

IN THE UNDERCOVER POLICING INQUIRY

RESPONSE ON BEHALF OF THE NATIONAL POLICE CHIEFS' COUNCIL ("NPCC") TO CHAIRMAN'S STATEMENT ABOUT THE CONDUCT OF TRANCHE 1 EVIDENCE HEARINGS

Introduction

1. The NPCC provides this response to the *Chairman's statement about the conduct of tranche 1 evidence hearings* dated 29 May 2020, following the Hearings Protocol dated December 2019 and accompanying Chairman's Statement dated 18 December 2019.¹
2. The NPCC intends to address the Inquiry in writing and, briefly, orally at the start of Tranche 1 due to its interest in the handling of sensitive information, particularly concerning tactics and techniques. The NPCC does not envisage needing more than approximately 30 minutes in opening, and suggests that the state bodies should, logically, go after the non-state bodies.

Harmful disclosure of information

3. The NPCC's primary concern remains the risk that information which is the subject of a restriction order will, either in isolation or as a result of the "mosaic effect", be disclosed during the course of evidence hearings. This risk is most likely to eventuate in Tranche 1 when the experience of evidence hearings will be limited. Whilst the disclosure of such information could give rise to significant harm, the NPCC is also concerned that police witnesses could be deterred from giving their "best evidence" by the fear of contributing to the problem.

¹ This response is provided further to the NPCC's (1) response (to the *Public Consultation on the Approach to the Administration of Evidence Hearings*) dated 28 September 2018; (2) Note (regarding the Inquiry's evidence gathering process) dated 15 March 2019; and (3) response (to the *Chairman's further statement about the conduct of evidence hearings*) dated 27 November 2019.

4. The NPCC maintains its opposition to live-streaming and is grateful for the indication that this will not be employed.² This goes some way to mitigating the risk. However, the NPCC remains concerned that the risk of harmful disclosure of information could eventuate by other means.
5. The NPCC understands that both an audio recording and transcript will be prepared of each day's evidence, and that both will be published after a process of checking to ensure that neither contains information which would infringe or undermine a restriction order.³ The NPCC respectfully seeks clarification of how this "checking" process will be conducted for both audio and transcript publications, and within what timescale. If the open evidence hearings are to be "attended" by members of the press, consideration will need to be given to the terms of any reporting restrictions necessary to ensure that information is not published in the media prior to the "checking" process being complete.
6. The potential for mosaic disclosure, particularly as regards tactics and techniques, is likely to prove the most challenging to assess. The NPCC stands ready to assist the Inquiry, and proposes:
 - a) To have practitioners and/or legal representatives in attendance at the evidence hearings, to raise any concerns with Counsel to the Inquiry ("CTI") as promptly as possible during the course of live evidence;
 - b) That this exercise would be greatly facilitated by advance disclosure of witness statements and CTI's (and any other CP's) indicative areas of questioning, so that areas of risk can be identified in advance of the hearings;
 - c) There will need to be an agreed means of flagging concerns to CTI, confidentially in the first instance, as and when they arise. The NPCC suggests this is likely to take at least 10 minutes, especially if the participants are in different locations;
 - d) The live transmission of evidence may need to be paused if continuing is likely to cause harm, although it is hoped that breaks in the evidence can be kept to a minimum if areas of risk have been identified in advance and police witnesses

² Hearings Protocol, page 7.

³ Hearings Protocol, pages 7 and 8; Chairman's Statement to Accompany the Hearings Protocol at [4]; Chairman's statement about the conduct of tranche 1 evidence hearings at [6].

given guidance on areas of open and closed evidence. The NPCC previously suggested the use of “crib” sheets for this purpose;⁴

- e) The more preparation that can be done in advance, as regards likely areas of evidence and associated risk, the less need there is likely to be to interrupt the flow of evidence hearings.
7. The NPCC has previously expressed concern about (i) the proposal to publish witnesses’ voices via the audio recording and (ii) the potential for voice modulation technology, which may be necessary to avoid breaches of restriction orders, to be infiltrated or compromised.⁵ The NPCC would be grateful for clarification as to whether these issues have been resolved.

Social media reporting

8. Prior to the publication of the Hearings Protocol, the NPCC expressed concern about the proposal for communication devices to be brought into the hearing room for the purpose of social media reporting, and for there to be no restrictions on such reporting unless problems arise during the course of evidence hearings.⁶ This proposal has now been incorporated into the Hearings Protocol, subject to a time delay of 5 minutes between any words being spoken or information being given in the hearing room and any communication or publication of those words or information on Twitter or other social media (or form of communication).⁷
9. If information is disclosed in oral evidence which should be but is yet to be restricted, either as required during the course of live evidence or as part of the “checking” process prior to publication of the audio recording and transcript, this proposal will mean that the information may already have passed into the public domain and become permanently accessible on the internet, prior to any check. The NPCC is concerned that a 5 minute delay may not be sufficient when evidence is being given live, and that on

⁴ NPCC’s response (to the *Public Consultation on the Approach to the Administration of Evidence Hearings*) dated 28 September 2018 at [22]-[27].

