

IN THE MATTER OF:
THE INDEPENDENT INQUIRY RELATING TO AFGHANISTAN

ADVICE ON UNDERTAKINGS:

**ANNEX A – SUMMARY OF THE APPROACH TAKEN TO
UNDERTAKINGS IN PREVIOUS INQUIRIES**

Inquiry	Context and Terms of Reference (ToR)	Undertaking terms
Stephen Lawrence Sir William MacPherson March 1998	The ToR were: <i>“To inquire into the matters arising from the death of Stephen Lawrence on 22 April 1993 to date, in order particularly to identify the lessons to be learned for the investigation and prosecution of racially motivated crimes.”</i>	AG authorised undertaking: “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, except in proceedings where he or she is charged with having given false evidence in the course of this Inquiry or with having conspired with or procured others to do so.”
The Bloody Sunday Inquiry Lord Saville November 1998	ToR: to inquire into <i>“the events of Sunday, 30th January 1972 which led to loss of life in connection with the procession in Londonderry on that day, taking account of any new information relevant to events on that day”</i> .	AG’s authorised undertaking (letter to Lord Saville dated 22 February 1999): “An undertaking in respect of any person who provides evidence to the Inquiry that no evidence he or she may give before the Inquiry relating to the events of Sunday 30 January 1972, 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 to the prejudice of that person in any criminal proceedings or for the purpose of investigating or deciding whether to bring such proceedings except proceedings where he or she is charged with having given false evidence in the course of this Inquiry or with having

		conspired with, aided, abetted, counsel procured, suborned or incited any other person to do so.”
Ladbroke Grove Inquiry Lord Cullen 2000	<p>Context: Inquiry into the October 1999 accident at Ladbroke Grove junction.</p> <p>ToR: <i>“1. To inquire into, and draw lessons from, the accident near Paddington Station on 5.10.99, taking account of the findings of the HSE’s investigations into immediate causes. 2. To consider general experience derived from relevant accidents on the railway since the Hidden Inquiry, with a view to drawing conclusions about: (a) factors which affect safety management (b) the appropriateness of the current regulatory regime. 3. In the light of the above, to make recommendations for improving safety on the future railway”.</i></p>	<p>AG authorised Lord Cullen to provide the following undertaking (29 November 1999):</p> <p>“To undertake in respect of any person who provided evidence to the Inquiry that no evidence he or she might 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, would be used in evidence against him or her in any criminal proceedings, except in proceedings where he or she was charged with having given false evidence in the course of the Inquiry or having conspired with or procured others to do so. The Attorney-General also stated that the effect of the undertaking was to protect from use in any prosecution the actual documents produced to the Inquiry and that it did not extend to any other manifestation of the documents, whether retained originals or any copies, which the police or other investigators were able to obtain.”</p>
Robert Hamill Inquiry Sir Edwin Jowitt	<p>Context: Inquiry into the incident in Portadown, Northern Ireland in which Robert Hamill, a Northern Irish Catholic man was beaten to death by loyalists.</p>	<p>AG authorised undertaking</p> <p>“An undertaking 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 or</p>

<p>2004</p>	<p>ToR: <i>To inquire into the death of Robert Hamill with a view to determining whether any wrongful act or omission by or within the Royal Ulster Constabulary facilitated his death or obstructed the investigation of it, or whether attempts were made to do so; whether any such act or omission was intentional or negligent; whether the investigation of his death was carried out with due diligence; and to make recommendations.</i></p> <p>Note, the difference between this undertaking and that given in the Stephen Lawrence Inquiry is the addition of the words “<i>or information</i>”.</p>	<p>information produced by that person to the Inquiry, will be used in evidence against him or her in any criminal proceedings, except in 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.”</p>
<p>Rosemary Nelson Inquiry</p> <p>Sir Michael Morland</p> <p>2005</p>	<p>Context: Nelson, an Irish solicitor specialising in Human Rights, was assassinated in 1999 by a loyalist group. There were allegations that British state security forces were involved in the killing.</p> <p>ToR (as expanded): <i>These were expanded to: ‘To inquire into the death of Rosemary Nelson with a view to determining whether any wrongful act or</i></p>	<p>Various assurances were given:</p> <p>AG’s letter dated 4 July 2005 provided terms identical to those given in the Stephen Lawrence inquiry: An undertaking 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, except in proceedings where he or she is charged with having given</p>

omission by or within the Royal Ulster Constabulary, Northern Ireland Office, Army or other state agency facilitated her death or obstructed the investigation of it, or whether attempts were made to do so; whether any such act or omission was intentional or negligent; whether the investigation of her death was carried out with due diligence; and to make recommendations.'

false evidence in the course of this Inquiry or with having conspired with or procured others to do so.

