

## **Chairman's second statement about the conduct of tranche 1 evidence hearings**

1. This statement sets out the manner in which the Inquiry will conduct the hearing of oral opening statements and open evidence in tranche 1. I am grateful to all who have responded constructively to the statement made on 29 May 2020. The first part of this statement sets out my response to the written submissions made by core participants and the media. Paragraphs 13 to 20 set out the decision made as to the conduct of the hearings.
2. A striking feature of the submissions made by the Metropolitan Police Service (MPS), the designated lawyers (DL) and the non-state core participants (NSCP) is that the only issue upon which they agree is that the hearings should be further delayed. This is not acceptable to me. The terms of reference require that I report as soon as practicable. Further, those ultimately responsible for the public purse are entitled to require that I stick to that commitment. Failure to take practicable and available steps to start hearings this year would be inconsistent with it. I reject submissions that there should be further delay.
3. The DL and NSCPs submit that hearings must, for a variety of reasons, take place in a traditional hearing room in which all or almost all participants are physically present. That would have been my preference, as I stated on 19 December 2018. It is not practicable now. The experience of the independent Inquiry into child sex abuse (IICSA) demonstrates that there is a viable alternative. There is no reason why opening oral statements should be any less effective for being made over the Internet and broadcast by live streaming than if made in a hearing room and reported by traditional means. IICSA's remote evidence hearings have shown that evidence can be given and received remotely without significant impairment of its quality. I am satisfied that opening statements and the oral evidence in tranche 1 can be given remotely without materially impairing their effect and quality.
4. The NSCPs submit that if it is not possible to hold a traditional hearing, something approaching as closely as possible to one should occur. In particular, the evidence should be heard live and the venue or venues to which it is transmitted should be large enough to accommodate as many people, even with social distancing restrictions, as would have been accommodated in the hearing and overflow room in Pocock Street at which the Inquiry had intended to hold its hearings. I agree, in principle, with both submissions. The live transmission of oral evidence to a hearing room under the control of the Inquiry is the nearest equivalent to live evidence given in the hearing room and, in principle, raises no

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fresh difficulty. Since the statement made on 29 May 2020, the Inquiry has located a central London venue which can accommodate approximately 100 people in two rooms on the basis that they must be at least 2 metres apart. 3 smaller rooms are also available for the use of the legal teams of core participants.

5. The NSCPs and the media submit that evidence should be live streamed, with or without a delay, to a variety of locations not under the control of the Inquiry. For the reasons explained in paragraphs 19 and 20 of the statement made on 19 December 2018 that will not happen. The factors giving rise to that decision (security considerations and the need to minimise actions which may undermine restriction orders already made) have not changed. They must take priority over the wishes of those who may, for a variety of reasons, be unable to attend the hearing venue.
6. The DL submit that they have not had adequate notice of the intention of the Inquiry to receive evidence from undercover officers and managers in tranche 1 remotely and have raised a series of complaints in correspondence about the absence of detail set out by the Inquiry of the arrangements necessary to give effect to that intention. This is, to put it mildly, surprising. I accepted a proposal made on behalf of DL clients required to give evidence in tranche 1 that their evidence should be given remotely. Constructive face-to-face or virtual discussions have taken place between the Inquiry team and the DL on other issues. In paragraph 13 of the statement made on 29 May 2020 I indicated that virtual meetings with recognised legal representatives would be arranged before a final statement was made. As a result of a misunderstanding, no meeting with the DL took place before this statement was drafted. It is not necessary, for present purposes, to determine how the misunderstanding arose. To avoid any future misunderstanding, I have included in the decision a deadline for them to provide certain information necessary to permit the Inquiry to receive evidence from their clients remotely. For the future, I and their clients are entitled to expect that they will engage constructively with the Inquiry in discussions to give effect to a proposal made by them to protect their legitimate interests.
7. The MPS have requested that the evidence transmitted remotely should be live streamed to the Commissioner's Lawyers (CL). I am in principle unwilling to do this, because it would create the impression of unfairness between them and the legal representatives of other participants. I accept, however, that they have a particular role to play in ensuring that nothing is transmitted outside the hearing room by a handheld communication device which would infringe a restriction order. To permit them to do that, one of the three smaller rooms available for the use of the legal teams of core participants at the hearing venue will be provided

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for their use for this purpose. The Inquiry will discuss the practical steps necessary to achieve this with the MPS.

