

IN THE UNDERCOVER POLICING INQUIRY

SUBMISSIONS OF THE NATIONAL POLICE CHIEFS' COUNCIL IN ADVANCE OF DIRECTIONS HEARING ON 26 JANUARY 2021

1. These brief submissions are supplied in response to the Chairman's note of 7 December 2020 outlining matters on which he invites submissions in advance of a procedural hearing due to take place on 26 January 2021 and the Tranche 1 Phase 2 evidence hearings scheduled for spring 2021.
2. The NPCC is grateful for the Inquiry's repeated emphasis that the arrangements for Tranche 1 hearings are not intended to be a template for future hearings, and makes these submissions with that in mind.

Broadcast of evidence hearings

3. The Chairman has invited submissions on the broadcast of evidence hearings, in particular the use of a rolling text transcript and/or an audio feed of proceedings and any associated delay in transmission for security reasons.
4. At the Tranche 1 Phase 1 evidence hearings held in November 2020:
 - a) The witness evidence¹ was live-streamed to a hotel in Central London, which was open to all CPs (and their legal representatives) and the media. The plan had been for this location also to be open to members of the public, but this was not possible due to the national restrictions imposed amid the coronavirus pandemic. Those attending the hotel were given a warning at the start of each evidence hearing that they would not be permitted to transmit any account of what they had seen or heard in the hearing room to any other person until at least 10 minutes had elapsed since the event being described.

¹ As opposed to the Opening Statements and summaries of written evidence, which were live-streamed on the Inquiry website/the internet.

- b) Alongside this limited live-streaming to the hotel – a venue under the control of the Inquiry – a rolling transcript of the oral evidence was streamed to the Inquiry’s website, subject to a 10-minute delay. The NPCC notes that the rolling transcript was cut on a number of occasions, indicating that the 10-minute delay was used.
5. For reasons outlined in previous submissions,² the NPCC remains opposed to any proposal to live-stream evidence hearings on the Inquiry’s website/the internet. Once material is on the internet it cannot be taken down. As the Chairman has recognised,³ the security and privacy considerations pertaining to most of the evidence this Inquiry will hear make it unjustified and unreasonable to live-stream evidence on the internet. Such a course would inevitably involve undermining restriction orders and the rights and interests personal to both state and non-state witnesses.
6. The Chairman’s original plan was to conduct evidence hearings in a physical venue open to members of the public, akin to a typical courtroom. It was never to conduct a public broadcast of proceedings on the internet. The coronavirus pandemic required the T1P1 evidence hearings to be conducted remotely⁴; however, the Inquiry retained control over the manner in which this was done by live-streaming proceedings only to a location under the control of the Inquiry. This ensured that the Chairman’s warning at the start of each hearing – regarding the transmission of information subject to a 10-minute delay and any further restriction order made in that period – could be enforced.
7. The fact that members of the public were, ultimately, unable to attend the physical venue for the T1P1 evidence hearings was not the fault of the Inquiry but was instead due to the pandemic. The Inquiry did not prevent any members of the media from continuing to access the physical venue and comment or report on social media subject to the 10-minute delay (in the event, few chose to do so). Members of the public were able to follow the evidence via the rolling transcript, which was published daily.

² The NPCC’s Response to the Public Consultation on Evidence Hearings dated 28.9.18 at [29]-[30] regarding voice modulation and [41]-[47] regarding live-streaming; and the NPCC’s Response to the Chairman’s Further Statement about the Conduct of Evidence Hearings dated 27.11.19 at [9]-[14] regarding live-streaming.

³ Chairman’s Statement about the Conduct of Evidence Hearings dated 19.12.18 at [19]-[20].

⁴ As explained in the Chairman’s Statement about the Conduct of Tranche 1 Evidence Hearings dated 29.5.20.

8. Should pandemic conditions persist for the Tranche 1 Phase 2 hearings in spring 2021, the NPCC respectfully submits that the arrangements for T1P1 could be maintained, and that live evidence, subject to a 10-minute delay in any onward publication of information, should only be transmitted to participants who are (for these purposes) enabled to have access by the Inquiry. The factors giving rise to the Chairman's previous decision to this effect still have not changed.⁵
9. Relaxation to enable unrestricted access without control measures in place (and the ability to enforce them) risks compromising the very substantial work invested to date in the restriction order process, and infringing the rights and interests of those called to give evidence to the Inquiry.

Rule 10 questions

10. The Chairman has invited submissions on the use and format of Rule 10 questions.
11. Under the current system for questioning witnesses⁶:
 - a) The large majority of questions are posed by Counsel to the Inquiry;
 - b) CPs and their legal representatives have the opportunity to submit proposed lines of questioning in advance. Late requests are considered on a case-specific basis;
 - c) Only where there is a "significant dispute of fact" will direct questioning by legal representatives be permitted after CTI has questioned the witness, provided that the person on whose behalf questions are asked is prepared to give evidence⁷;
 - d) Where no such dispute exists, questioning will ordinarily be done by CTI or the Chairman – even in areas where CPs may have a legitimate interest, because the alternative (i.e. questioning by all representatives with an interest in a given area) would not be conducive to an efficient and cost effective investigation.
12. The NPCC respectfully submits that the current system accords with the provisions of Rule 10 of the Inquiry Rules 2006.

⁵ Per the Chairman's Second Statement about the Conduct of Tranche 1 evidence hearings 23.7.20 at [5].

⁶ Per the Chairman's Further Statement about the Conduct of Evidence Hearings dated 30.10.19 at [15]-[19].

⁷ Chairman's Further Statement about the Conduct of Evidence Hearings dated 30.10.19 at [17]; Chairman's Statement to Accompany the Hearings Protocol dated 18.12.19 at [7].

13. Departing from it to permit further questioning (or cross-examination) by legal representatives risks undermining the inquisitorial nature of the Inquiry and introducing unfairness between CPs, whose representatives do not have the opportunity to object (as they would in adversarial proceedings) to lines of questioning introduced, without notice, at the end of questioning by CTI, or to advance such questions themselves.
14. With such broad terms of reference, it is inevitable that many potentially relevant factual disputes will not be resolved. It will therefore fall to the Chairman to determine which disputes of fact are “significant” enough to warrant further collateral questioning – which, in fairness, may need to be permitted for other CPs with a legitimate interest – and those which do not.
15. Genuinely new lines of questioning, which cannot be foreseen in advance and which arise during the course of the live evidence, should remain relatively rare and can be considered on a case-by-case basis, allowing for extra time if necessary.

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