MOD letter dated 27 June 2005: the MOD undertakes that evidence given to the Inquiry by military personnel will not be used against them in any subsequent proceedings before a Court Martial or summary hearing before a commanding officer or appropriate superior authority, other than proceedings for an offence under section 70 of the Army Act 1955 for which the corresponding civil offence is perjury. But if such evidence given to the Inquiry exposes any offence under military or civilian law or any breach of the Army's Standards and Values, the Army will investigate to discover whether any other evidence, other than that given to the Inquiry, might exist to support some form of disciplinary or administrative action.

Cabinet Secretary letter dated 22 June 2005 in respect of civil servants:

- "Subject to the limitations set out below, nothing which any official provides the Inquiry by way of evidence, whether orally or in writing, will be used in subsequent disciplinary proceedings against that official or any other official.
- "This undertaking not to use evidence is subject to three limitations. First, it does not apply to anyone who is charged with having deliberately misled the Inquiry by telling lies or deliberately omitting important information in their evidence. Second, it does not apply in relation to an allegation of misconduct which is so serious it

		<p>would justify summary dismissal for gross misconduct. In disciplinary proceedings for misconduct, such evidence from officials may be used.</p> <ul style="list-style-type: none"> • “If an official’s employing department becomes aware of any possible misconduct by that official only because of evidence given to the Inquiry by any official witness, that Department will not investigate any such possible misconduct or institute disciplinary proceedings in relation to any allegations of such misconduct [...] except where those allegations are of misconduct which is so serious that it would justify summary dismissal for gross misconduct. • “I should nevertheless make clear that disciplinary investigations and proceedings, including in relation to allegations of misconduct falling short of gross misconduct may be instituted and pursued if there is evidence from sources other than the evidence given to the Inquiry by any official witness. “Finally, nothing in these undertakings is intended to provide immunity against prosecution for any criminal offence.” <p>Chief Constable of the Police Service for Norther Ireland letter dated 14 July 2005, gave the following undertaking with the Police Ombudsman for Norther Ireland:</p> <p>“Nothing which any serving police officer provides to the Inquiry by way of evidence, whether orally or in writing, will be used in subsequent disciplinary proceedings against that officer or any other serving police officer, except where the allegations are so serious</p>
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		as to merit consideration by a disciplinary board of the punishments ‘required to resign’ or ‘dismissed’.
The Baha Mousa Public Inquiry Sir William Gage January 2009	<p>Inquiry into the death of an Iraqi detainee, Baha Mousa, and the ill-treatment/assault of nine other Iraqi detainees at the hands of British soldiers in Iraq in September 2003.</p> <p>The ToR were: <i>“To investigate and report on the circumstances surrounding the death of Baha Mousa and the treatment of those detained with him, taking account of the investigations which have already taken place, in particular where responsibility lay for approving the practice of conditioning detainees by any members of the 1st Battalion the Queen’s Lancashire Regiment in Iraq in 2003, and to make recommendations.”</i></p>	<p>AG undertaking (see Report at [2.2]):</p> <p>“an undertaking in respect of any person who provides evidence to the Inquiry relating to a matter within its terms of reference, including oral evidence, any written statement, any written statement made preparatory to giving evidence, and any document or information produced to the Inquiry:</p> <ol style="list-style-type: none"> 1. “No evidence a person may give before the Inquiry will be used in evidence against that person in any criminal proceedings or for the purpose of deciding whether to bring such proceedings (including any proceedings for an offence against military law, whether by court martial or summary hearing before a commanding officer or appropriate superior authority), save as provided in paragraph 2 herein: 2. “Paragraph 1 does not apply to: <ol style="list-style-type: none"> (i) A prosecution (whether for a civil offence or a military offence) 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

