

Q: What are the next steps?

A: The Chairman will write to the Attorney General to seek an undertaking not to use witnesses’ evidence against them (or against their spouse or civil partner) in any criminal proceedings, or when investigating or deciding whether to bring criminal proceedings. The Attorney General’s response will be published in due course. The Chairman will keep the question of an ‘extended undertaking’ under review.