

## Chairman's statement about the conduct of evidence hearings

1. In paragraph three of my [statement of 20 November 2017](#)<sup>1</sup>, I set out the approach which I would adopt to the Inquiry and to procedural steps taken within it:

*“In the last sentence of paragraph 17 of his opening remarks, Sir Christopher said “The Inquiry’s priority is to discover the truth.” That is my priority. It is only by discovering the truth that I can fulfil the terms of reference of the Inquiry. I am determined to do so. In making procedural decisions about the conduct of the Inquiry I will do nothing which I can legitimately avoid which makes fulfilment of that intention more difficult. I will also make no decision whose purpose is not to fulfil that aim.”*
2. On 30 August 2018, the Inquiry issued a [consultation document](#)<sup>2</sup> on the approach which it should take to the administration of evidence hearings. Five specific areas were covered in the document, which were as follows:
  - (i) The handling of evidential documents;
  - (ii) The giving of oral evidence;
  - (iii) Facilities and support for witnesses on the day they give evidence;
  - (iv) Facilities for attendees; and
  - (v) Live streaming and/or Inquiry-managed Internet Channel.
3. The Inquiry received a number of responses to the consultation, from both state and non-state core participants. **In due course, I will issue a final response to the consultation, together with a protocol for the management and conduct of hearings.**
4. In advance of that, I am setting out my preliminary conclusions on the issues covered in the consultation; that is so to the extent necessary these conclusions may inform submissions at the forthcoming privacy hearing on 31 January 2019, the purpose of which is described in the paragraph below, and in my [directions](#)<sup>3</sup> dated 29 November 2018.

<sup>1</sup> <https://www.ucpi.org.uk/wp-content/uploads/2017/11/20171120-Chairman-statement.pdf>

<sup>2</sup> <https://www.ucpi.org.uk/wp-content/uploads/2018/08/20180830-PUBLIC-CONSULTATION-ON-THE-APPROACH-TO-THE-ADMINISTRATION-OF-EVIDENCE-HEARINGS-1.pdf>

<sup>3</sup> <https://www.ucpi.org.uk/wp-content/uploads/2018/11/20181129-Privacy-Chairman-note-and-directions.pdf>

5. The premise of the views set out below is that the majority of Inquiry hearings will take place in public. It is my hope and intention that they should do so. The premise is, however, subject to a significant reservation, which must be addressed at a public hearing at which submissions will be heard on the manner in which effect can be given to the rights of non-state individuals under Article 8 of the European Convention on Human Rights, the General Data Protection Regulation and the Data Protection Act 2018 in this public inquiry.

### **Venue**

6. The venue for open hearings has not yet been determined. No good purpose would be served, at this stage, by my addressing the submissions made by core participants about it.
7. For reasons of convenience for most participants and of efficiency the venue for open hearings will have to be in London. If practicable, an overflow facility should be available.
8. Closed hearings will take place in a building which affords reasonably secure means of access to witnesses and other participants. A facility for the temporary storage of closed material will be provided. These arrangements will be discussed privately with those concerned.

### **Witnesses**

9. My foremost concern is that the arrangements made for the reception of live evidence from witnesses should permit them to give it in circumstances most conducive to the discovery of the truth. This will require consideration of the circumstances of each witness before he or she gives evidence. I do not accept the submission made in the consultation response of the National Police Chiefs' Council that there should be a default method of giving evidence in the case of 'every officer that has been given anonymity'- a category which would appear to include the great majority of former undercover officers, in whose cases a restriction order has been made in respect of their real name. There is much to be said for the traditional means of eliciting the truth: the giving of evidence in the room in which the Chairman, lawyers and interested members of the public sit. While I do not intend to lay down a presumption or prescriptive rule, I will require an application to be made, by or on behalf of an individual witness, together with reasons for departure from that practice, before evidence by that witness is given. The mechanism for that is explained below.

