

Ruling by Chair of the Sheku Bayoh Inquiry

On a request for undertakings from the Solicitor General and Chief Constable

Executive summary

[1] I have decided to request the Solicitor General to give an undertaking that in any future prosecution of a police officer or former officer, arising out of the events at Hayfield Road on 3 May 2015 and the post-incident management, she will not use against that officer evidence which that officer has provided to the Inquiry. In addition, I have decided to request the Deputy Chief Constable to give an undertaking that in any future disciplinary proceedings against an individual serving officer arising out of these matters, she will not seek to rely on evidence given to the Inquiry by that officer.

[2] I have taken these decisions because I am satisfied that without these undertakings the Inquiry is likely to be seriously impeded in fulfilling its function in relation to the terms of reference. I am satisfied that in the absence of undertakings officers and former officers would be highly likely to exercise their right against self-incrimination and would not give full, frank and uninhibited evidence to the Inquiry.

[3] It is vitally important that all should understand the limited nature of the undertakings which I request. The requests do not seek immunity from prosecution or disciplinary proceedings. In the event that new evidence against officer A emerges in the Inquiry it will be open to the Solicitor General and the Deputy Chief Constable

to make use of that material as they think fit. The undertaking is restricted only to the use of evidence provided to the Inquiry by officer A.

[4] It is also important to note that the undertakings do not extend to evidence of an incriminating nature that one officer gives about another. In other words, officer B would not have the benefit of the undertaking in respect of incriminating evidence against officer B given by officer A.

[5] There is an important public interest in the Inquiry ascertaining the truth as to what happened on 3 May 2015. That will involve a consideration by me of the whole evidence in order to find facts proved and draw inferences from proved facts. The terms of reference require me to establish the circumstances of the death of Sheku Bayoh and examine the post-incident management process. Without the undertakings, my ability to do that will be severely undermined.

[6] The terms of reference include the remit “to establish the extent (if any) to which the events leading up to and following Mr Bayoh’ death, in particular the actions of the officers involved, were affected by his actual or perceived race and to make recommendations to address any findings in that regard”. I am satisfied that in the absence of the undertakings, my ability to satisfy this aspect of the terms of reference will be severely limited.

[7] The terms of reference will require me to hold individual officers accountable for their actions, both in relation to events at Hayfield Road, and subsequently. In order to do that I will require the full and frank evidence of officers and former officers to be available to the Inquiry. Without the undertakings my ability to hold individuals to account will be severely limited.

[8] I am conscious that the family of Sheku Bayoh were opposed to the making of the requests, but they have a strong interest in hearing the fullest account of what happened on 3 May 2015 leading to the death of Sheku Bayoh. Hearing the full evidence of the key witnesses is essential to achieving that. I am satisfied that in the absence of the undertakings the family are most unlikely to hear the full evidence of the officers in relation to events at Hayfield Road and subsequent events. I very much hope that they will come to understand that.

Introduction

[1] Three core participants, Sgt Scott Maxwell, PC Daniel Gibson and PC James McDonough (the applicants), who are serving police officers who attended Hayfield Road on 3 May 2015, invited me to request (a) the Solicitor General for Scotland, to whom the Lord Advocate has delegated responsibility for her dealings with the Inquiry, to give certain undertakings in respect of any future prosecutions of these core participants; and (b) the Chief Constable to give similar undertakings in respect of any future disciplinary proceedings. After receiving written submissions on behalf of the applicants and other core participants, on 22 February 2022 I held a preliminary hearing at which I heard oral submissions from Ms Grahame QC, senior counsel to the Inquiry, Ms McCall QC on behalf of the applicants, Ms Mitchell QC on behalf of the family of Sheku Bayoh, the Dean of Faculty on behalf of the Scottish Police Federation (SPF) and Mr Jackson QC on behalf of PC Kayleigh Good, PC Alan Smith and PC Ashley Tomlinson, each of whom is a core participant.

[2] The Solicitor General accepts that it is competent for her to give an undertaking. Although in written submissions senior counsel for the Chief Constable had maintained that it was not competent for the Chief Constable to give such an undertaking, prior to the preliminary hearing she departed from that position. The Chief Constable now accepts that it is competent for the Deputy Chief Constable, designated under The Police Service of Scotland (Conduct) Regulations 2014, to give an undertaking.

