

IN THE UNDERCOVER POLICING INQUIRY

Pursuant to Directions given 8 June 2016

MPS POSITION STATEMENT ON UNDERTAKINGS RE RETIRED OFFICERS DATED 14 JULY 2016

1. In summary, the Commissioner would be prepared if invited to do so by the Chairman to give an undertaking not to use evidence provided by a retired MPS officer against him or her in disciplinary proceedings, should the law be changed to permit such proceedings. The Commissioner gives this indication because he recognises the importance of individuals not being inhibited in explaining their conduct, however difficult this may be for them or for the MPS as an institution.
2. The starting point is that the MPS will wish to consider disciplinary proceedings wherever evidence of serious misconduct comes to light during the Inquiry on the part of a current or (if the law changes) former MPS officer. However, as has been observed in position statements submitted by other Core Participants, the public interest balance in preserving the right to use material for disciplinary proceedings in the case of officers who are no longer serving is different from the balance that applies in respect of current officers. The MPS understands that the Inquiry wishes to address this issue now - even though legislation which would permit such proceedings has not been enacted - so that it can start to obtain the fullest accounts from former officers. The MPS recognises the importance of this task, and the Commissioner is therefore willing to provide an undertaking at this juncture.
3. Two matters should be noted. Firstly, the proposed undertaking would not cover officers who now seek to resign or retire but whose resignation or retirement is prevented by a refusal of consent pursuant to regulation 10A of the Police (Conduct) Regulations 2012. Secondly, it will be recalled that the Commissioner may be *directed* in certain circumstances to bring proceedings by the IPCC (see MPS submissions, dated 13 January 2016). An exception has been included in the draft, for this reason. No doubt the Chairman will consider inviting an undertaking from the IPCC so that this possibility (assuming the law permitted it) did not act as an inhibitor.
4. The Commissioner would therefore propose to give the following undertaking (or one that is in substance the same), if invited to do so. It is

adapted from the undertaking which the Chairman has invited the Attorney General to consider in relation to criminal proceedings (Ruling, 26 May 2016, at §23).

“It is undertaken that, in respect of any former officer of the Metropolitan Police Service who provides evidence or produces a document, information or thing to the Inquiry, no evidence he or she may give to the Inquiry, whether orally or by written statement, nor any written statement made preparatory to giving evidence, nor any document, thing or information produced by that person to the Inquiry:

- (i) will be used against him or her in any disciplinary proceedings;*
- or*
- (ii) will be used when deciding whether to bring such proceedings,*

It is further undertaken not to use in disciplinary proceedings against that person any evidence which is itself the product of an investigation commenced as a result of the provision by that person of any evidence, document, thing or information to the Inquiry.

This undertaking does not apply if the Commissioner is directed by the IPCC to act in any particular way.

For the avoidance of doubt:

- (a) this undertaking does not preclude the use of a document and/or information and/or evidence identified independently of the evidence provided by that person to the Inquiry;*
- (b) this undertaking does not apply to officers who wish to resign or retire but who are prevented from doing so pursuant to regulation 10A of the Police (Conduct) Regulations 2012.”*

JONATHAN HALL QC

14 JULY 2016