

## 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 'NRO'

1. This is an application for a restriction order in respect of NRO, whose identity is known to the Inquiry. The application seeks a continuance of the interim order preventing his identification and granting him anonymity for the purposes of his participating in the Inquiry.
2. The application is made in accordance with paragraph 9(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 (Convention), 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 when gathering, hearing and publishing evidence amount to an interference with an applicant's Article 8(1) rights<sup>1</sup>?

*And if there is an interference*

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<sup>1</sup> 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).

- b. Noting that the Inquiry is acting in accordance with the law when gathering, hearing and publishing evidence is the act of disclosing information nevertheless necessary in a democratic society for the protection of the rights and freedoms of others (or one of the other legitimate aims set out in the Article 8(2)) and proportionate?

*s.19(3)(b)*

- 6. Before granting an order for the anonymity of an applicant the tests based on s.19(3)(b) to be applied by the Chairman are:
  - a. absent an order for anonymity of an applicant would the Inquiry be more or less likely to fulfil its terms of reference?
  - b. is it necessary in the public interest to issue a restriction order for anonymity?
- 7. In making his assessment the Chairman is required to balance the relevant considerations under s.19(4).

Scope

- 8. The term “anonymity” has been used in this application to refer compendiously to the full range of protective measures available which allow the Chairman to order that the identity of the applicant not be disclosed. The applicant is to be referred to as NRO. The applicant seeks the use of reporting restrictions where reporting would have the same effect as disclosure of his identity.

Background to this application

- 9. The applicant has been granted CP status in light of his involvement with various political groups including a group called Indymedia. Through his political activities he came into contact with an undercover police officer (UCO) known as Rod Richardson (RR).
- 10. The applicant works in a regulated profession in the child and adult workforce sector. To date he has maintained a degree of separation between his political activities and his professional life as a medical doctor.
- 11. [REDACTED]  
[REDACTED]  
[REDACTED] As part of his duties, he attends [text inserted]  
[text inserted] health care facilities in South East England [REDACTED]  
[REDACTED] The applicant also has academic links  
with an academic institution (AI) and he hopes to return to academia in the future.
- 12. 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).
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## Reasons

13. The reasons for the application are as follows:

### *s.19(3)(a)*

14. The applicant has a serious and well-founded concern about the impact that media coverage of his activism and involvement with activists groups would have on his employment. He believes the likely media coverage that would be generated would have a deleterious impact on his professional life. Neither his employer nor AI is aware of his involvement with activism and activist groups; he is concerned about the possible impact disclosure of his identity would have on future roles.
15. In the event of disclosure of information relating to the applicant and his involvement with activist groups the applicant submits that there would likely be significant media coverage, over which the applicant has no control. This information would be readily available and easy to search for and find online if it were in the public domain. Moreover the applicant would have no control over the manner in which his activism and he himself were portrayed and very little ability to rebut any opinions proffered in the media about him or the activist groups he is involved with. His professional life rests heavily on his ability to command respect among colleagues and in academic circles and maintain the trust of his patients. If his identity were linked to category [K], political activists, and any information linking him to his activism were disclosed it would be likely to impinge on his ability to do his job. His respect and trust would be jeopardised.
16. The applicant has witnessed the impact on friends who have experienced employment and housing difficulties as a result of their activism and, significantly, the portrayal of their political activities in the media. The applicant has witnessed first-hand his friend's difficulties with current and prospective employers as a result of such coverage and is acutely aware of the damage that can be caused.
17. Although this application relies on the Article 8 test, the rights in play include not just Article 8, but also Article 10 and 11 Convention rights of the applicant. The applicant's desire to engage in protest and activism in exercise of these rights ought not to interfere with his employment and his ability to do his job as would be inevitable if information about his activism were subject to media scrutiny and interpretation. The applicant works in a regulated profession. Further, his ability to do his job depends on his professional reputation. It is submitted that the impact of disclosure of his identity and the ensuing, inevitable media coverage on the applicant's personal and professional life would not secure a fair balance.
18. In securing a fair balance between competing considerations of the various CPs, the applicant submits that his 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. Further, the applicant has already been the victim of the invasion of privacy through contact with RR. This should not be exacerbated.

### *s.19(3)(b)*

19. In the event that anonymity is not granted the applicant may feel obliged to withdraw his participation in the Inquiry. Although he is aware of the rights and privileges he enjoys as a CP he is nonetheless extremely reluctant to continue in his role as a CP or indeed at all without the assurance that he will be able to maintain a degree of separation between his political involvement and his professional life. He is unwilling to expose himself to the inevitable media attention that would ensue and jeopardise his professional life if his identity is disclosed.
20. Further he harbours genuine concern about the effect of disclosure. Restricting the anonymity of the applicant would mean that the risk of harm arising from his links to activists could be avoided or at least reduced. The applicant fears he may be targeted by people aligned with the political far-right. He has worked with individuals whose photographs and personal information have been published by a website "*Redwatch*", which is associated with the far-right British People's Party. This information is known to have been used by people associated with the political far-right to assault political activists.

### Conclusions

21. For the reasons set out above the disclosure of the applicant's identity is neither necessary nor proportionate and there is not sufficient general, public interest to justify any resulting curtailment of his right to respect for his private life. Further there is not sufficient public interest to justify making it less likely that the Inquiry will fulfil its terms of reference or exposing the applicant to a risk of harm.
22. 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.
23. For the avoidance of doubt, this application contains information which should be treated in confidence by the Inquiry.

Hickman and Rose  
4 March 2016