[3] In essence, the undertaking sought from the Solicitor General is that in any future prosecution of officer *A* she will not use against officer *A*, evidence which that officer has provided to the Inquiry. It is important to stress at the outset that this is not a request for immunity from prosecution. None of the core participants seek immunity from prosecution. It is an undertaking limited to the possible use to which the evidence given by officer *A* to the Inquiry might be used in a subsequent prosecution of officer *A*. Undertakings of this kind have been given in other public inquiries.

[4] In similar vein I am asked to request the designated Deputy Chief Constable to undertake that she will not in any future disciplinary proceedings against officer *A* seek to rely on evidence given to the Inquiry by officer *A*. Again, it is important to understand that the request is not for an undertaking that no disciplinary proceedings will be raised against officer *A*. Similar undertakings have been given in other public inquiries.

[5] It is also important to note that it is not sought to extend the undertakings to evidence of an incriminating nature that one officer gives about another. In other words, officer *B* would not have the benefit of the undertaking in respect of incriminating evidence against officer *B* given by officer *A*.

[6] In addition to the applicants, a number of other officers and former officers are core participants. PC Craig Walker, PC Kayleigh Good, PC Alan Smith, PC Ashley Tomlinson, and Nicole Short and Alan Paton (both retired constables) also attended Hayfield Road on 3 May 2015; Temporary Assistant Chief Constable Patrick Campbell, Chief Superintendent Conrad Trickett and Chief Superintendent Garry McEwan (now retired) were involved in post-incident management.

[7] While, in written submissions, these core participants reserved their position, all have indicated that undertakings from the Solicitor General may be necessary. In addition, Temporary Assistant Chief Constable Campbell, Chief Superintendent Trickett, PC Good, PC Smith, and PC Tomlinson have indicated that they may also require an undertaking from the Deputy Chief Constable. Senior counsel to the Inquiry recommended that, given the limited period of time available between now and the first hearing, I should make requests now in respect of each of the officers and former officers who seek or may seek undertakings. She advised me that she had intimated to each of these core participants that she intended to make that recommendation and all had either confirmed that they were content with that approach or had raised no objection. I shall proceed on the basis of the recommendation.

[8] The Sheku Bayoh family opposed the application to request undertakings. The Coalition for Racial Equality and Rights (CRER) took a neutral position. Senior counsel to the Inquiry recommended that I should request the undertakings sought from both the Solicitor General and the Deputy Chief Constable.

Background

[9] On 11 November 2019 the Lord Advocate wrote to the Chief Constable of Police Scotland and the solicitors acting on behalf of the officers involved in the restraint of Sheku Bayoh. The letters were in the following terms:

“Death of Sheku Bayoh - 3 May 2015, Kirkcaldy

I write to advise you that Crown Counsel have instructed that no criminal proceedings will be instituted against any police officer in relation to the death of Sheku Bayoh in Kirkcaldy on 3 May 2015 on the basis of the current available information.

You will be aware that there is an obligation on the prosecutor to keep cases under review. This includes cases in which the prosecutor has decided to take no action. The Crown therefore reserves the right to prosecute any of the officers at a future date.”

[10] In the event of new or further evidence coming to light in the course of the Inquiry, such evidence would be available for consideration in a review of the case by the Crown and could be led in any future prosecution. In particular, something of a self-incriminating nature said by officer A in the course of evidence to the Inquiry would be available against officer A in any subsequent prosecution of him/her.

The privilege against self-incrimination

[11] It is clear from section 22 of the Inquiries Act 2005 that the privilege against self-incrimination extends to witnesses in a public inquiry.

[12] At common law, a witness is entitled to refuse to answer a question if a truthful answer could lead to conviction of the witness for a crime. “It is a sacred and inviolable principle ... that no man is bound to incriminate himself.”¹ The privilege is enshrined in Article 6 ECHR:

¹*Livingstone v Murrays* (1830) 9 S 161; per Lord Gillies at 162

“...there can be no doubt that the right to remain silent under police questioning and the privilege against self-incrimination are generally recognised international standards which lie at the heart of the notion of a fair procedure under Article 6”.²

[13] The privilege has a wide scope. It applies not only to a direct question as to whether the witness has committed a specific crime, but also to examination on facts which indirectly infer guilt or may form links in a chain of evidence³. The privilege extends to evidence which might be used for the purposes of deciding whether to bring proceedings against the person who gives it⁴. In addition, it extends to the use of an answer which may set in train a line of inquiry⁵.

