

Chairman's Statement to Accompany the Hearings Protocol

1. The Inquiry received 11 written submissions about the proposed hearings protocol. This statement sets out my response to the principal submissions.

Audio Recording and Uploading

2. There is a balance to be struck between the need for the Inquiry to receive oral evidence from witnesses in the manner most likely to permit me to get at the truth of events which they describe and the legitimate interest of those interested in the Inquiry's proceedings in being able to listen to a recording of the evidence given. The first must, in general, predominate.
3. In considering this issue, the Inquiry will need to consider, on a case by case basis, the extent to which the publication of an audio recording would undermine existing restriction orders, or otherwise undermine the provision of evidence. For example, in the event that proposed publication of an audio transcript would require evidence to be given with voice modulation, the disruption of the evidence being given by modulation would be likely to outweigh the limited benefit flowing from publication of a transcript of modulated evidence. With that significant proviso, it is the intention of the Inquiry to upload as much of the audio recording of open proceedings onto its website as can safely be broadcast.
4. There must be an opportunity to check that any audio recording contains nothing which would infringe or undermine a restriction order. Near-simultaneous broadcasting would not permit the careful editing of audio recordings which may be required before they are uploaded or broadcast.

Opening Statements

5. Both state and non-state core participants with a direct interest in tranches 1 to 4, and an interest in tranche 6, must have the opportunity to make a short opening statement about that tranche before evidence in that tranche is heard. To do that, they will have to have disclosed to them the documents which will be deployed during the hearing of that tranche. Core participants with an interest in the systemic issues must also have the opportunity to make an opening statement before evidence is heard in tranche 6 about the issues which will be addressed in it. Written open statements will be published on the Inquiry's website when they are received.

UNDERCOVER POLICING INQUIRY

6. State core participants will not be required to provide “position statements”, because it will interfere, at a time of high demand on the resources of those representing them, with fulfilment of the manifold tasks which they are performing to permit hearings to start on time.

Questioning of Witnesses

7. Recognised legal representatives of category M core participants will be permitted to question managers (and vice versa) when there is a significant dispute of fact between the core participant and the manager. The category of circumstances in which direct questioning will be permitted is not closed, save that it will be limited to those in which there is a significant dispute of fact between the core participant on whose behalf the question is asked and the witness. I do not accept the submission made on behalf of the non-police non-state core participants (NSCPs) that direct questioning should be permitted simply so as to permit different perspectives to be explored by cross examination. Because the purpose of permitting direct questioning of witnesses is to elucidate disputed issues of fact, it will only be permitted when the witness on whose behalf direct questioning is to occur is willing to be questioned in the same manner. It will not be necessary for that witness already to have given evidence: all that is required is an indication of willingness to do so. I do not accept the proposal made on behalf of Peter Francis that a formal direction is required to deal with issues which arise unexpectedly or otherwise during the course of evidence given by a witness. Such issues will be dealt with on a case-by-case basis as and when they arise.

Disclosure of Documents

8. The suggestion made by the NSCPs that all documents (“all material relevant to the subject matter of the Inquiry”) should be disclosed to them before a witness statement is sought from an individual NSCP or hearings begin is impracticable and would result in the postponement of the start of any hearing until all of the documents relevant to tranche 6 had been collated, analysed, tagged and redacted and witness statements obtained from all state witnesses. The delay, which could not be less than two years, is not acceptable, both because hearings must begin in time to permit individuals who may be elderly and/or incapacitated to participate and because public confidence in the Inquiry would be impaired by a further postponement of the start of hearings.
9. Two categories of documents will be disclosed: those necessary to permit a NSCP/non-state witness to provide a witness statement; and those which will be included in a hearing bundle. There will not be third category – “general

UNDERCOVER POLICING INQUIRY

disclosure of potentially relevant material to enable CPs to effectively participate in the process”, subject to restriction orders. The Inquiry has attempted to secure agreement to the disclosure to NSCPs of packages of documents subject to restriction orders, but has been unable to secure their agreement to such a process. Hence, the disclosure protocol adopted by the Inquiry. Requests to vary the restriction order under which documents are disclosed to a NSCP/non-state witness will be considered sympathetically and promptly.

10. NPOIU officers from whom a witness statement is sought will, on request, be provided with the documents relevant and necessary to tranche 4, even if they are not core participants.

“Special Measures”

11. Any request for “special measures” may be made, and will if possible be determined, well before any hearing. Four weeks is intended to be a minimum, not a maximum period.

Miscellaneous Submissions Made by the NSCPs

12. The draft witness list for tranche 1 will be published at least four weeks before the start of each hearing. It cannot be published immediately, because witness statements have not yet been received from all undercover officers and will not be received from managers until they are. Lists of groups infiltrated will be updated. This process will continue as further information is received by the Inquiry. The Inquiry will not publish routinely the identity of every group reported on, but it intends to publish the identity of significant groups which were reported on but not infiltrated, such as family justice campaigns which are core participants.
13. The NSCPs are mistaken to assert the disclosure of documents, whether of secondary importance or not, to them is “far less resource onerous than setting criteria for what is and is not a “document of secondary importance” and summarising it.” The redaction of documents for public interest reasons is a labour-intensive and time-consuming task, of which the Inquiry now has considerable experience. It is not intended to summarise individual documents. The intention is to summarise groups of them and publish examples of documents from within a group, to illustrate what has been summarised. A practical exercise has been undertaken, from which conclusions will be drawn.
14. It is appreciated that NSCPs from whom a witness statement is sought will be placed under time pressure when providing it. This is the unavoidable

UNDERCOVER POLICING INQUIRY

consequence of the agreement to obtain and show to them witness statements from undercover officers and accompanying documents which concern them first. The hearings in tranche 1 will take place between 1 and 19 June 2020. Managers, and any evidence relevant to tranche 1 not by then heard, will be heard between 1 and 18 September 2020.

15. There will not be an oral hearing to receive submissions about the hearings protocol. Since the end of open restriction order hearings, all open procedural issues have been dealt with by written submissions and private meetings between the Inquiry legal team and the recognised legal representatives of NSPCs. This procedure has worked. To change it now would be disruptive of the demanding task of preparing for hearings.

18 December 2019

Sir John Mitting
Chairman, Undercover Policing Inquiry