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The Rt Hon Lord Bracadale QC
Chair of the Inquiry

22 March 2022

Dear Lord Bracadale

I refer to the letter from the Solicitor to the Inquiry dated 1 March 2022.

The letter formally requested that I give undertakings to twelve named officers, and former officers, of Police Scotland 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, I would not use against that officer any evidence which that officer has provided to the Inquiry.

This formal request followed upon written submissions from all Core Participants to the Inquiry, including the family of Mr Bayoh, and a Preliminary Hearing on the matter on 22 February 2022. At that Preliminary Hearing the Inquiry had the benefit of hearing submissions from Senior Counsel to the Inquiry and further oral submissions from relevant Core Participants. The Inquiry's ruling was published on 1 March 2022.

I acknowledge the careful consideration given to this matter by the Inquiry and its Core Participants. I understand why the undertakings have been sought. I am mindful that, as you state in your ruling, you require "the full and frank evidence of officers and former officers to be available to the Inquiry". I consider that it is important to ensure that the Inquiry is not prevented from fulfilling its Terms of Reference.



In carrying out my assessment of this request for undertakings I must act fairly and in the public interest. I must ensure that the security and confidence of the people of Scotland is maintained by providing just and effective means by which crimes may be investigated, prosecuted and offenders brought to justice. Accordingly, any decision which has a direct impact upon the ability of prosecutors to carry out their obligations must be made independently after careful consideration of the individual facts and circumstances.

Whilst similar undertakings have been granted in other public inquiries, these have only been approved after consideration of the totality of the evidence likely to be received by an inquiry, the likelihood that important evidence would not be available to an inquiry if a witness or witnesses sought to invoke their privilege not to answer any question which may incriminate them, and the overall impact on the inquiry's ability to fulfil its terms of reference. These decisions are unique to each inquiry and, again, each decision must be made on its own facts and circumstances.

Having carefully considered all the information available to me, I cannot currently be satisfied that it is in the public interest to grant the undertakings sought. For various reasons, including the fact that disclosure is ongoing, it is not yet clear whether each individual officer will invoke his or her right to claim privilege against self-incrimination, or the extent of any such claim. In the absence of this information, the actual impact upon the Inquiry's ability to fulfil its Terms of Reference is still unknown. Specifically, there is no evidential basis on which I can establish what, if any, document or line of questioning from the Inquiry will, in fact, cause any witness to invoke his or her right against self-incrimination. Nor can I assess the cumulative impact which the position of each individual in this regard will have on the totality of the evidence obtained by the Inquiry or how that will impact on the Inquiry's fulfilment of specific Terms of Reference.

For these reasons, I do not consider that I can be satisfied at this stage that there is an established and clear need for the twelve undertakings sought. I cannot therefore provide the undertakings.



I will keep the matter under review and will give individualised consideration to any future request for an undertaking from the Inquiry should there be information from which it becomes clear that the Inquiry will in fact be prevented from fulfilling its Terms of Reference.

Yours sincerely

A handwritten signature in black ink, which appears to read "Ruth Charteris".

RUTH CHARTERIS, QC
Solicitor General for Scotland