

IN THE MATTER OF THE UNDERCOVER POLICING INQUIRY

METROPOLITAN POLICE SERVICE

SUBMISSIONS FOR THE 26 JANUARY 2021 PROCEDURAL HEARING

1. These are the submissions of the Commissioner of the MPS (“the MPS”) in response to the Chairman’s Note of 7 December 2020. The Chairman has requested submissions on:
 - a. Matters relating to the efficient and effective running of the Tranche 1 Phase 2 (“T1P2”) evidence hearings;
 - b. The use and form of Rule 10 questions; and
 - c. The broadcast of evidence hearings, in particular the use of a rolling transcript and/or audio feed of proceedings and any associated delay in transmission for security reasons.

2. On 16 December 2020, the Inquiry stated that the intended dates for the T1P2 hearings are 21 April – 14 May 2021 (allowing 3 days for tranche-specific opening statements and three weeks for evidence). The following is not yet clear:
 - a. Whether these dates are likely to change in view of the 6 January 2021 imposition of a third national lockdown (“Lockdown 3”).
 - b. The location for the proposed hearings, including whether they will be at the Amba Hotel or an equivalent venue, or the Inquiry’s Pockock Street venue (although it is understood that this unlikely).
 - c. The format for the hearings, in particular whether a hybrid model is again proposed (as took place in November 2020), or a full in-person hearing.
 - d. Whether witnesses will be expected to attend virtually in every case as was required in the November hearings, or in person.
 - e. The timetable for witness attendance, or whether the Inquiry will sit 4 or 5 days per week.

3. Absent an indication from the Inquiry of its proposals it is not easy to make focused submissions. The MPS would be grateful to receive indications of the Inquiry’s proposals

in order to be able to give a more focused response by the date for reply submissions (15 January 2021).

4. The Inquiry also may wish to consider whether proceeding to hear T1P2 on 21 April 2021 is the most sensible course, given the recent Covid-19 developments, including both the approval of vaccines and the strictures of Lockdown 3, with the likely effects of the latter on Core Participants' ability to prepare.
5. A short delay to the hearing might have considerable benefits: (i) it would allow the Inquiry to proceed after the vaccine roll out, making attendance at a normal, in-person hearing once again realistic; (ii) it would be safer and minimise risks to legal teams and support staff who would otherwise have to attend in person; (iii) it would avoid placing undue pressures on the Core Participants and their legal teams, arising from preparing for the hearing in January - March, whilst schools are closed and travel should be minimised, and in the case of the MPS, with a lesser risk of additional front-line policing duties which flow from the Covid-19 resurgence; (iv) it would afford Non-State Core Participants ("NSCPs") further time to consider the hearing bundles, avoiding the difficulties that occurred in November (see below); (v) and finally, it might allow the Inquiry to hear T1P2 along with the managers' evidence (Tranche 1 Phase 3 or T1P3), which – as the MPS has previously submitted – would be beneficial for the proper understanding of UCO evidence.
6. The above notwithstanding, the following submissions assume, for present purposes, that the hearing will be in April 2021 in a format similar to November 2020, with the same proposed processes, because there will still be Covid-19 restrictions and challenges to public access.

The use and form of Rule 10 questions

7. The MPS' key submission, developed below, is that the principal difficulties identified in the November 2020 hearing can - and should be - managed by the timely provision of the T1P2 bundle to the relevant participants. The MPS suggests that circulation of the bundle

to all Core Participants no later than the week commencing 15 February 2021¹ is appropriate, and more time should be afforded if it is possible.²

The existing position

8. The Inquiry is presently following what has been termed the ‘hybrid model’.³ Witness examination is primarily undertaken by Counsel to the Inquiry (“CTI”), followed by the witness’s own representative (limited to 10 minutes). Core Participants’ representatives may submit issues or questions in advance to CTI. They may also apply to ask questions directly (pursuant to Rule 10 of the Inquiry Rules 2006). However, as the Chairman indicated in §17 of his statement on 30 October 2019, this will only be permitted or encouraged ‘when there is a significant dispute of fact between the individual or individuals represented by the recognised legal representative and the witness’. During the hearing in November 2020, the Chairman also allowed a 10-minute period after CTI’s questioning for Core Participants to formulate and apply to ask questions.

