

INQUIRY INTO THE RETIREMENT OF THE FORMER COMMISSIONER OF POLICE

Protocol on the use of livestreaming at the Inquiry

1. This Protocol is supplemental to the Order dated 3 April 2024 made by the Chairman. The Protocol sets out the conditions under which livestreaming is to be permitted and explains how the livestreaming of the Inquiry will operate on a day-to-day basis.
2. Prior to the passage of the Inquiries Act 2024, the Chairman had ruled that the principles of open justice apply to the Inquiry,¹ and that the Inquiry should be livestreamed subject to agreement of an appropriate protocol.² Pursuant to section 18(2) of the Inquiries Act 2024, the Chairman expressly has a discretion to request or permit the broadcasting of proceedings subject to section 18(3).
3. The Main Inquiry hearing will be livestreamed, subject to any decision by the Chairman not to livestream any section of the proceedings pursuant to the provisions in paragraphs 8 to 10 below or any prohibition by notice under section 19 of the Inquiries Act 2024. Subject to this, livestreaming will ensure that the public and media can access the evidence that is heard during the Inquiry.
4. The Inquiry proceedings will be livestreamed on the Gibraltar Broadcasting Corporation ("**GBC**") website and on Radio Gibraltar Plus to any member of the public who wishes to follow the proceedings.
5. Insofar as possible, the camera will be operated by a single person and shall remain in a fixed position throughout, so as to minimise disruption to the proceedings. In the case of technical malfunction of the livestream or equipment, the Chairman is unlikely to adjourn the proceedings.
6. It is anticipated that the livestream on the GBC website and Radio Gibraltar Plus will be set up during each day of the Main Inquiry Hearing so that it is only possible for users to 'watch now' (rather than to watch proceedings from the beginning of the day or to select a specific start point to listen to the evidence). After the conclusion of each day of the Main Inquiry Hearing, the livestream for each day will be uploaded on the GBC website, but only once the Inquiry is satisfied that the recording does not include any evidence that is subject to a restriction order or restriction notice. STI are to confirm this to GBC (as soon as practicable after the conclusion of each hearing day) by email from the Lead Solicitor to Mr James Neish, the CEO at GBC..
7. In addition to the livestreaming of evidence, at the end of each hearing day a transcript of the evidence heard will be posted on the Inquiry's website. Any transcript will be edited to remove reference to evidence that is subject to a restriction order and which was not broadcast on the livestream in accordance with the provisions below. Under the terms of today's Order,

¹ See the Commissioner's Ruling dated 25 August 2022 at [13]: <https://coircomp.gi/wp-content/uploads/2022/09/Amended-Ruling-on-Open-Justice-and-Recommendations-25-August-2022.pdf>.

² <https://coircomp.gi/wp-content/uploads/2023/08/2023-07-26-Ruling-Following-PH4.pdf>

Epiq Europe Limited are permitted to record the Main Inquiry Hearing for the purpose of the preparation of the transcript.

Restrictions on livestreaming

8. Exclusion of the public

8.1 In circumstances where the Chairman exercises his power to exclude the public from the Inquiry hearing or where broadcasting has been prohibited in accordance with a section 19 notice the livestream shall be suspended.

9. Advance applications to restrict livestreaming

9.1 The Chairman may rule in advance of the Inquiry hearing, either of his own initiative or following consideration of an application by the legal representative of a Core Participant (“CP”) or by or on behalf of a witness, that a section of the proceedings will not be livestreamed. Any such ruling shall be communicated in writing to GBC by the Lead Solicitor to the Inquiry.

9.2 Any CP or witness should take a measured approach to any applications that a section of the proceedings should not be livestreamed, and carefully particularise any application so that it specifies precisely what information it is submitted should not be livestreamed. The guiding principle is that the livestream should be paused for the shortest time possible to protect the information in issue. As a starting point, grounds for an application include that:

- a. A witness giving evidence is a vulnerable witness, following determination of an application made under the Protocol for Vulnerable Witnesses and Restrictions on Public Access;
- b. Evidence is the subject of a restriction order made by the Chairman pursuant to the Protocol for Receipt and Handling of Documents, Redactions and Records Management; or
- c. It is otherwise in the interests of justice that a section of the proceedings not be livestreamed.