8. The National Police Chiefs' Council (NPCC) and the MPS submit that there should be a delay on the live streaming of evidence to the hearing room. I do not accept this submission and prefer that of the NSCPs that evidence given remotely should, as nearly as possible, equate to evidence given personally in a hearing room. The protection of information covered by a restriction order will be upheld by imposing a 10 minute delay on the onward transmission of any information about evidence being given, to permit a new restriction order to be made. I accept the submission that a protocol should be published setting out what steps the Inquiry will take to ensure that restriction orders are not breached. I intend to record a statement, to be broadcast at the start of each evidential session explaining the prohibition on onward transmission for 10 minutes and the consequences of breaching it. I also accept that discussions must take place with the MPS and the DL and NSCPs about the manner in which the Inquiry will ensure that control is kept over the hearing rooms. For reasons of security and to facilitate the tracing arrangements made to deal with the Covid 19 outbreak, no one will be permitted to enter them who does not provide their name email address and telephone number.
9. It is not now intended to upload an audio recording of evidence. My obligation to take reasonable steps to secure that the public, including reporters, are able to attend the Inquiry and to obtain or view a record of the evidence and documents given produced or provided to the Inquiry under section 18 (1) of the Inquiries act 2005 will be discharged by the measures set out below, by publishing the open documents received and by uploading a transcript of each days open evidence on the Inquiry website.
10. The DL appear to be under the misapprehension that opening statements will be confined to tranche 1. The intention of the Inquiry is to afford to core participants their opportunity to make the opening statement to which they are entitled under rule 11 (1) of the Inquiry Rules 2006.
11. I accept the suggestion of most core participants the written statements should be exchanged before the opening day of the hearings and set out in the decision how that can be accommodated.
12. The NSCPs have provided a detailed breakdown of the time required by them to make their oral opening statements. The total is 25 hours. The MPS and the DL require between 7 and 8 hours between them. The NPCC and Home Office require 30 minutes each and the NCA and Mark Kennedy "a very short time, if any". There has been no response from Slater and Gordon or Clyde and co.

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### Decision

13. Written opening statements must be provided to the Inquiry by 4 pm on Thursday 22 October 2020. Any security checking of the statements made by state bodies and those representing former undercover officers and managers must be completed, together with any proposals for redactions by 4pm on Monday, 26 October 2020. The Inquiry will determine any disputed redactions in time to permit circulation of all written statements to the legal representatives of those who have provided such statements to the Inquiry by 4 pm on Wednesday, 28 October 2020. A restriction order will be made prohibiting dissemination of any statement circulated beyond the legal team responsible for the preparation and making of an oral opening statement, except for the purpose of addressing its content in an oral opening statement. Written opening statements will be published by the Inquiry on the day on which an accompanying oral opening statement is made.
14. All opening oral statements will be live streamed. On 2 to 6 and 9 and 10 November 2020 the Inquiry will sit from 10 am to 5 pm, with a one hour break from 1 pm to 2 pm. The opening oral statement of counsel to the Inquiry will be made on 2 November 2020. The opening oral statements on behalf of state core participants and former undercover officers will be made on 3 and 4 November 2020, ending at 3 pm on 4 November 2020. The MPS statement will be made first, followed by the NPCC, NCA and Home Office. The DL statement will be made on the afternoon of 3 November and the morning of 4 November 2020. One hour will be set aside ending at 3 pm on 4 November 2020 for Mark Kennedy and Slater and Gordon and Clyde and co, should they belatedly indicate a wish to make an opening oral statement. The opening oral statements of non-state core participants will begin at 3 pm on 4 November 2020 and will continue on 5, 6, 9 and 10 November 2020. Counsel for Peter Francis will make the first statement, followed by counsel for the category M core participants. Counsel for the remaining NSCPs will make their statements in the order notified to the Inquiry by 4 pm on Friday, 2 October 2020 or, in default of notification, determined by the Inquiry.
15. The open oral evidence of witnesses will be given remotely on equipment to be provided by the Inquiry at a location convenient to the witness. The DL must notify the whereabouts of that location to the Inquiry in respect of each witness represented by them who will give oral evidence in phase 1 tranche 1 by 4 pm on Friday, 4 September 2020. It will be given on 11 – 13 and 16 – 20 November 2020.

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16. The oral evidence of witnesses in phase 1 tranche 1 (from undercover officers and non-state witnesses about the SOS between July 1968 and the end of 1972 approximately) will be live streamed to a central London location, the identity of which will be disclosed to core participants and the media once firm contractual arrangements have been made. There will be two rooms which will accommodate approximately 100 people on the basis of minimum social distancing requirements of 2 metres. Each room will be under the control of the Inquiry, aided by security staff. Any person wishing to attend the hearings should notify the Inquiry of that wish and of the day or days on which they wish to attend by 4 pm on Friday, 23 October 2020. Any person wishing to attend the hearings must provide their name email address and telephone number. Anyone who declines to do so will not be afforded access to a hearing room. An online register of those who wish to attend will be opened on Monday, 5 October 2020. In the event that demand for space exceeds availability, the Inquiry will determine who may attend. Subject to availability, members of the public will be afforded access to a hearing room without prior notification, but will be required to provide their name email address and telephone number before being allowed to enter.
17. There will be no delay between the giving of evidence and its transmission to the hearing rooms. No one attending a hearing will be required to surrender a handheld communication device and will be permitted to use it, silently, to transmit the content of evidence after a 10 minute delay. A restriction order will be in place prohibiting transmission before that time has elapsed.
18. The evidence of witnesses will be live streamed to me, to counsel to the Inquiry and to the recognised legal representative of the witness.
19. A transcript of each day's proceedings will be posted on the Inquiry's website, together with written statements and documents given produced or provided to the Inquiry in tranche 1. An audio recording of proceedings will be made, but will not be posted on the Inquiry's website.
20. Evidence from undercover officers deployed by the SDS between 1972 and 1982 approximately and non-state witnesses from whom the Inquiry has obtained witness statements about this period will be given or received in phase 2 of tranche 1. It is intended that this will begin on 25 January 2021. The Inquiry will seek the views of relevant core participants about the time required for brief oral statements about this phase and the giving of evidence in it. Arrangements for the giving and hearing of evidence similar to those for phase 1 of tranche 1 will be made.

23 July 2020

Sir John Mitting

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Chairman, Undercover Policing Inquiry