

IN THE UNDERCOVER POLICING INQUIRY

SUBMISSIONS IN RELATION TO UNDERTAKINGS SERVED ON BEHALF OF MARK KENNEDY

1. On behalf of Mark Kennedy (MK) and in so far as his personal position is concerned, it is submitted that an undertaking should be sought from the Commissioner of Police for the Metropolis that no retrospective misconduct proceedings be taken against officers who have retired from the police.
2. It is submitted that if granted any such undertaking should mirror the terms of the undertaking to be sought from the Attorney General at Paragraph 23 of the 26.05.16 Undertakings Ruling.
3. As noted by the Chairman in the further directions relating to this issue of 08.06.16, there has been a change of circumstance since those representing Mark Kennedy made submissions in relation to undertakings. The Policing and Crime Bill proposes to introduce a regime to bring misconduct proceedings against retired officers.
4. The Inquiry's further directions note that the proposed amendments within the Police and Crime Bill would amend the Police Act 1996 so as to apply to conduct which occurred after

officers had retired but only if that retirement occurs after the proposed amended section of the 1996 Act comes into force. As the Bill was drafted at the time of the further directions, it would not prima facie affect the position of MK who retired in 2010.

5. The Chairman has, however, noted that whilst the current terms of the Bill might not affect MK, the Inquiry cannot know what further amendments might be made to the Bill in its passage through Parliament.
6. Subsequent to the Chairman's direction on this point, the Prime Minister has indicated that the government proposes to amend the Bill to extend the time period for bringing proceedings against former officers in "exceptional cases" (The Times 14.06.16, p 24). It is unclear to what if any extent this proposed amendment will have a retrospective effect, however, it is plain that the government intends to amend the proposed regime with a view to extending the affected class of retired officers. The Chairman's caution in this regard was therefore plainly well placed.
7. It is noted that the MPS was previously resistant to a blanket undertaking in relation to misconduct proceedings. It can be understood why retired officers who would not have been affected by police misconduct proceedings did not seek undertakings from their former employers to date. The proposed change to the law and the government's stated intention to widen the proposal to other retired officers does, however, represent a significant change which is likely to affect the position of both serving and retired officers (though only the

latter are addressed in this note).

8. It is submitted that the public interest and the interests of justice plainly favour seeking an undertaking in relation to (at least) retired officers and police misconduct proceedings.
9. There is a marked difference between the public interest considerations which would apply to a blanket undertaking in relation to serving officers and the position of officers who have already retired. There are obviously no public safety considerations relating to operational policing where retired officers are concerned.
10. As the actions of MK (and other retired officers) are to be scrutinised by this inquiry, there cannot be any real concern that absent retrospective misconduct proceedings police wrongdoing (if any) will not be exposed. Indeed failing to seek such an undertaking is for the reasons previously identified by the Inquiry, likely to reduce the efficacy of any such scrutiny.
11. The Inquiry's duty of fairness towards core participants such as MK extends to protecting his legitimate expectation that having retired several years ago, he should not have to respond to misconduct proceedings as a result of his participation in this inquiry when he had thought himself safe from any such proceedings. This consideration tells strongly in favour of requesting an undertaking from the MPS in relation to retired officers.
12. In accordance with the undertakings ruling it is plainly in the public interest that those who

are core participants before this inquiry are able to give open and frank evidence without fear of personal consequences.

13. It is submitted therefore that the circumstances strongly favour an undertaking from all affected police forces (but the case of MK the MPS) that there will be no retrospective misconduct proceedings brought against former police officers in suitably amended terms consistent with the approach identified at paragraph 23 of the 26.05.16 ruling.

14. It is noted that this submission can be more fully argued if necessary at a later date.

Matthew Butt
Three Raymond Buildings
Gray's Inn
London

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