		<p>(ii) 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</p> <p>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.”</p> <p>MOD undertaking from DPP, PUS to MOD, CiC of the Navy, Chief of the General Staff and the Air Chief Marshall: “If written or oral evidence given to the Inquiry by a witness who is a former or current [civil servant or member of that Armed Force] 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 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.”</p>
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<p>Al-Sweady Inquiry</p> <p>Sir Thayne Forbes</p> <p>July 2010</p>	<p>Inquiry into the killing and ill-treatment of Iraqi nationals by British soldiers in Iraq during May 2004. Pre-inquiry there was an RMP investigation with no criminal proceedings resulting.</p> <p>Forbes at [32-33] held that the undertaking he sought was co-extensive with the privilege against self-incrimination.</p> <p>An undertaking was given by MOD and Heads of the Armed Services to protect witnesses from administrative or disciplinary proceedings regarding previous failures to disclose information or previous false information sought regarding</p>	<p>The undertakings were similar to those in Baha Mousa – (see Report at Ch4, para 1.44—148).</p> <p>AG undertaking:</p> <p>“No evidence...will be used in evidence against that person in any criminal proceedings or for the purpose of deciding whether to bring such proceedings against that person (including any proceedings for an offence against military law, whether by court martial or summary hearing before a commanding officer or appropriate senior authority)...”</p> <p>[the undertaking contained the same exception for false evidence given in the Inquiry itself and added].</p> <p>“...in any criminal proceedings brought, or in any decision as to whether to bring such proceedings, against any person who provides such evidence [as defined] to the Inquiry, no reliance will be placed upon evidence which is obtained during an investigation as a result of the provision by that person of evidence to the Inquiry. This undertaking does not preclude the use of information and/or evidence identified independently of the evidence provided by that person to the Inquiry.”</p> <p>MOD undertaking from PUS to MOD, CiC of the Navy, Chief of the General Staff and the Air Chief Marshall: “If written or oral evidence given to the Inquiry by a witness</p>
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		<p>who is a former or current [civil servant or member of that Armed Force] 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 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.”</p>
<p>Azelle Rodney Inquiry</p> <p>Sir Christopher Holland</p> <p>2011</p>	<p>To ascertain by inquiring how, where and in what circumstances Azelle Rodney came by his death on 30 April 2005</p>	<p>AG’s undertaking:</p> <p>“This is an undertaking in respect of any person who provides evidence to the Inquiry relating to the matter within its terms of reference. “Evidence” includes oral evidence, any written statement made by that person preparatory to giving evidence to the Inquiry or during the course of his or her testimony to the Inquiry, and any document or information produced to the Inquiry solely by that person.</p> <p>No evidence a person may give before the Inquiry, nor any evidence as defined above, will be used in evidence against that person in any criminal proceedings, save that this undertaking does not apply to:</p>

		<p>(a) A prosecution where the person is charged with having given false evidence in the course of this Inquiry or having conspired with or procured others to do so, or</p> <p>(b) Proceedings where the person 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.</p> <p>It is further undertaken that in any criminal proceedings brought against any person who provides evidence, as defined above, to the Inquiry, no reliance will be placed on evidence which is obtained during an investigation as a result of the provision by that person of evidence to the Inquiry. This undertaking does not preclude the use of information and/or evidence identified independently of the evidence provided by that person to the Inquiry.”</p>
Independent Inquiry into Child Sexual Abuse June 2015	<p>To consider the extent to which State and non-State institutions have failed in their duty of care to protect children from sexual abuse and exploitation; to consider the extent to which those failings have since been addressed; to identify further action needed to address any failings identified</p>	<p>AG’s undertaking (dated 15 June 2015):</p> <p>“This is an undertaking in respect of any person who provides evidence to the Independent Panel Inquiry into Child Sexual Abuse (the Inquiry), relating to a matter within its terms of reference.</p> <p>"Evidence" includes oral evidence, any written statement drafted for or made by that person, including any statement made preparatory to giving evidence to the Inquiry, or during the course of his or her testimony to the Inquiry, and any document or information produced by that person to the Inquiry.</p>

		<p>No evidence (as defined above) that a person may give to the Inquiry will be used in evidence against that person in any criminal proceedings under the Official Secrets Acts or relied upon for the purpose of deciding whether to bring such proceedings against that person.</p> <p>Where the evidence (as defined above) a person gives includes the production to the Inquiry of any document, film, image or any other physical item which does not lawfully belong to him, then his production of that item shall not be used as evidence against him in any criminal proceedings in respect of his unlawful possession of it or relied upon for the purpose of deciding whether to bring such proceedings against that person</p> <p>This undertaking does not apply to any prosecution where the person is charged with giving false evidence in the course of the Inquiry or having conspired with or procured others so to do.”</p>
Undercover Policing Inquiry Sir Christopher Pitchford (now Sir John Mitting)	<p>The ToR are: <i>To inquire into and report on undercover police operations conducted by English and Welsh police forces in England and Wales since 1968 and, in particular, to:</i></p> <ul style="list-style-type: none"> <i>investigate the role and the contribution made by undercover policing towards the prevention and detection of crime;</i> 	<p>AG’s undertaking (dated 28 August 2016):</p> <p>“It is undertaken that, in respect of any person 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:</p>