MPS submissions

9. The MPS submits that the existing protocol/procedure should remain in place for the hearing in April 2021. It has the manifest advantage of ensuring that all relevant questions are asked without the Inquiry becoming adversarial in either content or tone.

10. At the short procedural hearing on 17 November 2020, criticism was made by the cooperating group of NSCPs of the procedure which had been adopted to date. The bases of criticism were:

- a. It was difficult to meet the deadline to supply CTI with issues 7 days in advance, because of the shortness of time with the bundle overall.⁴
- b. Questions may arrive late because not all Core Participants have advance access to the bundle before the hearings.⁵

¹ i.e. allowing for 8 working weeks with the bundle, recognising the need to allow a week for the Easter bank holiday in 2021. In light of Lockdown 3, it may be that more time is required, particularly if there is an indication of school closures and travel limits persisting past mid-February.

² i.e. if necessary security checks can be completed sooner, this should translate to earlier circulation of the bundle. Longer periods can also be achieved by a short delay to the hearing start date.

³ Jason Beer QC, *Public Inquiries* (OUP, 2011) p233 Ch 5 §5.186.

⁴ T12112020/D12/P77/L19.

⁵ T12112020/D12/P78/L2; T12112020/D12/P79/L7.

- c. Late responses by CTI to the Rule 10 requests could lead to late application to the Chairman.⁶

11. In the MPS' submission, these concerns can be met by:

- a. Granting Core Participants directly affected by a tranche longer with the evidential bundles than the 6 weeks which was permitted before the November 2020 hearings (and for some parts of the bundle the period was less: additional materials were added within the 6-week window).
- b. Maintaining the 10-minute period at the conclusion of evidence before a witness is released, for the Core Participants and their legal representatives to decide whether they wish to ask the witness further questions and, if necessary, to apply to do so.
- c. Close adherence by CTI team to the timescales set out in their October 2020 'Note on application of Inquiry Rules 2006' at §16.

12. The MPS supports each of the above features, which are fair to all and allow a proper opportunity for active participation by each class of participant affected by the tranche in progress. The MPS recognises the pressures on all legal teams to process the content of the bundles for the first time, and suggests a period of at least 8 working weeks⁷ would be significantly fairer, if necessary with material being uploaded in stages.⁸ For that reason, as stated above, the MPS suggests that the T1P2 hearing bundle should be made available to relevant Core Participants by or during the week commencing 15 February 2021, if at all possible.⁹

13. The MPS is particularly anxious to avoid a situation – as occurred at the last hearing with witness Joan Hillier – where questions alleging that WDS Helen Crampton had engaged in a deceitful sexual relationship with an activist were put to Ms Hillier, without there being a proper evidential foundation for such an allegation, and without any notice to the witness or the MPS (which has responsibility for the officer against whom allegations were made, given that she is deceased). This was plainly unfair. For present purposes it suffices to say

⁶ T12112020/D12/P78/L17.

⁷ As indicated above, if it becomes clear that school closures and travel restrictions will persist past mid-February it may be that more time than this is required.

⁸ Although notification of each upload and a soft index setting out the additions should be provided to all participants – this did not always happen with the November 2020 bundle and made keeping track of the content unnecessarily difficult.

⁹ Recognising that security checks are required on the bundle before it can be circulated.

that this situation must be avoided in future, and granting relevant participants longer with the bundle in advance is likely to assist in that goal.