The position of the family of Sheku Bayoh

[14] Ms Mitchell on behalf of the of Sheku Bayoh family moved me to decline to make requests for undertakings from both the Solicitor General and the Deputy Chief Constable. She submitted that the family had a legitimate expectation that police officers would give every assistance after a serious incident and that expectation extended to attending a public inquiry and answering all and any legitimate and relevant questions put to them by the Inquiry. She pointed to the duties of police officers found in the declaration each officer makes on taking up office, which was to be found in the Police and Fire Reform (Scotland) Act 2012, the code of ethics of Police Scotland and the statutory standards of professional behaviour. She made reference to the recent Independent Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing, conducted by Dame Elish Angiolini QC, published in November 2020, where Dame Elish concluded:

² *Murray v United Kingdom* (1996) 22 EHRR 29 at para 44-45; *Saunders v United Kingdom* (1997) 23 EHRR 313 at para 68

³ Dickson, *Evidence* (3rd edn), para 1789

⁴ *Den Norske Bank ASA v Anonatas* [1999] QB 271 per Lord Justice Waller at p 289A

⁵ *Rank Film Distributors Ltd v Video Information Centre* [1982] AC 380 per Lord Wilberforce at p 443D

"... all of which to some extent express or imply a statutory, ethical or procedural duty on that person to assist in the investigation of a serious incident and to uphold Convention rights."⁶

[15] She also stressed the duty of candour which existed on police officers. Dame Elish made a recommendation that the duty of candour should be put beyond any doubt by statute and whilst this recommendation had not yet been implemented, the duty nonetheless existed.

[16] The difficulty with Ms Mitchell's submission is that as a matter of law these duties are subject to the right against self-incrimination which may be exercised by a witness in giving evidence, as Dame Elish recognised.⁷

Power to make requests

[17] In terms of section 17 of the Inquiries Act 2005 I have a wide discretion to direct the procedure and conduct of the Inquiry, subject to the requirement to act with fairness and with regard also to the need to avoid unnecessary cost. It is common ground that in directing the conduct of the Inquiry in terms of section 17 I may request the undertakings. There was some difference of view between senior counsel to the Inquiry and Ms McCall as to the test that I should use in deciding whether to make the request. Essentially, the issue was whether, on the one hand, I should foreshadow the decision ultimately to be made by the Solicitor General in balancing the public interest in establishing the truth in the Inquiry against any negative effect on the administration of justice, or, on the other hand, whether I was restricted to considering only the question as to whether the Inquiry would be hampered in the absence of the undertakings. I do not think that in the circumstances of the issue before me in this Inquiry much turns on the difference of approach. I consider that Ms McCall goes too far in submitting that I may only have regard to the impact on the inquiry in the absence of an undertaking. While that will inevitably be the main driver, I would wish to take into account considerations such as the limited nature of the undertaking, which does not amount to immunity from

⁶ At para 7.108

⁷ At paras 7.109 and 7.115

prosecution and does not extend to other witnesses. I consider that I should have regard to the circumstances in the round and decide whether to make the requests.

Whether I should make the requests

[18] As a general proposition, the exercise of the right against self-incrimination by a witness can have a significant impact on the ability of an inquiry to find facts proved and draw inferences from proved facts. For example, at the inquest in 1997 into the death Stephen Lawrence the five men suspected of involvement in his murder refused to answer any questions asked of them. Sir William MacPherson of Cluny, in his subsequent report following a public inquiry, observed:

“This part of the inquest must have been both frustrating and indeed almost farcical to the jury. We fully understand the coroner’s reasons for summoning the five suspects to court and calling them. Although the fact is that calling them did, in fact, achieve nothing.”

[19] I have repeatedly stressed the important public interest in striving to ascertain the truth in the Sheku Bayoh Inquiry. My task is to search for the truth through the evidence. That will involve a consideration of the whole evidence, making of findings in fact and drawing inferences from proved facts. If the exercise by witnesses of the right against self-incrimination is likely significantly to inhibit that process, and the examples cited above suggest that that would be the case, then a strong case may emerge in favour of seeking an undertaking from the Solicitor General.