⁵ NPCC’s previous responses dated 27 November 2019 at [11] and 28 September 2018 at [29]-[30].

⁶ NPCC’s previous response dated 27 November 2019 at [12]-[14].

⁷ Hearings Protocol, page 7-8.

occasion the checking process could take longer, although the NPCC will endeavour to alert CTI to any risks as quickly and efficiently as possible.

Live-streaming to an “overflow” room

10. The NPCC remains opposed to the live-streaming of information by any means, due to the risk of revealing information capable of giving rise to significant harm without any means of remedying a breach.⁸ Once information is on the internet it may prove impossible ever to remove it.
11. In paragraph 8 of the Chairman’s statement about the conduct of Tranche 1 evidence hearings, it is suggested that evidence may be live-streamed to a “room under the control of the Inquiry” in which a limited number of people – likely confined to core participants directly affected by the evidence and their RLPs, “and representatives of the media” – could be accommodated. It is said that the same restrictions would be imposed on the use of handheld devices to photograph or record proceedings as would apply in a conventional hearing room; but the NPCC understands these persons would be permitted to use their devices for social media reporting, as envisaged in the Hearings Protocol. The NPCC understands the purpose of this proposal to be to enable participants other than CTI, CPs with a “direct interest”, and witnesses (who are covered in paragraph 6 of the Chairman’s statement) to “attend” open evidence hearings. The NPCC would be grateful for clarification as to how it is envisaged that such participants, including CPs without a direct interest in the evidence being given, and members of the public or press, would attend the proceedings if not by this means.⁹
12. The NPCC has no objection to the provision of an “overflow” room, if its purpose is to permit persons who would otherwise have been permitted to attend a conventional hearing room to listen to and, if applicable¹⁰, view the evidence. The NPCC observes that such a facility would have the advantage of enabling members of the public and

⁸ NPCC’s previous responses dated 27 November 2019 at [9]-[10] and 28 September 2018 at [41]-[47].

⁹ Further to the penultimate sentence of paragraph 8 of the Chairman’s statement, where it is suggested that the “overflow” facility may be “of limited value in enabling the wider public to witness the proceedings”.

¹⁰ The NPCC would be grateful for clarification as to whether it is envisaged that the live-stream will be an audio-only feed (as for CPs with a “direct interest” referred to in paragraph 6) or an audio and video-feed.

press to attend in circumstances controlled by the Inquiry. The NPCC seeks clarification of how the Inquiry proposes to enforce its conditions of attendance. If witnesses' voices or images are restricted, these conditions will need to apply to the overflow facility.

13. The NPCC's concerns about the proposed "overflow" facility relate solely to the potential for these individuals to live-stream information, subject to a 5 minute delay, using their handheld devices and/or for members of the press to report information which is yet to be subject to the "checking" process discussed above (which the NPCC does not envisage being completed in 5 minutes). For this reason the NPCC objects to the proposal, but would not object if the concerns regarding media and social media reporting were addressed by other means. The NPCC will be in a better position to offer an alternative proposal to the planned 5 minute delay following advance disclosure of statements and indicative areas of questioning, but provisionally suggests 10 minutes as a minimum.

Virtual hearings

14. The NPCC respectfully seeks clarification of the arrangements which will be made to allow witnesses, especially former officers, to give evidence remotely. The NPCC observes that safeguards will be needed to ensure that evidence is not improperly recorded, disseminated or otherwise interfered with during the course of a hearing, where witnesses are giving evidence in locations other than the hearing room.
15. The same concerns apply to persons permitted to "attend" remotely, if there is to be any provision for such attendance beyond the "overflow" facility discussed above.

Attendance at tranche 1 hearings

16. The NPCC respectfully asks to be included among those permitted to attend the evidence hearings, since the NPCC has a "direct interest" in ensuring that information relating to tactics and techniques, which is capable of giving rise to a real risk of harm, is not disclosed.¹¹

¹¹ As envisaged in the Chairman's statement about the conduct of tranche 1 evidence hearings at [6].

17. The NPCC understands its main role to be to assist with the timely identification of information which should be withheld from disclosure during the live evidence, and redacted from the audio recording and transcripts as part of the “checking” process. If the Chairman envisages this exercise being performed during the 5 minute delay in information being relayed to the “overflow” room (the feasibility of which the NPCC expresses concerns about above), the NPCC would ask to be included among the CPs permitted to hear the evidence in real time. It can only be with the benefit of hearing the evidence live that the NPCC can react to try and obviate the risk of a harmful disclosure.

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