2016	<ul style="list-style-type: none"> • <i>examine the motivation for, and the scope of, undercover police operations in practice and their effect upon individuals in particular and the public in general;</i> • <i>ascertain the state of awareness of undercover police operations of Her Majesty's Government;</i> • <i>identify and assess the adequacy of the: 1. justification, authorisation, operational governance and oversight of undercover policing; 2. selection, training, management and care of undercover police officers;</i> • <i>identify and assess the adequacy of the statutory, policy and judicial regulation of undercover policing.</i> 	<p>(i) will be used against him or her (or their spouse or civil partner) in any criminal proceedings (whether present or future or on appeal from a conviction); or</p> <p>(ii) will be used when deciding whether to bring such proceedings,</p> <p>except proceedings where he or she is charged with having given false evidence in the course of this Inquiry or with having conspired with or procured 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 procured others to commit such an offence.</p> <p>It is further undertaken not to use in criminal proceedings (whether present or future or on appeal against conviction) against that person (or their spouse or civil partner) 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.</p> <p>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 person to the Inquiry.”</p>
Grenfell Inquiry	<p><i>To examine the circumstances surrounding the fire at Grenfell Tower on 14 June 2017.</i></p>	<p>AG's undertaking (dated 26 February 2020):</p> <p>1. No oral evidence given by a natural or legal¹ person before the Grenfell Tower Inquiry ("the Inquiry") in Modules 1, 2 and 3 of Phase 2 will be used in evidence against that person</p>

¹ Added by letter from AG dated 28 May 2020

Sir Martin Moore-Bick 2020		<p>in any criminal proceedings or for the purpose of deciding whether to bring such proceedings save as provided in paragraph 2 herein.</p> <p>2. Paragraph 1 does not apply to: (a) a prosecution in which that person is charged (however charged) with having given false evidence in the course of the Inquiry or with having conspired with or procured others to do so; or (b) a prosecution in which that person is charged with any offence under section 35 of the Inquiries Act 2005 or with having conspired with or procured others to commit such an offence.</p>
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Where no undertaking was provided

Inquiry	Context and Tours	Undertaking terms
Hutton Inquiry (2003)	<i>Urgently to conduct an investigation into the circumstances surrounding the death of Dr Kelly.</i>	<p>No undertaking from AG sought</p> <p>The Attorney General was not asked to provide an undertaking but there was a “disciplinary action” undertaking from the Cabinet Secretary who confirmed in writing that nothing which any Government official provided to the Inquiry by way of evidence, whether orally or in writing, would be used in subsequent disciplinary proceedings against that official or any other official.</p>

Iraq Inquiry (2009)	<i>(1) The terms of reference of the inquiry shall be to conduct an investigation into the— (a) origins, (b) inception, (c) legality, and (d) conduct, of the war.</i>	<p>No undertaking from AG sought</p> <p>However, there was immunity from disciplinary action to serving officials and military personnel who gave evidence or otherwise assisted the Inquiry. As stated on the Inquiry’s website:</p> <p><i>“The hearings were not covered by Parliamentary or other privilege. The Committee expected all witnesses to provide truthful, fair and accurate evidence. The Inquiry welcomes the fact that the Government and Services have extended an immunity from disciplinary action to serving officials and military personnel who give evidence or otherwise assist the Inquiry, as this helped reassure witnesses that they could provide frank and honest evidence.”</i></p>
Leveson Inquiry (2011)	<i>Part 1: To inquire into the culture, practices, and ethics of the press.</i>	No undertaking from AG sought
Litvinenko Inquiry (2014)	<i>To conduct an investigation into the death of Alexander Litvinenko.</i>	<p>No undertaking from AG sought</p> <p>In the FAQ section it is stated that: “[t]here are no immunities from prosecution relating to the inquiry’s work.”</p>

<p>Manchester Arena Inquiry (2021)</p>	<p><i>To investigate how, and in what circumstances, 22 people came to lose their lives in the attack at the Manchester Arena on 22 May 2017 and to make any such recommendations as may seem appropriate.</i></p>	<p>Chair refused to seek AG undertaking</p> <p><i>“the potential effect on the administration of justice considerably outweighs the potential benefits of allowing the applicant to give evidence without the risk of criminal proceedings. In those circumstances, the balance in this case is against any request being made to the Attorney General for an undertaking and I am not persuaded to make one”.</i></p> <p>Ruling on the application by Ben Romdhan for an application to be made to the Attorney General to give an undertaking, dated 10 June 2021 at para 19.</p>
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