

## WRITTEN EVIDENCE FROM ELKAN ABRAHAMSON (HBL0003)

Hearing re: Hillsborough Law.

- A. During the hearing instances were mentioned where the absence of a Duty of Candour had led to Inquiries being misled.

Examples are:

### 1. The Manchester Arena Inquiry

Prior to the statutory Manchester Arena Inquiry Lord Kerslake conducted a review (not a statutory inquiry) of the response of the emergency services. There is no requirement to cooperate with a review and no sanction for nonm-cooperation). A statutory Inquiry later took place chaired by Sir John Saunders. The Inquiries Act 2005 s.21 gives the Inquiry Chair a power to require cooperation. We submitted to the Inquiry that Greater Manchester Police at its most senior level tried to mislead the Kerslake Inquiry about its role and the way it handled the incident. A link to our submissions and a relevant extract follow:

<https://files.manchesterarenainquiry.org.uk/live/uploads/2021/12/14101126/INQ042527.pdf>

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‘241. Ten months after the Arena outrage, GMP's Senior Leadership Team including then Chief Constable Hopkins and his Deputy, Mr Pilling, were trying to persuade Lord Kerslake that GMP's response was commendable and that there had been communication of PLATO to emergency service partners straight away. That was not only a "grave error" as Mr Hopkins was to accept, it was a wholly remarkable error that the senior leadership apparently did not know the basics of what had gone wrong on the night, as summarised above.

242. Lord Kerslake was trying to conduct a rapid investigation to see if lessons could be learned and changes made quickly. Was the leadership of GMP trying to assist him or was it putting forward an aggressive defence with a casual disregard for the facts? We suggest one only has to read the correspondence to Lord Kerslake to draw the clearest of inferences that it was the latter. One only has to look at the Op Newtown debriefs and other knowledge held by GMP after the night to see that it was inexcusable for Mr Hopkins and Mr Pilling to be misrepresenting the facts in this way.’

Our submission is that , whether Mr Hopkins deliberately misled the Review or not, he was not required by statute to tell the Inquiry the truth ( or indeed to cooperate at all) . A statutory Duty of Candour would plug this gap.

### 2. Hillsborough

Among the many proceedings which took place after the Hillsborough disaster were a set of criminal proceedings against Metcalf Denton and Foster, a solicitor and 2 police officers, based on allegations that they had altered statements with a view to perverting the course of justice. The cases against them was dismissed after the

prosecution evidence was heard, the trial judge Mr Justice Davis ruling on 26/5/2021 that there was no case to answer. The Court Service press release is here: [Microsoft Word - Hillsborough press summary.docx \(judiciary.uk\)](#)

The relevant extract follows:

‘1. The offence of doing an act tending and intended to pervert the course of public justice did not apply to the public inquiry. Although chaired by a senior judge, the inquiry was carrying out an administrative function for the Home Secretary. It was not a process of public justice. The offence is a common law offence designed to protect the exercise of judicial functions. Whatever the defendants did in relation to the public inquiry, they could not and did not commit the offence charged.’

Again, the fact that this was a non- statutory public Inquiry meant that lying to the Inquiry was not an offense.

### **B The Lucy Letby Inquiry**

The decision today by the Health Secretary that the Letby Inquiry will now be statutory ( having initially announced a non-statutory inquiry) illustrates one of the consequences of not having a statutory duty of candour ( although there is a weak version of it for the NHS). The reason given for making the Inquiry statutory was that it would empower the Chair to compel attendance of witnesses. A statutory duty of candour as drafted would ensure the attendance of all relevant witnesses ( who had acted in a public capacity) at all inquiries . This in the Letby case would have saved both time and substantial costs.

*(1 September 2023)*