

## 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 'C'

##### Preamble

1. This is an application for a restriction order in respect of C, 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 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, 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) 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.

- 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 and that of her daughter not be disclosed. The applicant is to be referred to as C. The applicant seeks the use of reporting restrictions where reporting would have the same effect as disclosure of her or her daughter’s identity.

Background to this application

9. The applicant’s political activity brought her into contact with undercover police officers (UCO) and in particular, Mark Kennedy (MK). The applicant was groomed for an intimate relationship by MK. The applicant’s relationship commenced and continued after MK’s deployment as a police employee UCO had ended. It is understood that he then continued to work in the private sector, in particular for Global Open Limited (GO), while still using his police given identity.
10. During her relationship with MK the applicant introduced her closest family to him and MK spent time alone in the company of the applicant’s ██████ daughter. The applicant’s relationship with MK was emotionally significant to her. Towards the end of the relationship MK’s behaviour started to become erratic. Without a clear explanation for his behaviour the applicant started to suffer from ██████ and worry at not being able to support him. When the applicant learnt of MK’s role as a UCO he confessed and expressed remorse.
11. MK told journalists about his relationship with the applicant although she was not named. An article published by the *Guardian* gave details of his role as a UCO (*‘Mark Kennedy: confessions of an undercover cop’, Guardian 26 March 2011*). He was also interviewed by the

Mail on Sunday (*'I'm the victim of smears'* Daily Mail 17 January 2011). Crucially the applicant was not identified by the media. It is important to note that MK's brazen account portrayed in the media illustrates that any indication of remorse was rote and part of an exit strategy. This further betrayal led to the onset of extreme stress in the applicant.

12. The applicant developed significant health problems affecting her ability to work and function. She was signed off work. Shortly after MK's story had come out in the press, the applicant began to suffer more extreme health conditions, [REDACTED]. The applicant responded well to [REDACTED] treatment which has [REDACTED] left her feeling more resilient in her ability to cope.
13. The applicant's daughter suffered a knock to her confidence when she became aware of MK's role as a UCO. This had a damaging impact on her ability to trust people and form relationships with adults. When she learnt of MK's UCO role she was studying [REDACTED]. She did not achieve her predicted grades and as a result had to sit a further year in education catch up. [REDACTED]
14. The applicant has the benefit of an order for anonymity granted in High Court proceedings against GO under claim no. HQ13X04982. The subject matter of those proceedings, which are currently stayed, come within the scope of the inquiry. Moreover GO (as the defendant in those proceedings) has not been anonymised and the link between MK and GO has already been reported in the media. Linking the applicant to MK through disclosure of her identity would have the effect of removing the existing grant of anonymity. We note the general requirement that the Chairman have regard to any previous grant of anonymity<sup>2</sup>.
15. For the purpose of the Inquiry 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

16. The applicant seeks anonymity for the following reasons:

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

17. 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.
18. It is submitted that the applicant and her daughter have already suffered a grievous interference with their private and family life. This interference would be continued and

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<sup>2</sup> As discussed at paragraphs 86-89 of Counsel to the Inquiry's note on the legal tests applicable to applications for restriction orders

exacerbated were information pertaining to her identity and relationship with MK made public.

19. Absent an order for anonymity it is inevitable that there will be unwanted media interest in the applicant and her daughter. The applicant's relationship with MK is not common knowledge among a wider circle of friends and family and this would be jeopardised absent an order for anonymity of the applicant.
20. Furthermore, the applicant believes that her ill-health is likely to be exacerbated by public awareness of her identity and the stress that this would cause. Further, she believes that there is a risk of relapse after the noted improvement in her condition and her general ability to cope.
21. The applicant's daughter also suffered having learnt of MK's role as a UCO. In the aftermath of the events referred to in this application the applicant's daughter was in need of uncharacteristic levels of emotional support which stemmed from her difficulty trusting others. The applicant is concerned about the impact of disclosure on her daughter. Further the resilience of the applicant is closely linked to the ability of her daughter to cope independent of the applicant.
22. 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. Further, the applicant and her daughter have already been the victims of an invasion of privacy, and this should not be aggravated.

*19(3)(b)*

23. In the event that anonymity is not granted the applicant may withdraw her participation in the Inquiry. Without the assurance of her identity, and that of her daughter, being protected she would have to reconsider her involvement. For the reasons noted above she is unwilling to expose herself and her daughter to the inevitable media attention that would ensue if her name and personal details are in the public domain and her status as a party to the proceedings against GO became common knowledge.
24. It is submitted that the applicant's withdrawal from the Inquiry would be a detriment and would prevent key issues being explored. Although there is a complement of CPs in category [H] (individuals in relationships with undercover officers) it is understood that the applicant is in an uncommon, if not unique position in that she was in a relationship with a UCO at the time his deployment ended and after he continued working as a UCO for the private sector. 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 operational

governance, oversight and regulation of undercover policing as well as the nature of targeting category [H] CPs by UCOs.

25. The public concern will not be allayed if the Inquiry is unable to inquire into the effect of undercover policing on Category [H] 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 did not participate in the Inquiry.

### Conclusions

26. For the reasons set out above the disclosure of the applicant's identity and that of her daughter is neither necessary nor proportionate and there is not sufficient general, public interest to justify any resulting curtailment of her right and her daughter'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.
27. 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.
28. For the avoidance of doubt, this application contains information which should be treated in confidence by the Inquiry.

Hickman and Rose  
17 February 2016