

INQUIRY INTO THE RETIREMENT OF THE FORMER COMMISSIONER OF POLICE

Protocol for Vulnerable Witnesses and Restrictions on Public Access

Introduction

1. The purpose of this protocol is to set out the principles which will guide the Inquiry in its treatment of vulnerable witnesses, and general restrictions on public access.

Core principles

2. The core principles of the Inquiry's interactions with witnesses are:

- a. every witness should be able to give evidence with dignity and to the best of his or her ability;
- b. the Commissioner should be in the best position to assess the quality of that evidence; and
- c. the process of being a witness does not begin once sitting in the witness box, but includes preparing for, making, editing and approving any formal statement (written or otherwise, whether or not given under oath). Nor does the process end once leaving the witness box, as many witnesses are in fear of reprisal after giving their evidence.

Definition of witness

3. For the purposes of this protocol a witness is anyone who gives evidence to the Inquiry, regardless of whether he or she is also a Core Participant (pursuant to the Inquiry's Core Participants Policy).

Definition of vulnerability

4. A person shall be considered "vulnerable" for the purposes of this protocol if there is – or perceived by the witness to be – a significant risk that by reason of threat, fear or intimidation or by reason of one or more personal characteristics, he or she will:

- a. experience added stress or other difficulty in being a witness or potential witness; and/or
- b. suffer a likely detrimental effect in the quality of any statement or evidence which they give; and/or
- c. require greater than normal support to ensure their participation; and/or
- d. be at significant risk that by giving evidence he or she may suffer a worsening of their mental health or wellbeing.

Personal characteristics

5. These characteristics include, but are not limited to any of the following:

- a. Age;
- b. A significant impairment of intelligence or social functioning;
- c. A recognised mental disorder;
- d. Physical disability or disorder;
- e. Substantial fear or distress related to testifying about matters relevant to the Inquiry;
- f. Difficulties with communicating in spoken English;
- g. Difficulties with communicating in written English;
- h. Difficulties with reading;
- i. Any condition which, whilst not amounting to a disorder is such as to affect significantly the ability of the individual to be a witness or potential witness.

Identifying a vulnerable witnesses or potential witness

6. It is essential to a fair inquiry that anyone who is or may be vulnerable as defined in paragraph 5 above is identified as such at the earliest opportunity. The assistance and co-operation of anybody involved in taking statements from such an individual is of vital importance.

7. It is possible for an individual's vulnerabilities and needs to develop or change over time. It is essential that any changes in an individual's vulnerabilities or needs be communicated to the solicitor to the Inquiry as soon as they are discovered.

8. In any event, every statement from anyone who is or may be a witness and who is or may be vulnerable should be accompanied by the Vulnerability Questionnaire which is annexed to this Protocol.

9. It is for the Commissioner to determine whether any witness should be considered vulnerable within the meaning of this protocol. In making this determination, the Commissioner will take into account:

- a. Considerations relevant to Articles 2 and 3 of the European Convention on Human Rights, if the facts require it.
- b. The applicant's subjective fears, even if not well-founded.
- c. Whether the evidence supplied to the Inquiry is likely to attract the interest of those elements thought to pose a risk to the witness.
- d. Whether the fears entertained by the witness are genuinely and reasonably held.
- e. The potential for the measures sought to cause injustice to persons against whom serious allegations have been made, and the erosion of public confidence in the Inquiry which might ensue as a consequence of permitting a witness (or category of witness) to remain anonymous.

MEASURES TO ASSIST VULNERABLE WITNESSES

General principles

10. Where the Commissioner determines that a witness is vulnerable within the meaning of this protocol, he may also direct that additional measures be taken to assist a witness in participating effectively in that role or to improve the quality of their evidence.

11. Before making any direction the Commissioner shall, where possible, ascertain and take into consideration the views of the witness on the appropriateness and nature of any additional measures.

Additional measures

12. The Commissioner has a wide discretion to make such directions as he considers necessary to achieve the core principles set out above. Such directions may include, but are not limited to any one or more of the following:

a. The appointment of an intermediary: The Inquiry may appoint an intermediary to assess (and report upon) the additional needs of any witness, to assist with the making of a statement and/or to assist the individual when giving evidence.

b. The appointment of an interpreter.

c. The making of a recorded interview in place of (or, exceptionally, in addition to) a written statement:

I. Where a witness is unable to make a witness statement in the normal way or the Commissioner considers it appropriate so to do, the account of an individual may be taken by way of a recorded interview.

II. The interview shall be conducted in a manner approved by the Commissioner.

III. The interview will normally be conducted by a member of the Inquiry team, although the Commissioner may approve another individual outside that team to conduct the interview.

IV. At any such interview, the witness or potential witness may be accompanied (in the interview room) by their solicitor (if they have one). In the absence of a solicitor, the witness may be accompanied by a friend or relative.

