

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

1. The Inquiry is now preparing for the start of evidence hearings in June 2020. In my last [statement of 19 December 2018](#), following a consultation, I set out the approach the Inquiry would take in a number of areas concerning the administration of evidence hearings. This statement follows on from that and summarises the approach which will be adopted to the following issues:
  - (i) venue and facilities for those attending hearings;
  - (ii) communication, recording of proceedings, and live streaming;
  - (iii) the handling of evidential documents;
  - (iv) the giving of oral evidence; and
  - (v) facilities and support for witnesses on the day on which they give evidence.

The conclusions expressed about these issues will be incorporated into the "hearings protocol" which will be issued by 3 December 2019. I do not invite, and do not expect to receive, further submissions about them. However, I do invite views on a number of proposals for the conduct of hearings which were not covered in my statement of last year. These are set out at paragraphs 14 to 20 and **I invite written submissions on them by 4pm Wednesday, 27 November 2019.**

## Venue and facilities for those attending hearings

2. We will be in a position to confirm the Inquiry's hearing venue when the hearings protocol is published in December.
3. Members of the public or the media who wish to attend hearings will be asked to register their interest via the Inquiry website. A registration link which will be made available before the hearings to indicate the hearing day they would like to attend. This is in order to provide the Inquiry with an indication of the level of interest in each hearing and allow us to make necessary arrangements to cater for this. This will not guarantee entry and on days of high demand, members of the public may be turned away if capacity is reached.
4. Questions about facilities for those attending hearings should be raised directly with the Inquiry legal team, through recognised legal representatives where they are instructed. Specific requests by individuals should be raised in advance, but

will - if necessary and possible - be dealt with informally on the day on which they attend.

### **Communication, recording of proceedings, and live streaming**

5. Following each open hearing, the Inquiry will publish a daily transcript of the hearing. Once the hearings for a particular tranche have finished, all publicly available evidence considered as part of that tranche – even if it is not expressly referred to during the hearings – will be published.
6. There will be no restrictions on bringing hand-held communication devices into the hearing room or any overflow room during the public hearings for purposes of social media reporting, at least for Tranche One. The issue will be reconsidered if any problems with their use arise during the hearings.
7. For the reasons explained in my statement of 19 December 2018 the evidence will not be live streamed. The video footage of the opening and closing submissions will be uploaded and published to the Inquiry website at the conclusion of each of those hearing days. These arrangements will be kept under review as hearings proceed.

### **The handling of evidential documents and the giving of oral evidence**

8. The approach which the Inquiry will adopt to the remaining issues is that set out in the statement issued on 19 December 2018, with the following qualifications:
  - a. To save time and the unnecessary expenditure of effort on the redaction of documents of secondary importance, summaries of their contents will be published, rather than redacted versions of all documents relevant to a particular deployment. This approach will be adopted in relation to undercover officers in Tranche One who will not be called to give oral evidence, but whose deployments gave rise to a large volume of intelligence reports. The Inquiry will publish a redacted version of the officer's witness statement, together with a summary of relevant documents. Even in such a case, non-police non-state core participants and/or civilian witnesses will be provided with copies of intelligence reports in which they are named or referred to.
  - b. Applications for 'special measures' for witnesses must be made in writing at least four weeks before the witness is due to give evidence. The application should set out the reasons for the application and any evidence in support of it and the 'special measures' required. Late applications will be considered on their merits, but applications made late without good reason

may find that the outcome is less satisfactory for practical reasons. In any case, the Inquiry will discuss the detail of the measures required informally with the recognised legal representative and/or witness concerned.

9. 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 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**

10. The Inquiry will, on request, make arrangements for the counselling of witnesses providing live evidence before, during or immediately after giving their evidence. Requests for such arrangements are to be regarded as a request for 'special measures' and so 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.
11. The Inquiry will also, on request, make arrangements for witnesses providing live evidence to visit the hearing venue and have an opportunity to familiarise themselves with the hearing room in advance of their hearing date. Such requests must also be made at least four weeks before the beginning of the hearings of the tranche in which the witness is to give evidence.
12. The remainder of this statement sets out proposals for the conduct of hearings upon which I invite written submissions by 4pm Wednesday, 27 November 2019.