[20] The terms of reference require me to establish the circumstances of the death of Sheku Bayoh and examine the post-incident management process. The nine police officers who attended the scene are key eye witnesses to the events in Hayfield Road and subsequent events. The three senior officers are key witnesses to the subsequent events. Each of the officers and former officers is a crucial witness in respect of highly important and potentially controversial aspects of the terms of reference. The exercise of the right against self-incrimination by these witnesses would be likely to have a profound effect on my ability to reach the truth of what happened, both at Hayfield Road, and subsequently.

[21] I have committed to ensure that the family of Sheku Bayoh are at the heart of this Inquiry. They have a strong interest in hearing the fullest account of what happened on 3 May 2015 leading to the death of Sheku Bayoh. The full evidence of the key witnesses is essential to achieving that. I hope that they will come to understand that in the absence of the undertakings they are most unlikely to hear the evidence of the officers in relation to events at Hayfield Road and subsequent events. It was very clear from the observations of the Dean of Faculty and Mr Jackson that the clear advice given to the officers as witnesses would be to refuse to answer questions because of the risk of self-incrimination. As Ms McCall observed, the breadth of the terms of reference may give rise to a range of possible offences in respect of which witnesses might well be concerned about the risk of self-incrimination. In exercising the right to refuse to answer questions the witnesses would simply be exercising their legal rights and could not be criticised for doing so.

[22] While all these witnesses gave statements to the investigators on behalf of PIRC, and these are available to the Inquiry, it is necessary for the Inquiry to hear their oral evidence and, in anticipation of doing so, take full statements from them. The Inquiry is an inquisitorial inquiry which requires to conduct its own investigation. The terms of reference are much wider than the investigation conducted by PIRC and extend to an examination of the quality of that investigation itself. All of the issues to be explored in the hearings were not explored by PIRC when the initial statements were obtained. The assessment of the Inquiry team of the available material is that there are key issues of fact to be explored. In order to resolve these and make appropriate findings in fact, the Inquiry requires to have the benefit of the full, frank and uninhibited evidence of the officers and former officers identified above.

[23] The Inquiry will require to explore contradictions in the evidence and resolve discrepancies and assess the demeanour of witnesses. Assessment of credibility and reliability will be difficult if I do not see and hear the officers and former officers give full evidence.

[24] The terms of reference include the remit “to establish the extent (if any) to which the events leading up to and following Mr Bayoh’ death, in particular the actions of the officers involved, were affected by his actual or perceived race and to make

recommendations to address any findings in that regard". The issue of race will be explored as a thread throughout the hearings. This is an area which may very much depend on drawing inferences from a body of circumstantial evidence. More than one inference may be capable of being drawn from the same body of evidence. Explanations for acts or omissions of officers might require to be taken into account. In the absence of undertakings it is likely that explanations would not be available. I consider that fulfilling the remit in relation to race will require full exploration of the actions of the officers and former officers concerned, including full, frank and uninhibited evidence from them as witnesses.

[25] The terms of reference will require me to hold individual officers accountable for their actions, both in relation to events at Hayfield Road, and subsequently. The task of the Inquiry in carrying out that exercise will be enhanced if the full and frank evidence of the officers and former officers is available to the Inquiry. Conversely, without the undertakings, the evidence of the officers available to the Inquiry may be limited to the statements given by the officers to the PIRC investigators with the limitations noted above. Without the undertakings the ability of the Inquiry to hold individuals to account for their actions would be significantly impeded.

Request to Solicitor General

[26] The undertaking from the Solicitor General, as drafted by the applicants, is designed to reflect the scope of the privilege against self-incrimination described above. It is worth repeating that it does no more than that. Such an undertaking would be limited in its effect: it does not grant any immunity from prosecution; it does not apply to any statements or documents already in the possession of the Inquiry; and it does not prevent the Crown from making use of answers given by one witness in furtherance of proceedings against another.

[27] I recognise that the Solicitor General is bound to act fairly and in the public interest. She will require to balance competing public interests. She has indicated that she will consider any request made with an open mind. It is for her to decide whether it would be appropriate for her to give an undertaking and, if so, the terms of any undertaking.

