

## Protocol for protecting existing restriction orders during hearings

### Protocol

1. Any person attending a hearing may carry with them a portable communication device.
2. If that device has the capacity to transmit or record voices or images it must not be used for either purpose.
3. That device may be used for transmitting to any other person, silently, the content of any evidence given or statement made not less than 10 minutes after it was given or made. A restriction order will be made under section 19 prohibiting earlier transmission.
4. In the event that any statement is made or evidence given which may be in breach of an existing restriction order the following steps will be taken. (1) I will, and any member of the Inquiry team or recognised legal representative may, immediately state that such a breach may have occurred (2) the hearing of statements or evidence will forthwith be suspended (3) if satisfied that such a breach may have occurred, I will forthwith make a fresh restriction order under section 19 prohibiting further dissemination of the statement or evidence until further notice (4) if, after hearing representations (if necessary in private) from relevant recognised legal representatives, I am satisfied that further dissemination of the statement or evidence would breach an existing restriction order, I will make a fresh restriction order under section 19 prohibiting further dissemination and direct that the transcript of that day's proceedings will be edited to remove any reference to the statement or evidence.
5. In the event of a possible breach by an identified person of any of the restriction orders specified above, the matter may be referred to the High Court under section 36 Inquiries act 2005. The High Court will have the power to deal with an established breach as if it had been a breach of an order made by the High Court.
6. Further, and in any event, if a breach of any of the prohibitions specified in paragraphs 2 or 3 above is established to my satisfaction, whether or not the person responsible for the breach can be identified, I will make a restriction order prohibiting any person from bringing into a hearing room any handheld communication or recording device unless I have reason to believe that the purpose of the breach was to cause me to make such a restriction order or there

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is some other exceptional circumstance, of a kind which I cannot now envisage, which would make it inappropriate do so.

### **Statement to accompany protocol**

1. The purpose of paragraph 6 of the protocol is twofold: to protect existing restriction orders; and to make it clear to any person tempted to breach the prohibitions specified in paragraphs 2 or 3, in the belief that they will not be detected, that their actions will have consequences for others. I accept the submission made by the NSCPs that a deliberate breach made for the purpose of causing me to revoke paragraph 1 of the protocol should not have that effect. Hence the reservation in paragraph 6.
2. I have accepted the submission made by the MPS that express provision should be made for editing the transcript of the day's proceedings to remove any reference to the offending statement or evidence. Hence the addition to paragraph 4. It is intended to apply to any transcript on Opus. Discussions about how this can be achieved will be undertaken.
3. Apart from the replacement of "handheld" by "portable", in paragraph 1, no other amendment is required. The remaining suggestions made by the MPS are already implicit in the protocol; and that made by the NCA is unnecessary, because it will not take me as long as 10 minutes to decide that a breach may have occurred.

14 October 2020

Sir John Mitting  
Chairman, Undercover Policing Inquiry