### **Opening statements**

13. Rule 11 of the Inquiry Rules 2006 provides:

*“Opening and closing statements*

*11.—(1) The recognised legal representative of a core participant may—*

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*(a) make an opening statement to the inquiry panel at the commencement of the first of any oral hearings, and*

*(b) make a closing statement to the inquiry panel.*

*(2) A core participant who does not have a recognised legal representative may make the opening and closing statements referred to in paragraph (1)."*

14. All core participants are entitled, through their legal representative, or personally if they are unrepresented, to make an opening statement at the commencement of the first oral hearing. Because the oral hearings are divided into six tranches, only the documents relevant to the first tranche will be available to be provided to those with a direct interest in Tranche One before opening statements are made. It is, therefore, likely that opening statements will principally address general issues. The Inquiry will set a timetable for the receipt of written opening statements and the making of a short oral statement at the beginning of the hearing of Tranche One. It will be published not later than four weeks before the first day of the hearing. The Inquiry would encourage the instruction of the same counsel to make an opening statement on behalf of core participants whose interests do not conflict.

### **Questioning of witnesses**

15. Rule 10 of the Inquiry Rules 2006 provides:

*'Oral evidence*

*10.—(1) Subject to paragraphs (2) to (5), where a witness is giving oral evidence at an inquiry hearing, only counsel to the inquiry (or, if counsel has not been appointed, the solicitor to the inquiry) and the inquiry panel may ask questions of that witness.*

*(2) Where a witness, whether a core participant or otherwise, has been questioned orally in the course of an inquiry hearing pursuant to paragraph (1), the chairman may direct that the recognised legal representative of that witness may ask the witness questions.*

*(3) Where—*

*(a) a witness other than a core participant has been questioned orally in the course of an inquiry hearing by counsel to the inquiry, or by the inquiry panel; and*

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*(b) that witness's evidence directly relates to the evidence of another witness, the recognised legal representative of the witness to whom the evidence relates may apply to the chairman for permission to question the witness who has given oral evidence.*

*(4) The recognised legal representative of a core participant may apply to the chairman for permission to ask questions of a witness giving oral evidence.*

*(5) When making an application under paragraphs (3) or (4), the recognised legal representative must state—*

*(a) the issues in respect of which a witness is to be questioned; and*

*(b) whether the questioning will raise new issues or, if not, why the questioning should be permitted.'*

16. Save as set out below, the questioning of witnesses will be conducted by counsel to the Inquiry or by me. Recognised legal representatives of core participants and, where they are not represented, core participants themselves, will have the opportunity to propose questions or areas of questioning for consideration by counsel to the Inquiry and me before a witness gives evidence. Such requests must be made at least one week before the day on which the witness is scheduled to give evidence. (The Inquiry will publish a list of witnesses to core participants directly affected by the undercover policing in a given tranche at least four weeks in advance of the start of each hearing.) With good reason, late requests will be entertained and considered on a case specific basis.
17. There will be circumstances in which the questioning of a witness by a recognised legal representative will be both permitted and encouraged after counsel to the Inquiry has questioned the witness. They will arise when there is a significant dispute of fact between the individual or individuals represented by the recognised legal representative and the witness. This is likely to occur three circumstances: when it is alleged that an undercover officer has encouraged, incited or participated in a serious crime alleged to have been committed by a core participant; when a deceitful sexual relationship is alleged, but disputed by the undercover officer; when there are significant disputes of fact between a manager and an undercover officer who is a core participant about what each did or knew. In each case, the individuals concerned are likely to know or assert the existence of facts which support their account against that of the other. Such requests, with details as to the questions or areas of questioning, must be made at least one week before the day on which the witness is scheduled to give

evidence. In each case in which direct questioning is permitted, the person on whose behalf the questions are asked will be expected to be willing to give evidence themselves. If they are not, direct questioning on their behalf will not be permitted.

18. Where no such dispute of fact exists, questioning will ordinarily be done by counsel to the Inquiry or by me. An example will illustrate the difference. Non-state non-police core participants have a legitimate interest in exploring what managers – and their superiors – knew about alleged misconduct by undercover officers, but are unlikely to have or to assert personal knowledge of facts relevant to the issue. The efficient and cost effective investigation of this issue cannot be achieved by multiple questioning of managers by many recognised legal representatives. Questions must be directed through counsel to the Inquiry or me.
19. When a core participant is giving evidence or when evidence directly affecting that core participant is given, he or she is entitled to have his or her legal representative present when that evidence is heard.

### **Publication of audio recordings of evidence**

20. I invite submissions on whether the audio recording of open proceedings referred to in my statement of 19 December 2018 should be made available to the participants and the wider public by uploading them onto the Inquiry's website, and if so what precautions should be taken to ensure that evidence or statements which compromise orders made by the Inquiry are not uploaded.

### **Costs**

21. Provision for meeting the cost of legal representation at hearings will be set out in a separate note by the Solicitor to the Inquiry.

30 October 2019

Sir John Mitting  
Chairman, Undercover Policing Inquiry