

## Protocol for Warning Letters

### Introduction

1. The Inquiry Rules 2006 (the Inquiry Rules) specify a specific formal warning letter process to ensure that no one is criticised without fair warning and a reasonable time in which to respond. This protocol sets out how the Undercover Policing Inquiry will operate the statutory warning letter process.
2. The entitlement to Warning Letters contained in Rule 13(3) of the Inquiry Rules is not restricted to core participants or to those who have given oral or written evidence to the Inquiry.
3. It is for the Chair to determine to whom Warning Letters should be sent. The Inquiry's general approach will be to ensure that significant criticisms of relevant individuals and organisations are aired, as far as practicable, during the Inquiry's investigation, and in the Inquiry's hearings in the interest of fairness, transparency and avoiding unnecessary delay. The Chair will be guided in such determinations by section 17(3) of the Inquiries Act 2005 (the 2005 Act), which provides that the Chair must act with fairness and with regard also to the need to avoid any unnecessary cost (whether to public funds or to witnesses or others) when making any decision as to the procedure or conduct of the Inquiry.

### Contents of Warning Letters

4. In accordance with Rule 15(1) of the Inquiry Rules, Warning Letters must:
  - a. *state what the criticism or proposed criticism is.*
  - b. *contain a statement of the facts that the Chair considers substantiate the criticism or proposed criticism; and*
  - c. *refer to any evidence which supports those facts.*
5. The Chair may provide copies of the evidence referred to in the Warning Letter if the Chair considers it appropriate to do so.
6. The prescribed contents of Warning Letters, as set out in Rule 15(1) of the Inquiry Rules, are subject to any restriction on the disclosure of evidence, documents, or information in accordance with sections 19 (restriction orders made by the Chair) and 23 (risk of damage to the economy) of the 2005 Act or resulting from a determination of public interest immunity.
7. In cases where significant criticism may be inferred from evidence that has been given during the inquiry proceedings, (see Rule 13(1)(b)) the

requirement under Rule 15(1) above is disapplied and the letter must instead refer to the evidence from which criticism could be inferred (Rule 15(3)).

### Arrangements for Sending Warning Letters

8. Where the intended recipient of a Warning Letter has a designated Recognised Legal Representative, a Warning Letter will be sent to them but is not to be opened without the permission of the intended recipient in order to comply with Rule 14 (see below). Where the intended recipient does not have a designated Recognised Legal Representative, the Inquiry team will take reasonable steps to contact that person to ascertain the correct address for this purpose.

### Duties of Confidence in Relation to Warning Letters

9. Recipients of Warning Letters may disclose the contents of the letter to their Recognised Legal Representative under Rule 13(2) of the Inquiry Rules.
10. Pursuant to Rule 14(1), the contents of Warning Letters must be treated as confidential, and this obligation is owed:
  - a. *separately by each member of the Inquiry team to the recipient of the Warning Letter;*
  - b. *by the recipient of the Warning Letter to the Chair; and*
  - c. *by the recipient's recognised legal representative to the Chair (where the recipient has disclosed the contents under Rule 13(2)).*
11. This obligation is owed in addition to any other obligations owed by those persons to the Inquiry (by way of confidentiality undertakings or similar).
12. The Chair may waive the obligation of confidentiality in writing at any time under Rule 14(2) of the Inquiry Rules. The recipient of a Warning Letter who wishes to disclose its contents to any person other than their Recognised Legal Representative should submit a written application to the Chair identifying any person to whom they wish to disclose the content of the Warning Letter and giving reasons. If minded to waive the obligation of confidentiality, the Chair may attach conditions and, in particular, may require any person in respect of whom permission to disclose is requested to give a written confidentiality undertaking before the disclosure is made.

### Response to Warning Letters

13. Where the recipient of a Warning Letter wishes to respond, that response must be provided in writing and delivered by email, or other agreed method, to the Solicitor to the Inquiry ([contact@ucpinquiry.org.uk](mailto:contact@ucpinquiry.org.uk)).

## UNDERCOVER POLICING INQUIRY

14. All Warning Letters will specify a date by which any responses must be returned. The Inquiry will ensure that all recipients have been given a reasonable opportunity to respond. In determining what is a reasonable time in which to respond to a potential criticism the Inquiry will take into account the fact that it has to date published issues lists, comprehensive hearing bundles and conducted oral hearings. In addition, Counsel to the Inquiry and core participants have made opening statements and will have the opportunity to make closing statements. Consequently, the issues will have been ventilated to such an extent that it is anticipated that recipients will be able to respond to warning letters promptly. Recipients can normally expect to be given 14 days in which to respond.
15. The Inquiry's panel will take account of any response to a Warning Letter when finalising the report as regards the criticism or proposed criticism. Under Rule 16 of the Inquiry Rules, in determining the weight accorded to any evidence before the Inquiry, the Chair will disregard whether (or not) a Warning Letter was sent to any person.

24 October 2022

Sir John Mitting  
Chairman, Undercover Policing Inquiry