

IN THE UNDERCOVER POLICING INQUIRY

RESPONSE ON BEHALF OF THE NATIONAL POLICE CHIEFS' COUNCIL TO PUBLIC CONSULTATION ON EVIDENCE HEARINGS

Introduction

1. The NPCC provides the following response to the *Public Consultation on the Approach to the Administration of Evidence Hearings* published by the Inquiry Legal Team on 30 August 2018 (“the consultation”).
2. The NPCC observes that none of the five topics of the consultation relates to preparation for evidence hearings. The NPCC has a particular interest in the process to be adopted for preparing documents for witnesses and evidence hearings, since it is responsible for the very considerable volume of documentation pertaining to the NPOIU.
3. The NPCC proposes to address the Inquiry separately on the preparatory process, which is already underway in relation to former SDS officers but which may need to be modified in respect of former NPOIU officers due to the nature of NPOIU deployments and the (separate) representation of NPOIU officers and the NPCC.
4. The NPCC responds to the five consultation topics as follows.

(1) Handling of evidential documents post hearing

5. The Inquiry invites views on how and when evidence should be posted on the Inquiry website, as well as the timing of such publication.
6. The NPCC understands that, by the time documentary evidence comes to be referred to during evidence hearings:

- a) Any applications for restriction orders over those documents will have been made and determined;
 - b) Any documents referred to during the proceedings will be in a form which can be disclosed publicly, i.e. which have been redacted if necessary;
 - c) Relevant pages of evidence will, where possible, be displayed on screens within the hearing and “overflow” rooms.
7. As for the extent of material to be published on the Inquiry website following open hearings, the NPCC’s preferred approach would be for only relevant evidence to be published, meaning only those documents which have been referred to during oral evidence and submissions (which are likely to include any pages which have been displayed on the screens).
 8. The NPCC considers that wholesale publication of evidence bundles, regardless of the extent of reference to it during the hearing, would carry the risk of irrelevant, sensitive information being published, to which one or more parties might have a legitimate objection (for example on Article 8 grounds) and/or which could cause harm or damage. Publication of documents which have not been referred to during oral evidence would also require further consideration of the risks associated with disclosure, in light of the evidence which has been given orally, and any additional redactions which might need to be made. This could become a disproportionately time-consuming exercise.
 9. Any documents which are referred to during evidence hearings, which have not already been the subject of restriction order applications (i.e. any “new” documents produced at those hearings) would need to be subjected to this process in the same way before publication could be considered.
 10. The Inquiry and CPs will have a clearer idea of which documents are likely to be published once the evidence bundles have been compiled and circulated. This may allow some objections to publication to be determined in advance.

(2) The giving of oral evidence

11. The Inquiry is seeking views on how best to facilitate witnesses giving their evidence.
12. The NPCC understands that applications for special measures will be determined on a case-by-case basis.
13. However, the NPCC also anticipates that there will be certain generic concerns shared by all or a majority of former SDS and NPOIU officers, which could have an adverse effect on the evidence they are able to give.
14. These include concerns about:
 - a) The risk of exposure of real and/or cover names through former officers' attendance, in person, at the evidence hearing(s);
 - b) Deliberate or accidental disclosure of information, during the course of a hearing, which should have been the subject of a restriction order.
15. These concerns may be addressed by further consideration of venue, timings, video/live-link and how oral evidence is controlled.

Location and timing of hearings

16. The Royal Courts of Justice (RCJ) is an inherently unsuitable location for the evidential hearings. Experience of the hearings to date has demonstrated that the building and its facilities will struggle to cope with the particular pressures of conducting evidential hearings in this public inquiry:
 - a) The current court room is too small for all concerned (CPs, public, press and legal teams) and whilst this may be resolved in part by the provision of an overflow facility, an overflow cannot address all of the difficulties presented by the current location;