14. This notwithstanding, the MPS does not accept that any of the following changes, should they be proposed, would be fair or appropriate:
 - a. Granting wide advance access to the hearing bundle beyond those Core Participants who are directly concerned in the evidence within the tranche. The risk of inadvertent breach of restriction order increases with wider disclosure. The Inquiry is well able to assess who is affected by a particular set of proceedings. If the cooperating non-state group disagrees, that can be raised with the Inquiry. If longer is permitted with the bundle (as the MPS suggests it should be) there will be more time for this process.
 - b. Permitting questions by Core Participants automatically, without reference to CTI under the procedure outlined in CTI's October 2020 Note. There is no justification for such a move and many disadvantages. Such an approach is not within the letter or spirit of Rule 10, which sets down a clear structure for an inquisitorial process led by questions from CTI or the Inquiry Panel. Rule 10 (and the Inquiry's chosen procedure as set out in its Notes) allows the Inquiry to maintain control, efficiency and direction in its investigations – hugely important in a wide-ranging inquiry such as this. Permitting – without detail – an automatic right of questioning is liable to dilute focus in the investigations and be unduly time consuming. It could foster polarisation. It allows for partisan, non-neutral questions which are not the purpose of an inquiry, are unlikely to assist the Chairman and may be unfair to witnesses. This is particularly the case for elderly witnesses, the majority of whom have no possible allegation of wrongdoing to face.
15. In summary, the MPS submits that the system put in place by the Inquiry in advance of the last hearings in fact operated well. There was no suggestion in the previous procedural hearing that significant questions or topics should have been covered by CTI but were missed. Subject to the modification and improvements suggested at paragraph 11 above, the next hearings can be even more effective.
16. The MPS will respond to further or alternative suggestions made by other Core Participants in its further submissions as required.

Broadcast of hearings

17. In normal times the Inquiry's open hearings would allow Core Participants, the public, and the media to attend in person. Plainly, such hearings would meet the demands of the Inquiries Act 2005 (section 18) and the principles of open justice. It would not be appropriate for a live or delayed audio-visual broadcast of that evidence to be made outside the hearing room in this Inquiry. That was the Chairman's correct (and unchallenged) conclusion before the Covid-19 pandemic and, in July 2020, in its context.¹⁰ The principal objections to live or delayed streaming (security considerations and the need to minimise actions which may undermine restriction orders already made) have not changed. As the Chairman has already stated: "They must take priority over the wishes of those who may, for a variety of reasons, be unable to attend the hearing venue."
18. If, in April 2021 or shortly thereafter, it is possible to revert to a normal, in person or hybrid hearing with media and public access, even with social distancing, that would be far preferable. This is the position contemplated by the Chairman in his 23 July 2020 Note (see §4).

¹⁰ In respect of live audio-visual feeds, see §19 and §20 of https://www.ucpi.org.uk/wp-content/uploads/2018/12/20181219-Chairman_statement-conduct_of_evidence_hearings.pdf, and in particular the Chairman's conclusion:

"Witnesses in each category are human beings with rights and interests personal to each of them. The rights of both are entitled to proper consideration. Further, the evidence of one witness may impinge upon the interests and rights of many others, as the non-state core participants have rightly submitted. There is a further problem. It is inevitable that things will be said which cannot be broadcast to the wider world without infringing restriction orders already made. Given all of these considerations, it is inevitable that large parts of the evidence to be given by witnesses of all categories cannot be broadcast by live streaming and likely that there would need to be frequent interruptions in the live streaming of evidence of some witnesses, parts of whose evidence could safely be broadcast by this means. None of this is conducive to the giving of evidence by witnesses to the best of their ability in circumstances most likely to permit me to get at the truth. For all of those reasons, I am satisfied that live streaming of parts of the oral evidence is not a satisfactory solution to its publication."

And see the Chairman's July 2020 statement, made in the context of the pandemic at §5, in particular:

"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."

https://www.ucpi.org.uk/wp-content/uploads/2020/07/20200723_chairmans-second-statement_t1-hearings.pdf

19. *If* it is not possible for there to be public access to the hearing for T1P2, even with a short delay to the proposed start date, the Inquiry will wish to afford greater access to its proceedings to meet the inability of the public to attend. In November 2020, at hearings during Lockdown 2 without public rights of access, this was achieved by online publication of a rolling transcript (with a 10-minute delay to notify of issues arising before publication).
20. The MPS is aware that concerns were raised as to the effectiveness of the rolling transcript as a means of providing public access. The question is whether, *if* the same or similar restrictions persist in April 2021 as were in place in November 2020, more should be done to assist the public in accessing the proceedings. It is against that background, and in view of the specific risks arising for T1P2 officers, the MPS makes the submissions which follow. It should not be presumed, because it would be wrong, that the submissions which follow constitute a general concession as to the procedures that can be safely adopted during hearings after April/May 2021.
21. If the T1P2 hearing takes place in April 2021 and the public are not permitted to attend, or advised not to attend/travel, the MPS suggests that a delayed audio-only feed could be made available to accompany the rolling transcript, subject to the following strict conditions, which are necessary for security.
22. First, the audio-only broadcast would need to be subject to the same delay as the rolling transcript. Any audio feed could not be live, principally because of the risk of inadvertent disclosure.
23. Second, because even a delayed audio broadcast increases the risk that a person might be identified, the delayed audio-only feed should only be made available under the following conditions:
 - a. It should be accessible only at the time of transmission (i.e. not held online available for later watching or review, and in this way replicating normal in-person proceedings);
 - b. It should be encrypted with access provided upon request and via a login, not posted online. This will allow the Inquiry to ensure that all viewers are aware of restriction orders in place (see below);