V. The recording of the interview should be audio-visual. Exceptionally, if such a method of recording is not reasonably practicable, the Commissioner may give permission for the recording to be solely audio.

d. Screens: The Commissioner may direct that the witness be screened in any way which, in his judgement, achieves the core principles.

e. Live link from a remote location.

f. The support of a friend or relative (sitting with the witness as he/she gives evidence). Any such person shall play no part in the witness giving evidence unless directed to do so by the Commissioner.

- g. Frequent breaks at prescribed times, or as necessary.
- h. Time limits for questioning a witness.
- i. A preliminary hearing for establishing the appropriate boundaries for questioning, sometimes called a Ground Rules Hearing.

Questioning of vulnerable witnesses

13. The following additional rules shall also apply, if questioning of a vulnerable witness is permitted:

- a. Any questions must be straightforward and appropriate for a witness with his or her vulnerabilities;
- b. Unless the Commissioner directs otherwise, any questions must be discussed in detail with Counsel to the Inquiry not less than three working days before the witness is due to give evidence and, if Counsel to the Inquiry is dissatisfied with the proposed questioning, the matter shall be referred to the Commissioner for determination.

Vulnerable witnesses who are unable to give evidence before the Inquiry

14. If the Commissioner determines that, by reason of their vulnerability, a witness is unable to give evidence, in person, before the Inquiry he may:

- a. permit any signed statement or recorded interview made by that person to be received in evidence; and/or
- b. if no recorded interview exists, instruct counsel to the Inquiry to conduct such an interview (if reasonably practicable so to do).

Children and young people

15. No person under the age of 18 shall make any statement or give evidence unless specifically agreed to in advance by the Commissioner. The Commissioner may direct the manner in which any statement is to be taken and/or the manner in which evidence is to be given.

16. Should any recognised legal representative wish for a statement to be taken from a person under 18, they should make an application to the Commissioner as soon as practicable, explaining the particular reason why it is necessary.

17. In deciding whether such a statement should be taken, the matters which the Commissioner will take into account include:

- a. The importance of the information which can be given by the young person;
- b. Whether that information is available from other sources (especially witnesses over 18);
- c. The age, maturity and individual character of the young person, in particular whether he or she can participate without being caused unacceptable further trauma;
- d. The wishes of the child or young person;

- e. The views of the parents or carers of the young person and those of any professionals who work with the child or young person;
- f. Any intermediary's report (if obtained).

Assistance with vulnerability issues

18. The Inquiry Team includes counsel and solicitors with experience in dealing with vulnerable witnesses and individuals. They may be contacted by any representative who has a concern about the potential vulnerability of an individual or who needs any assistance in interpreting this protocol.

Restriction (including anonymity of witnesses) on public access etc

19. Restrictions may be imposed by the Commissioner on either:

- a. attendance at the Inquiry; or
- b. disclosure or publication of any evidence or documents given, produced or provided to the Inquiry (including, for the avoidance of doubt, an order that a witness might give evidence anonymously, or that a witness need not give their name in public, or a reporting restriction to prevent the publication of the name of a witness (or of any details by which they might be identified)).

20. Any applications for restrictions under the preceding paragraph should be made separately to the Commissioner and will be considered in accordance with the following principles:

- a. Restrictions may be imposed by being specified in an order made by the Commissioner during the course of the Inquiry.
- b. Any such order must only be made where the Commissioner considers it to be conducive to the Inquiry fulfilling its Terms of Reference or necessary in the public interest, having regard to the following matters:
 - i. the extent to which any restriction on attendance, disclosure or publication might inhibit the allaying of public concern;
 - ii. any risk of harm or damage that could be avoided or reduced by any such restriction;
 - iii. any conditions as to confidentiality subject to which a person acquired information that he or she is to give, or has given, to the Inquiry;
 - iv. the extent to which not imposing any such restriction would be likely to cause delay to or impair the efficiency or effectiveness of the Inquiry, or otherwise to result in additional cost (whether to public funds or to witnesses or others).
- c. In sub-paragraph (b)(ii) above "harm or damage" includes in particular-
 - i. death or injury;
 - ii. damage to national security or international relations;
 - iii. damage to the economic interests of Gibraltar or the United Kingdom;

iv. damage caused by disclosure of commercially sensitive information.

Issued under the authority of the Commissioner on 22 September 2022

ANNEX
VULNERABILITY QUESTIONNAIRE

1. Name of individual
2. Date of birth
3. Address
4. Solicitor acting on behalf of the individual, if any
5. Name of person completing this form (and relationship to vulnerable person)
6. Why may this witness or potential witness be vulnerable?
7. Will their vulnerability affect their ability to make a statement? If so, how?
8. Will their vulnerability affect their ability to give evidence? If so, how?
9. What "special measures" or other directions if any, may assist this individual?
10. Is there any material which the Inquiry should obtain to assist them in determining how best to assist this witness or potential witness?
11. Any further relevant information?