

7 December 2018

Re Minute No. 6

Dear Sir Terence and Sir Geoffrey,

I write concerning Minute No. 6 and the order at paragraph 23(a) and direction at paragraph 25(a). I understand your wish to hurry up things for the Inquiry but I am puzzled by the order and direction concerning my sources.

First some background. As I assume you are aware, I took the initiative some months ago to meet counsel assisting and talk about how to ensure it was safe for my sources to take part in the Inquiry. I was subsequently not happy with the Witness Protocol that accompanied Minute No. 4, which seemed to take little account of what I had said, and wrote that in my submissions. As I noted, whistle blowers have a lot to lose and if they do not feel comfortable it can put them off. One of my sources, in spite of my urging, decided at that stage that they are not prepared to participate.

On 7 November I met again with counsel assisting, at their suggestion, to discuss these issues. To help move things along, I had met with my other most important source and drafted a list of conditions that would make him comfortable to participate in the inquiry. I gave this list to counsel assisting and said, if he could have these assurances, I could try to arrange a meeting between them and the source the following week. Counsel assisting said they would not take up the offer of a meeting at that stage.

In other words, I have been actively trying to assist the Inquiry process. However, I wonder now if there has been a misunderstanding. I did not say that that source would definitely meet the Inquiry and the source did not say he would. It was conditional on receiving undertakings that that person considered made it safe enough. I put the conditions in writing to be clear about this.

Please note I have been doing this as a go-between, trying to facilitate an arrangement that is acceptable to you and him. It would be a fundamental breach of my ethical and legal responsibilities to hand over the name of a source without his permission. If you require this of me under the s 20 order, I will have to consider my legal options.

But I think this is entirely unnecessary. I have been doing my best to facilitate contact already. Indeed I was attempting it months ago to help progress. I am ready and willing to help once there's clarity about the conditions the person asked for. I could also help with negotiation over the conditions if you wish. The basic point, though, is that he doesn't want to be identified until he feels sure of the situation.

I also draw attention to the direction in paragraph 25(a). It assumes that the source is able to be contacted safely within 24 hours, which is not at all the case. It will take considerably longer to have safe contact. The point is that vulnerable people need some care, and flexibility and time are part of providing care.

Yours sincerely,

Nicky Hager