- b) Rooms will need to be provided for secure storage of sensitive documents or other material to prevent the need for such items to be transported to and from the venue each day;
 - c) Rooms will be needed for the CPs to consult privately in addition to rooms being provided for witnesses; and
 - d) Security and safety, both in and around the RCJ is a concern (addressed further below in relation to witnesses).
17. The NPCC anticipates practical difficulties associated with protecting the identity of witnesses required to give evidence, in person, at the RCJ. The building is widely recognisable, has limited routes for access, and is likely to attract significant media attention. Former officers whose real and/or cover names have not been released are likely to have concerns about their identities nevertheless being revealed due to the timing and location of their oral evidence.
18. Steps will therefore need to be taken to prevent the determined minority, intent on exposing the identity of officers who attend to give evidence, from undermining decisions which have already been taken by the Chair. If the venue for evidence hearings is to be the RCJ, many witnesses are likely to require assistance entering and exiting the building safely and/or the use of an alternative entrance.
19. These difficulties are just as likely to arise in closed hearings. Careful thought may need to be given to whether the timing of those hearings could be capable of revealing identities, which would not otherwise be published. In some cases it may be appropriate to hear evidence out of order to prevent an identity or connection being inadvertently revealed.
20. The NPCC suggests that these problems could be significantly overcome through the use of video/live-link, allowing serving or former officers to give evidence remotely instead of in person. The NPCC suggests that this should be the default method of giving evidence for every officer that has been given

anonymity. Such a course would significantly alleviate concerns about the security of witnesses, reduce the day-to-day burden on the Metropolitan Police (who will be responsible for security) and reduce the risks of identity exposure. This would be especially helpful for officers who are still serving and/or based in different parts of the UK, as is the case for many NPOIU officers.

21. The timing and location of closed evidence hearings should not be published for obvious reasons. Similarly, any recording or broadcast of evidence of officers who have been granted anonymity should not be made available to the public.

“Crib” sheets

22. The NPCC has serious concerns about the potential use of live-streaming, outlined further below. However, even if live-streaming is not used, open hearings will be attended by members of the public and therefore the potential for disclosure of information, in isolation or combination, which has or should have been the subject of a restriction order will be ever-present.
23. The NPCC suggests that many former officers are likely to be assisted by guidance on what information can and cannot be referred to publicly, including any ciphers to be used. Counsel for the various CPs, and other witnesses, are likely to find such guidance similarly useful.
24. These details could be captured within a “crib” sheet for each witness or day of evidence outlining:
 - a) Any ciphers to be used – these might apply not only to the officer(s) giving evidence (in respect of real or cover names) but also other officers or third parties with whom the officer(s) has had contact. It would be helpful for any documents, including witness statements, to be annotated in the same way (i.e. to include the use of any ciphers);

- b) Any information which is the subject of a restriction order and is not to be referred to, for example names of organisations or individuals.
25. Ideally the “crib” sheet would be drafted in such a way that it could be made public. However, there may be occasions when it is not possible to do so.
26. The NPCC has concerns that even with these precautions, the risk of compromise of sensitive information will remain and is highly likely to eventuate, either in isolation (deliberately or in error) or as a result of an accumulation of information from different sources (the mosaic effect). Even if the information is not immediately made available online (through live-streaming) it will pass to members of the public in attendance at the hearing(s).
27. The NPCC would therefore be willing to contribute to such guidance and the drafting of individual “crib” sheets and considers there would be benefit in clarifying what process will be adopted for avoiding and/or remedying accidental disclosure of restricted information during the course of evidence hearings. This process will depend on whether the evidence is streamed live or following a short delay, or (as the NPCC proposes below) is not published until some time later.
28. Officers are likely to be assisted by advance warning of when they are due to give evidence, and for how long, so that they and their legal teams can make the appropriate arrangements for travel and accommodation.

Voice modulation

29. The NPCC has an additional concern about the use of voice modulation during the course of live-link evidence and/or live streaming. Voice modulation will be important in cases where an officer’s identity could be revealed by his or her accent or voice.

30. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(3) Facilities for witnesses on the day they give evidence

31. The Inquiry invites views on the level of support that witnesses should receive when giving evidence and methods by which this may be provided.

