

Notice to Core Participants

Hearing Restriction Orders 22 March 2016

1. The Inquiry is due, on 22/23 March 2016, to hear oral argument as to the legal principles that will apply to my consideration of applications for restriction orders under section 19 of The Inquiries Act 2005.
2. At paragraph V.30 of the submissions served by the Metropolitan Police Service are references to Tabs 1 – 4 of an accompanying file containing a general schedule of harm (Tab 1), a summary of potential harm (Tab 2), a witness statement from 'Cairo' and a report on risk and risk assessment (Tab 4). At paragraph VI.3 reference is made to a 'mosaic' identification report (Tab 5). At paragraph VII.3 reference is made to worked examples of neither confirm nor deny in practice (Tab 6). At paragraph VII.4 reference is made to the witness statement of Mr Paddy McGuinness dated 13 January 2016 copied at Tab 7.
3. I have read the 'open', redacted version of the file. I have refrained from studying the 'closed', un-redacted version although I have skimmed it so as to be aware of the general nature of its contents. The open version has been circulated to the other core participants. The closed version has not.
4. The hearing on 22 March 2016 is listed to consider argument as to legal principle and my approach to applications under section 19. I wish to be clear as to the ambit of submissions I expect to be receiving on that day.
5. I shall be receiving applications for restriction orders:
 - (i) From the police services to protect from disclosure the identity of undercover officers;

- (ii) From the police services to protect from disclosure techniques employed in the prevention and detection of crime;
 - (iii) From individuals who wish to remain anonymous.

- 6. Applications of the kind anticipated in paragraph 5(i) and (ii) above will be founded upon public interest grounds (section 19(3)(a), “a rule of law” – public interest immunity and section 19(3)(b), “public interest”). Individual applications for anonymity will, I apprehend, be founded on section 6 of the Human Rights Act 1998 and Articles 2, 3 and 8 of the European Convention on Human Rights (section 19(3)(a), “statutory provision”) and the common law (section 19(3)(a), “a rule of law”) and/or section 19(3)(b), “conducive” to fulfilment of the terms of reference.

- 7. At the hearing on 22 March I wish to hear argument as to the legal principles that apply to public interest immunity and identification of the public interest, to relevant rights under the European Convention and to the common law as to anonymity in a statutory inquiry. As to my approach, I am expecting that those submissions will assist me to identify the **factors** relevant to the decision-making process. For example, where there are ‘competing’ public interests at stake I would wish to know what are the components of the public interest, whether for or against disclosure. I do **not** expect to receive, save at the level of generality, submissions as to the weight to be given to those factors or as to the place where the **balance** of relevant factors should be struck.

- 8. Once I have had the opportunity to consider submissions made to me at the hearing I intend to publish a Ruling in which I shall identify the legal principles to be applied and the factors so far identified that I regard as relevant to my consideration of applications for restriction orders. I shall not in that Ruling be making any decisions about comparative weight or balance.

- 9. The time for submissions as to weight and balance and evidence in support in individual cases or categories of cases will be the time when I consider

the first batch of applications for restriction orders. I recognise that before I embark on consideration of the applications themselves it may and probably will be necessary to hold a further oral hearing.

10. I do not *at present*, therefore, intend to admit into evidence at the hearing on 22 March 2016 the witness statement of 'Cairo' (Tab 3), the risk assessment briefing note (Tab 4), or the report on the 'mosaic' effect (Tab 5). I am content that reference should be made in argument, as particulars of the argument, to the open version of categories of harm (Tab 1), summary of harm (Tab 2) and neither confirm nor deny in practice (Tab 6). Every core participant can, of course, make such reference to Mr McGuinness' witness statement (Tab 7) as they wish.

Sir Christopher Pitchford
Chairman

22 February 2016
(Amended 24 February 2016)