

IN THE MATTER OF THE UNDERCOVER POLICING INQUIRY

Submissions on behalf of the Slater and Gordon Clients on matters relating to the efficient and effective running of the Tranche 1 Phase 2 evidence hearings

1. The Slater & Gordon clients welcome the return to hearings where all Core Participants and others can make submissions about matters that affects their interests and which they ought fairly to be heard on.
 2. Such hearings and any encouragement for Core Participant(s) to participate actively and constructively in the hearings should not alter the principles that govern Inquiries and this Inquiry in particular.
 3. Core Participants and their Recognised Legal Representatives should be treated equally.
 4. The Inquiry is inquisitorial and not adversarial in nature.
 5. Ordinarily, the questioning of witnesses should be carried out by Counsel to the Inquiry.
 6. The Chairman already has made statements about the conduct of evidence hearings [19 December 2018, 30 October 2019, 18 December 2019 and the Hearings Protocol of the same date, 29 May 2020, 14 October 2020]. Also, there is a Protocol for protecting existing Restriction Orders during hearings and the Chairman made a statement to accompany that Protocol [14 October 2020].
 7. It is axiomatic that having made Restriction Orders the Chairman should adopt procedures that prevent those Restriction Orders from being undermined or infringed, whether deliberately or inadvertently.
 8. The Chairman has invited submissions from Core Participants and the media on:
 - 8.1. The broadcast of evidence hearings: in particular the use of a rolling text transcript and/or audio feed of proceedings and any associated delay in transmission for security reasons.
 - 8.2. The use and format of Rule 10 questions.
- The broadcast of evidence hearings: in particular the use of a rolling text transcript and/or audio feed of proceedings and any associated delay in transmission for security reasons.
9. The questioning of Tariq Ali on 11 November 2020 led to matters that should not have been aired in public being aired in public, including the asking of a question the answer to which breached a Restriction Order.
 10. It is essential that the Inquiry adopts procedures that ensures its Restriction Orders are not undermined or infringed whether deliberately or inadvertently. If matters are aired in a public hearing where there is a rolling text transcript and/or audio feed of proceedings there must be a prohibition on any person transmitting the content of any evidence or statement

made for not less than 10 minutes after it was made or given [§3, Protocol for protecting existing Restriction Orders during hearings and the statement of the Chairman to accompany that Protocol, 14 October 2020]. If a statement is made or evidence given which may be in breach of an existing Restriction Order, the procedure set out in §4 of the Protocol should be utilised.

11. Any rolling text transcript and/or audio feed of proceedings should only be to a room or premises that are under control of the Inquiry. If it is not, the protection in the Protocol is worthless. This submission is not intended to undermine the Chairman's decision to permit proceedings to be 'live-streamed' to a Core Participant, whatever the circumstances of that 'live-stream' it must be subject to the same protection, however that is achieved.

The use and format of Rule 10 questions.

12. The current procedure is set out in the Note on application of Rule 10 of the Inquiry Rules 2006 and the accompanying template.
13. There appears to be three areas of evidence that are relevant to the directions hearing:
 - 13.1. Where there is a significant dispute of fact(s).
 - 13.2. Where a topic has not been dealt with by counsel to the Inquiry.
 - 13.3. Where a new issue has arisen unexpectedly during oral evidence.
14. Where there is a significant dispute of fact, the Chairman stated that questioning of a witness by a Recognised Legal Representative will both be permitted and encouraged after counsel to the Inquiry has questioned the witness in the circumstances set out in §17 of the Chairman's further statement about the conduct of evidence proceedings, 30 October 2019. It is of importance that the Chairman stated:

In each case in which direct questioning is permitted, 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.

15. A similar observation was made in §7 of the Chairman's statement to accompany the hearings Protocol.
16. The significant dispute of fact must be relevant to the terms of the Inquiry.
17. Core Participants should be treated equally. If, as expected, the person on whose behalf the questions were asked gives evidence, ordinarily the Recognised Legal Representative of the Core Participant who was questioned should be permitted to question the person on

whose behalf the questions were asked about the same significant disputed fact. If that person does not give evidence, the Chairman will have to assess the appropriate weight to be given to any disputed evidence provided other than orally.

18. It will be unusual for a topic relevant to the terms of the Inquiry not to be dealt with by Counsel to the Inquiry, but if it is not, the Chairman should deal with each application on its merits in accordance with the Chairman's statements about the conduct of evidence hearings and the Hearings Protocol.
19. If a new issue arises unexpectedly during oral evidence the Chairman should deal with each application on its merits in accordance with the Chairman's statements about the conduct of evidence hearings and the Hearings Protocol.

Richard Whittam QC
Matrix Chambers

7 January 2021