- c. A restriction order should be made prohibiting any sharing of the link/invitation to any other person, and prohibiting the making of any recording of the audio feed;
 - d. The link to the delayed audio-only feed must only be effective and accessible within the jurisdiction of England and Wales.
24. Where there are reasons to believe a delayed audio-only feed would increase the risk of identification of a witness whose identity is restricted, it should not be transmitted. The MPS will identify any such cases to the Inquiry separately, should this arise, with reasons – and proposes to do this within 14 days of any decision in line with paragraphs 22-23 above.
25. For the avoidance of doubt, the MPS continues to oppose strongly any suggestion that online audio-visual streaming should take place (either live or delayed). Such a course is completely incompatible with the protection of prospective witnesses’ rights and interests under the ECHR; and in the event of mistakes which might undermine a restriction order, the harm cannot be undone.¹¹ It would breach the restriction orders in place which prohibit image publication, and (particularly if live) could lead to further breaches in respect of content of evidence (for example, if a witness mistakenly names another).

Other matters relating to the effective and efficient running of T1P2 hearings

26. As mentioned above, much remains unclear about the Inquiry’s proposals for the April 2021 T1P2 hearings, which makes it difficult to assist with focused observations. At this stage, it seems that a model operating similarly to the November 2020 hearings remains appropriate. The MPS submits the following features should be in place:
- a. A Covid-secure central London venue should be arranged (such as the Amba Hotel) which can accommodate Core Participants and the media (and, if permitted, the public).
 - b. The venue must be capable of operating as a hearing venue for legal teams (as did the Amba Hotel).
 - c. Witnesses should continue to give evidence by live link and not in person.

¹¹ It is to be noted that counsel of one non-state Core Participant in fact did breach an Inquiry restriction order (T17112020/D12/P64/L12-14). This serves to demonstrate how even with professional training and the best of intentions, these mistakes can occur.

- d. Relevant Core Participants should be afforded no less than 8 working weeks (or 9 actual weeks) with the hearing bundle before the hearing. This period may need to be longer in the event of further extensions to school closures and other lockdown restrictions. Additions to the bundle should be clearly communicated and marked on a soft index provided to the relevant participants.
- e. Rule 10 procedures should be followed as set out in the Inquiry's October 2020 'Note on application of Inquiry Rules 2006', with all efforts being made to adhere to the deadlines set therein.
- f. In addition, 10 minutes should be afforded at the end of each witnesses' evidence and before their release, to allow for applications to ask further questions pursuant to the criteria the Chairman has already identified.

27. In any future hearing, new allegations by Core Participants or witnesses should not be made by ambush; and applications to ask questions should not be permitted without an evidential foundation and proper notice being given to concerned participants of the issue arising. The Chairman has recognised that an evidential basis is necessary,¹² but with respect, this does not go far enough: before questions are permitted to be put, the evidential foundation for them should be provided to the Inquiry and to the witness, his/her representatives, and other representatives of Core Participants whose interests are directly engaged. In the case of all MPS officers (current or former), the MPS CL legal team should be given advance notice that the allegation has arisen/questions have been permitted. The MPS will then be able to consider its records, including potentially identify and highlight material which may assist in ascertaining the truth of an allegation. Such notice is essential in the interests of fairness and to preserve the inquisitorial nature of the Inquiry.

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AMY MANNION

8 January 2021

¹² See the Chairman's statement of 30 October 2019 at §17: where an RLR is permitted to ask questions alleging a deceitful sexual relationship "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". See also the Chairman's observations during the November 2020 procedural hearing: T17112020/D12/P71/3.