32. The NPCC broadly agrees with the options proposed by the Inquiry to support witnesses who attend to give evidence in person. The venue and procedures in this Inquiry are likely to be very unfamiliar to all witnesses, even police officers who may have given evidence many times before. Accordingly, familiarisation visits in particular are likely to be of benefit to all witnesses, although special care will need to be taken with witnesses who have the benefit of anonymity and consideration will need to be given to which venue the witness is shown (if they are giving their evidence at an external venue).

33. Because of the large number of legal teams, a significant amount of space is likely to be required, both in the hearing room and outside, to accommodate meetings between witnesses, legal teams and support staff. Conference rooms will be needed to allow such meetings to take place in private, separately from members of the public in attendance.

34. The NPCC observes again that these requirements call into question the suitability of the RCJ for evidence hearings, since the NPCC understands there is a limited number of “overflow” rooms available (see topic (4)) and few if any conference rooms to enable counsel to take instructions or witnesses to receive support.

35. The NPCC observes that the use of video/live-link may overcome a number of practical difficulties associated with trying to support witnesses to give evidence in person, on site.
36. For some former officers, support could be provided by the home force and/or the NPCC. It may be more practical to make such arrangements if the witness is not required to attend in person.

(4) Facilities for attendees

37. The Inquiry is seeking views on an overflow room, WiFi and whether or not a small number of rooms should be provided for use by attendees other than witnesses.
38. If the evidential hearings take place at the RCJ the NPCC agrees there will need to be “overflow” rooms for members of the public who attend but cannot be accommodated in the main hearing room, although there is likely to be a (practical) limit on how many people can be accommodated in this way.
39. The NPCC agrees that there should be a short time delay on any transmissions, but this should be measured in minutes rather than seconds.

(5) Live-streaming and/or Inquiry-Managed Internet Channel

40. The Inquiry wishes to hear views on live-streaming.
41. The NPCC has serious concerns about the proposal to stream evidence live, or with a short delay (in the order of minutes). As the Inquiry has highlighted, once information has been published on the internet, it can remain there in perpetuity without ever being retracted or taken down, for example, if it is re-Tweeted or otherwise recorded and distributed online.
42. Live streaming may also adversely affect the quality of the witness evidence, particularly where sensitive information is concerned. Former officers and non-state witnesses may be deterred from giving evidence in an open and

candid manner by the knowledge that their evidence could instantly find its way online.

43. Because of the mosaic effect – which means that it may not be possible to tell whether disclosure of a particular piece of information carries any risks without an awareness of what other information has been or will be disclosed – there is a real risk of information being disclosed, live and without objection, prior to anyone realising that its release could cause harm or damage.
44. The NPCC has a particular concern about the details of covert tactics and techniques being disclosed. Such evidence will often derive from multiple sources and could be pieced together from different items of evidence which are published or disclosed at different times. The NPCC does not, at this stage, consider that it will be possible to assess these risks within a matter of minutes prior to evidence being made available online.
45. Consequently, subject to any proposals to address the risks of compromise, the NPCC does not support the introduction of live-streaming during evidence hearings.
46. The NPCC considers that the public interest in hearings taking place in public can be met by publication of the recordings of the proceedings (transcript and visual recording) after the evidence has been heard and the Inquiry and CPs have had time to consider whether any additional redactions need to be applied.
47. The NPCC considers that publication at the end of each day would suffice, and would have the advantage of enabling any redactions to be applied consistently to both transcript and visual recordings.

Conclusion

48. In summary:

- a) The NPCC agrees that reasonable steps should be taken to enable members of the public to attend open evidence hearings;
- b) The NPCC is concerned that the RCJ is not a suitable venue for the evidence hearings;
- c) The NPCC supports the publication of relevant evidence, meaning evidence which has been referred to during an open hearing;
- d) Concerns about security and breach of restriction orders may be addressed by officers and former officers giving evidence by video link;
- e) Control of sensitive information when a witness is giving evidence, and the prevention of 'slips', may be achieved by drafting a "crib" sheet;
- f) Care must be taken with voice modulation;
- g) Live-streaming onto the internet will not be appropriate for witnesses who will be giving sensitive evidence.

49. The NPCC is particularly concerned to ensure that there is a rigorous process in place to avoid, highlight and address any breaches of restriction orders or other disclosures of information giving rise to a risk of harm.

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