10. A large of number witnesses are likely to require what have been described as 'special measures' in the consultation responses. The following is a non-exhaustive list: those who have evidence to give about intensely private matters, whether their own or those of another person; witnesses who are subject to a restriction order in respect of their name; witnesses who are abroad; witnesses who, for reasons of age infirmity or family commitments, would find it difficult to attend a hearing in London.
11. The range of measures available to assist such witnesses include the following: counselling services; hearings in private, from which members of the public and all but necessary members of legal teams are excluded; screens and voice modulation; the giving of evidence by television link from a room convenient to the witness; and the giving of evidence by television link when I can see the witness but others can only hear his or her voice. In some cases, it will not be necessary for a witness to give live evidence at all. In that event, the written statement of the witness, together with documents referred in it, will stand as his or her evidence.
12. Before each tranche, the Inquiry will publish a list of the witnesses from whom it expects to receive live and/or written open evidence. In the case of those required or invited to provide live evidence, an application for 'special measures' must be made in writing, together with supporting reasons, at least four weeks before the start of the hearings for that tranche. In cases which it is known and agreed with the Inquiry before that time that a witness wishes to give evidence by television link, the witness and/or his or her advisors must notify the Inquiry sufficiently far in advance to permit arrangements to be made at the witness's end and they must co-operate in identifying and reserving suitable facilities there. Any witness who wishes to discuss facilities for the giving of their evidence before the deadline set out above may do so.

### **Facilities for witnesses giving live evidence**

13. The Inquiry will, on request, make arrangements for the counselling of witnesses providing live evidence. Requests for such arrangements should be made at least four weeks before the beginning of the hearings of the tranche in which the witness is to give evidence. The Inquiry will use its best endeavours to ensure that adequate rooms for private consultation are available on each day of the hearing. If demand cannot be met, legal representatives with offices near to the hearing room will be requested to make such facilities available to witnesses represented by them.

14. Where facilities beyond those referred to above are requested, for example, assistance with discreet entry to and exit from the hearing room or the building in which it is situated, witnesses should give notice of their request within the same timeframe as that set for applications for 'special measures'.
15. The processes set out above are not intended to be a rigid framework. If, for good reasons, applications for 'special measures' or other requests are not made within the timeframe set out, they will not be excluded for that reason alone. It is the intention of the Inquiry to co-operate with reasonable flexibility, and on a case-by-case basis, with requests for measures, whenever made, which will permit witnesses to give their best evidence. I re-emphasise that my principal object is to afford them that opportunity and so permit me to get to the truth. I will adopt any reasonable measure, including, but not limited to those identified above, to assist them to do so. Requirements for advance notification are only made so as to permit this to be done in an orderly manner.

### **Evidential documents**

16. It is the Inquiry's intention to publish, in advance of the hearings of each tranche, general documents relevant to that tranche. The foremost examples are the annual reports submitted by the Chief Inspector of the Special Demonstration Squad to the Special Branch Commander and/or the Home Office. That should permit the public to be able to anticipate the evidence which will be given and to set it in context when given.
17. It is important that the public should have an opportunity to see and consider the documentary evidence which the Inquiry intends to take in to account in assessing the issues which it must determine, for example, what happened during a deployment and the reasons for it. I do not accept the submissions made in the response to the consultation on behalf of police bodies and on behalf of individual officers that only those documents referred to during the course of hearings should be published. The reasons are twofold: to ensure that the public have access to, and the opportunity to understand, all of the publicly available material on which the Inquiry will base its findings; and to avoid unnecessary work at the end of each hearing or at the end of a tranche to remove documents not expressly referred to.
18. The non-state core participants submit in their response that all relevant documents should be published before the hearing of the tranche to which they relate. I acknowledge that, provided privacy issues can be dealt with beforehand, the submission has a practical advantage: prompting evidence from those who participated in the events to be described by the officer. I believe that this can be

addressed, in part, by the steps which will be discussed at the 'privacy issues' hearing. It is opposed by all police bodies and the representatives of individual officers, because they fear trial by media, traditional or non-traditional, unsolicited approaches to witnesses and the increased stress upon them which might be caused by prior publication. No other inquiry of which I am aware has adopted the course proposed by the non-state core participants, in part for such reasons. Given my principal concern - to obtain evidence from witnesses which will permit me to get to the truth - I am unwilling to do anything which might impair fulfilment of that end. The open evidence taken into account during each tranche will be published soon after the conclusion of the hearings of that tranche, not before it.