9.3 Any application by a CP or witness should be made as soon as possible, and in any event before **5 April 2024**. The Inquiry will only consider applications made after this date if the Chairman is satisfied there is a good reason that the CP or witness could not have made the application prior to that date.

9.4 If the Chairman hears evidence from a witness for whom special measures are made under the Protocol for Vulnerable Witnesses and Restrictions on Public Access, it may still be appropriate to livestream the witness’s evidence, but make changes to how the evidence is broadcast. For example, not showing the witness on camera and/or only broadcasting the audio of the evidence. In any event, steps must be taken to ensure the witness is protected, in so far as the Chairman is satisfied that this is necessary and appropriate.

10. Retrospective rulings on livestreaming

10.1 There will be a 10-minute delay in the broadcast of the livestream. The purpose of the delay will be to ensure that nothing is broadcast that is (a) subject to a restriction order and therefore should not be made public, or (b) contains information which requires a restriction order to be made to protect the information from being made public. This may include, for example, information that is said to be operationally sensitive or that is otherwise sensitive and irrelevant to the Inquiry's List of Issues.

10.2 Any media representatives or members of the public who attend the hearing in person will not be permitted to liveblog, Tweet or otherwise comment publicly in real time from the hearing room. This is to ensure that nothing is broadcast by a member of the media or public who is present in the hearing room that may be subject to a restriction order. Any breach which results in the broadcast or publication of information that is subject to a restriction order may result in enforcement proceedings.

10.3 Rather, any media representatives or members of the public who wish to liveblog, Tweet or comment on the Inquiry's evidence should do so by following the livestream on GBC's website, which will be subject to the ten-minute delay, or during breaks in the hearing.

10.4 The Chairman may rule, either of his own initiative or on application by any legal representative of a CP, that a section of the hearing which has just taken place will not be livestreamed. Any such application should be made immediately to the Chairman (orally), and necessarily before the conclusion of the ten-minute delay so that the livestream can be paused before the information in question is transmitted. As a starting point, grounds for an application include that:

- a. There is a risk to the welfare of any witness; or
- b. Information that is the subject of a restriction order has inadvertently been referenced by a witness or legal representative; or
- c. Information has been revealed which should be made the subject of a restriction order.

10.5 Should any CP or witness make such an application, it is envisaged that the following steps will be taken:

- a. Counsel to the Inquiry ("**CTI**") will invite the Chairman to pause the livestream of the evidence whilst the issue is resolved. If necessary, the Chairman may rise but it is anticipated that stopping the livestream whilst the issue is addressed is likely to be sufficient.
- b. The livestream will be stopped immediately and no further evidence will be heard until the issue that has arisen is resolved.
- c. No one present in the hearing room will be permitted to report, liveblog, Tweet or otherwise comment on the evidence heard which has not been broadcast.

d. A member of the Inquiry team will check, and GBC will confirm, that the livestream has stopped.

e. If necessary and subject to the nature of the application and the discretion of the Chairman, closed submissions may be made whilst the livestream is switched off. The purpose of the submissions would be to enable the Chairman to decide whether to make a restriction order. The submissions themselves, if required, would also be subject to any restriction order.

f. Once the issue has been resolved the livestream will resume.

g. To the extent that it is necessary, any legal submissions that can be made in open will only be made once the livestream is restored so that all those following on the livestream can understand the reason for the delay (as far as it can be broadcast).

h. If necessary, the Chairman will be invited to explain the reason, as far as it is possible to do so, for the break in the proceedings.

i. Everyone present, including the media and public, will be reminded about the restriction order(s) in force and/or a new restriction order will be made to prohibit disclosure of the information which gave rise to the pause in proceedings.

Use of livestreaming content

11. There shall be no recording or onward transmission of the livestream by third parties, other than by the media for the purpose of public reporting of the Inquiry proceedings.

12. Any media reports which include extracts of the livestream shall be fair and not distort, misrepresent or take the extracts out of context.

13. GBC must seek the Chairman's prior written approval before licensing the use of any footage of the Inquiry to any third parties.

15 April 2024