[28] For the reasons which I have set out in detail above, I have come to the view that without undertakings from the Solicitor General the Inquiry is likely to be seriously impeded in fulfilling its function in relation to the terms of reference. In these circumstances I conclude that I shall request the Solicitor General to give appropriate undertakings.

Request to Deputy Chief Constable

[29] While the privilege against self-incrimination does not extend to disciplinary proceedings, I am concerned that any barrier to the giving of full, frank and uninhibited evidence by the witnesses who are serving police officers should be removed. I agree with the statement of principle by the chair of the Undercover Policing Inquiry:

“It is a commonplace that witnesses are more likely to be frank and honest with their inquisitor if there will be no adverse consequences to them arising from their evidence, such as the use of their evidence in a criminal prosecution or disciplinary proceedings against them... the Inquiry can, in the public interest, invite the Attorney General or an employer to consider whether it would be appropriate to grant an undertaking giving some measure of protection to witnesses.”⁸

[30] Undertakings were sought in the Al Sweady Inquiry:

“...I did form the view that I should seek appropriate undertakings to protect witnesses from the risk of their evidence or information being used against them in criminal proceedings and, possibly, in administrative or disciplinary procedures falling short of criminal proceedings. As it seemed to me, such a provision would properly serve to achieve the full and frank accounts from witnesses that the Inquiry requires.”⁹

[31] As noted above, the Chief Constable no longer insists that that it is incompetent for the designated Deputy Chief Constable to give an undertaking. I recognise that

⁸ [160526-ruling-undertakings.pdf \(ucpi.org.uk\)](#)

⁹ [rulingonimmunitiesandrelatedundertakingsfollowingfirstdirectionshearingof21june2010f.pdf \(nationalarchives.gov.uk\)](#)

the Chief Constable and the Deputy Chief Constable have a duty in the public interest to maintain discipline and ensure public confidence in policing. The Deputy Chief Constable will require to balance that against the public interest in establishing the truth in the Inquiry through full, frank and uninhibited evidence. An undertaking given by the Deputy Chief Constable would be limited in its effect: it would not prevent the Deputy Chief Constable from instigating disciplinary proceedings against the officer in respect of whom the undertaking is made; and it does not prevent her from making use of answers given by one witness in furtherance of disciplinary proceedings against another. Importantly, it does not apply to any statements or documents already in the possession of the Inquiry: that means that the Deputy Chief Constable would have available to her the earlier statements made by the officers.

[32] I shall request the Deputy Chief Constable to give appropriate undertakings to the specified core participants who are serving police officers. It will be a matter for her whether she decides to do so, and if she does, what the terms of any undertaking would be.

[33] A list of the officers (and former officers) in respect of whom I make the requests for undertakings from the Solicitor General and/or Deputy Chief Constable is to be found at Annex 1 to this ruling. A number of Core Participant officers (and former officers) drafted a suggested form of words for the undertakings, for the consideration of the Solicitor General/Deputy Chief Constable. The drafts are to be found at Annex 2 to this ruling.

[34] In order to allow the Inquiry to make progress in taking statements prior to the hearing on 10 May, I would be grateful if the Solicitor General and the Deputy Chief Constable could respond to my requests by 15 March 2022.

The Rt Hon Lord Bracadale 1 March 2022

Annex 1: officers and former officers in respect of whom I request undertakings

Solicitor General

Sergeant Scott Maxwell

PC Daniel Gibson

PC James McDonough

PC Craig Walker

Ms Nicole Short (retired Constable)

PC Kayleigh Good

PC Alan Smith

PC Ashley Tomlinson

Mr Alan Paton (retired Constable)

Chief Superintendent Conrad Trickett

Mr Garry McEwan (retired Chief Superintendent)

Temporary Assistant Chief Constable Patrick Campbell

Deputy Chief Constable

Sergeant Scott Maxwell

PC Daniel Gibson

PC James McDonough

PC Kayleigh Good

PC Alan Smith

PC Ashley Tomlinson

Chief Superintendent Conrad Trickett

Temporary Assistant Chief Constable Patrick Campbell

Annex 2: wording of undertakings proposed by applicants and others

Undertakings to be sought from the Solicitor General

Wording proposed by PC Gibson, PC McDonough and Sgt Maxwell

It is undertaken that no evidence given to the Inquiry by PC Daniel Gibson, PC James McDonough and Sergeant Scott Maxwell, whether orally or by written statement, or in any statement made preparatory to giving evidence, or in any document, information or item produced by that officer to the Inquiry:

