

IN THE MATTER OF THE UNDERCOVER POLICING INQUIRY

APPLICATION FOR A RESTRICTION ORDER PURSUANT TO s.19(3)(a) and (b) INQUIRIES ACT 2005

ON BEHALF OF 'KTC'

Preamble

1. This is an application for a restriction order in respect of KTC, whose identity is known to the Inquiry. The application seeks a continuance of the interim order preventing her identification and granting her anonymity for the purposes of her participating in the Inquiry.
2. The application is made in accordance with paragraph 4 of the revised directions issued by the UCPI Chairman on 27 January 2016 which requires the applicant to set out the terms of the restriction order sought and the legal test to be applied.
3. This application notes that the Chairman has provided for the core participants (CP) to submit open and closed written *submissions* as to the legal and factual merits of their application for anonymity together with any supplementary evidence on which they wish to rely by 29 April 2016 and accordingly, it is made subject to the applicant's right to amend and to add to the application (by 29 April 2016), subject to any subsequent rulings.

Test

s.19(3)(a)

4. The granting of an order for anonymity of an applicant meets the criteria in s.19(3)(a) where it is required under Article 8 of the European Convention on Human Rights, as incorporated into UK law by the Human Rights Act 1998. Accordingly, the source of power to make a restriction order granting anonymity to the applicant lies in the Human Rights Act 1998, s.6 read in conjunction with s.19(3)(a).
5. Article 8 justifies the making of a restriction order for anonymity where not making an order amounts to an interference with an applicant's Article 8(1) rights and is not justified under Article 8(2). The test to be applied based on Article 8 is therefore:
 - a. Absent an order for the anonymity of an applicant, would the Inquiry's act of disclosing the identity of that applicant or their family when gathering, hearing and publishing evidence amount to an interference with an applicant's Article 8(1) rights¹?

And if there is an interference

¹ The Inquiry's act of disclosing information amounts to an interference where it would affect one or more of the overlapping personal interests protected by Article 8, namely private life, family life, home or correspondence including the applicant's professional life *Niemietz v Germany* (1992) 16 EHRR 97 (para. 29).

12. Due to the stress caused [text amended] in connection with X's role as a UCO the applicant has been given time off by her employer. [REDACTED]
13. The applicant currently enjoys anonymity through the operation of Inquiry Rules 2006, rule. 12. This however does not provide final anonymity which is now sought by way of a restriction order under s.19(2)(b). ■

Reasons

14. The reasons for the application are as follows: ■

19(3)(a)

15. Anonymity is sought in order to protect the applicant's family and private life, given the very personal nature of her role in events forming part of the inquiry as set out in her application for CP status.
16. The applicant has suffered from and continues to experience health problems affecting her ability to work and function. She has agreed to return to work after a period of time on leave. [REDACTED]
17. Anonymity is now sought [REDACTED] in order to protect both her privacy and that of their children. [REDACTED] without anonymity the applicant and her children would be easily identifiable by members of the local community, pupils and parents at her children's schools and current and previous work colleagues.
18. Absent an order for anonymity it is likely that there will be [REDACTED] unwanted media interest in the applicant and her family. While the applicant has kept information about X's role as a UCO among close friends a wider circle of friends, family and colleagues are not aware. This would be jeopardised absent an order for anonymity of the applicant.
19. The applicant's employer knows of her situation, however the specific issues referred to in this application are not common knowledge in her workplace. If they were widely known then this would affect her professional life.
20. The applicant also seeks to protect her children's Article 8 rights. Concerns about their privacy are particularly acute in light of the age of her children. The children and their classmates have a level of awareness that would mean that the link between X and the applicant's family would be unavoidable if her identity were in the public domain. [REDACTED]

- [REDACTED]
- [REDACTED]
21. In securing a fair balance between competing considerations of the various CPs, the applicant submits that her position is different from that of police/state CPs as the purpose of the Inquiry is to inquire into and report on the conduct of UCOs, not on the conduct of the applicant.

19(3)(b)

22. In the event that anonymity is not granted the applicant would feel obliged to withdraw her participation in the Inquiry. Although she is aware of the rights and privileges she enjoys as a CP she is nonetheless extremely reluctant to continue in her role as a CP or indeed at all without the assurance of her identity, and that of her children, being protected. She is unwilling to expose herself and her children to the inevitable attention that would ensue if her name and personal details are in the public domain.
23. It is submitted that the applicant's withdrawal from the Inquiry would be a detriment and would prevent key issues being explored. The applicant is in a unique position to be able to assist the inquiry with evidence pertaining to her role as a UCO. Her evidence and knowledge comes from a perspective that the inquiry ought to include and it may influence the direction of the inquiry. In participating the applicant is more likely to assist the Inquiry meet its terms of reference in that it will be more likely to determine the facts and make meaningful recommendations and, in particular, assess the justification for, and regulation of undercover policing.
24. The public concern will not be allayed if the Inquiry is unable to inquire into the effect of undercover policing on Category [M] CPs. The Inquiry would be less likely to be able to examine the effect of undercover policing on this category of CPs if the applicant was unwilling to participate in the Inquiry.

Conclusions

25. For the reasons set out above the disclosure of the applicant's identity and that of her family is neither necessary nor proportionate and there is not sufficient general, public interest to justify any resulting curtailment of her right and her family's right to respect for their private and family life or to justify making it less likely that the Inquiry will fulfil its terms of reference.
26. Accordingly, the Chairman is asked to consider this application carefully and to consider the appropriateness and scope of a restriction order for the anonymity of the applicant subject to any further information and/or submissions the applicant provides in accordance with paragraph 3 above. It is noted that the anonymisation of her real name under a restriction order does not automatically follow and needs to be considered separately, even if it is appropriate to anonymise the applicant. Accordingly, the applicant anticipates that further submissions will be needed as regards this aspect of the scope of any restriction order.
27. For the avoidance of doubt, this application contains information which should be treated in confidence by the Inquiry.

Hickman and Rose
17 February 2016