### **Live streaming and hand-held communication devices**

19. The Designated Lawyers, the Metropolitan Police Service and the non-state core participants all submit in response to the consultation that extensive restrictions are required to protect the interests of numerous different categories of witness and to permit the best evidence to be obtained from them. In the case of the Designated Lawyers and the Metropolitan Police Service, their submissions focus on former undercover officers and their managers, though their submissions apply with equal force to many non-state witnesses. The non-state core participants confine their submissions to non-state witnesses. They seek to draw a sharp difference between them and former or serving police officers. Each recognises that live streaming of the evidence of witnesses for whom they are concerned is incompatible with protection of their rights and interests.
20. I agree that it is, but decline to draw any distinction, for this purpose, between state and non-state witnesses. Witnesses in each category are human beings with rights and interests personal to each of them. The rights of both are entitled to proper consideration. Further, the evidence of one witness may impinge upon the interests and rights of many others, as the non-state core participants have rightly submitted. There is a further problem. It is inevitable that things will be said which cannot be broadcast to the wider world without infringing restriction orders already made. Given all of these considerations, it is inevitable that large parts of the evidence to be given by witnesses of all categories cannot be broadcast by live streaming and likely that there would need to be frequent interruptions in the live streaming of evidence of some witnesses, parts of whose evidence could safely be broadcast by this means. None of this is conducive to the giving of evidence by witnesses to the best of their ability in circumstances most likely to permit me to get at the truth. For all of those reasons, I am satisfied

that live streaming of parts of the oral evidence is not a satisfactory solution to its publication.

21. Publication will be achieved by a daily transcript. An audio recording of the hearings may be made, both to facilitate the preparation of the transcript and to serve as a permanent record of proceedings.
22. In responding to the consultation the Designated Lawyers and the Metropolitan Police Service have both expressed concerns about the presence in the hearing room of hand-held communication devices, for three reasons: they may be used to capture visual images of witnesses; they may be used to record their voices; and they may be used to communicate evidence, mistakenly or otherwise, given in breach of a restriction order. My provisional view is that these concerns are overstated. Smartphones and mobile telephones have been brought into the hearing room for public hearings on procedural issues. As far as I know, no problem has been caused by the use of these devices to communicate silently during the course of the hearings; and I am not aware of any instance in which the [requirement](#)<sup>4</sup> for a short delay before transmitting has been breached. If experience shows that the conditions upon which such devices can be brought into the hearing room are breached, even once, I will reconsider the issue. For the present, I do not intend to impose restrictions on bringing hand-held communication devices into the hearing room or any overflow room during the public hearings in Tranche One.
23. Similar considerations apply to another concern raised by the Designated Lawyer's team. They have noted, correctly, that public procedural hearings have been accompanied by audible expressions of approval and disapproval and collective public statements and action. If such events occur, I will not hesitate to deal with them, if necessary by exercising my power to exclude individuals responsible for such conduct from public hearings. For the time being, I propose to act on the assumption that members of the public who attend hearings will behave with the responsibility and restraint customarily shown by those who attend judicial hearings, in particular when evidence is being given by witnesses.

### **Miscellaneous matters**

24. A number of miscellaneous matters on which the Inquiry did not seek views have been properly canvassed in the responses to the consultation. One example is the request for the provision of an opportunity for witnesses to familiarise themselves with the hearing room and building before the day on which they give

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<sup>4</sup> <https://www.ucpi.org.uk/wp-content/uploads/2015/10/social-media-order.pdf>

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evidence. Another is a request for the provision of an aide memoire of cyphers and pseudonyms for witnesses who will give evidence about individuals thus identified. Both are sensible suggestions, which do not require a formal ruling by me. Such issues should continue to be discussed with the Inquiry team informally.

19 December 2018

Sir John Mitting  
Chairman, Undercover Policing Inquiry