- (i) will be used against them in any criminal proceedings either in the future or on appeal from a conviction; or
- (ii) will be used when deciding whether to bring such proceedings

except proceedings where they are charged with having given false evidence in the course of this Inquiry, or with having conspired with or compelled any other person to do so, or are charged with any offence under section 35 of the Inquiries Act 2005 or having conspired with or compelled others to commit such an offence.

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

For the avoidance of doubt, this undertaking does not preclude the use of a document and/or information and/or evidence identified independently of the evidence provided by that officer to the Inquiry.

Wording proposed by PC Walker and Ms Short

1. To undertake in respect of any person who provides evidence to the Inquiry that no evidence he or she may give before the Inquiry, whether orally or by written statement, nor any written statement made preparatory to giving evidence nor any document produced by that person to the Inquiry will be used in evidence against him or her in any criminal proceedings, save as provided for in paragraph 2 herein:

2. Paragraph 1 does not apply to:

a) Proceedings 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

b) 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.

Wording proposed by Mr Alan Paton

It is undertaken that no evidence to the Inquiry by Alan Paton, whether orally or by written statement, or in any statement made preparatory to giving evidence, or in any document, information or item produced by him to the Inquiry:

- (i) Will be used against him in any criminal proceedings either in the future or on appeal from a conviction; or
- (ii) Will be used when deciding whether to bring such proceedings,

Except proceedings where he is charged with having given false evidence in the course of this Inquiry, or with having conspired with or compelled any other person to do so or is charged with any offence under section 35 of the Inquiries Act 2005 or having conspired with or compelled others to commit such an offence.

Any evidence which is itself the product of an investigation commenced as a result of the provision by him of any evidence, document, thing or information to the Inquiry will not be used in criminal proceedings against Alan Paton.

For the avoidance of doubt, this undertaking does not preclude the use of a document and/or information and/or evidence identified independently of the evidence provided by him to the Inquiry.

Such undertaking is given in perpetuity and binding on the office of the Lord Advocate.

The applicants' proposed wording is adopted by Chief Superintendent Trickett, Mr McEwan and Temporary Assistant Chief Constable Campbell

No form of words was proposed by PC Good, PC Smith or PC Tomlinson.

Undertakings to be sought from Deputy Chief Constable designate

Wording proposed by PC Gibson, PC McDonough and Sgt Maxwell

It is undertaken that no evidence given to the Inquiry by PC Daniel Gibson, PC James McDonough and Sergeant Scott Maxwell, whether orally or by written statement, or in any statement made preparatory to giving evidence, or in any document, information or item produced by that officer to the Inquiry:

- (i) will be used against them in any misconduct investigation or misconduct proceedings under the Police Service of Scotland (Conduct) Regulations 2014; or
- (ii) will be used when deciding whether to bring such a misconduct investigation or misconduct proceedings,

except in misconduct proceedings that arise as a result of that officer being charged with having given false evidence in the course of this Inquiry or with having conspired with or compelled any other person to do so or are charged with any offence under section 35 of the Inquiries Act 2005 or having conspired with or compelled others to commit such an offence.

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

For the avoidance of doubt, this undertaking does not preclude the use of a document and/or information and/or evidence identified independently of the evidence provided by that officer to the Inquiry.

Wording proposed by Chief Superintendent Trickett and Temporary Assistant Chief Constable Campbell

As per the wording proposed by the applicants, with the addition of the following:

If written or oral evidence given to the Inquiry by a witness who is a [current or former member of the relevant body] may tend to indicate that:

(1) the same witness previously failed to disclose misconduct by himself or some other person, or

(2) the same witness gave false information on a previous occasion in relation to such misconduct,

Then I undertake that the [relevant body] will not use the evidence of that witness to in the Inquiry in any disciplinary proceedings against that witness where the nature of the misconduct alleged is the failure to give a full, proper or truthful account on that previous occasion.

No form of words was proposed by PC Good, PC Smith or PC Tomlinson.