

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 'S'

Preamble

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

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

Background to this application

9. The applicant was married to an undercover police officer (UCO), ██████████ γ, in ██████████ and they have been separated ██████████. As a result of γ’s undercover work, the applicant and her children were forced to move from their home ██████████ where they had lived for over 10 years to a new property in a village ██████████. She has retained a network of friends and has formed new relationships and established herself in the community where she now lives.
10. In ██████████ the applicant became aware that γ had lied about the nature of his role as a UCO. She attributes this to the breakdown in their marriage. It was not until after the applicant and γ were separated that she learnt of the extent of γ’s role in undercover policing ██████████
██████████
██████████
11. The applicant’s health has suffered. She was on leave from work in ██████████ due to ██████████
██████████
██████████. The applicant has noted an improvement in her health and ability to cope; most notably she was able to return to work ██████████

12. The applicant works as a civil servant in the criminal justice system. [REDACTED]
[REDACTED]
[REDACTED]

13. The applicant has [REDACTED] children. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Reasons

14. The reasons for the application are as follows :

s.19(3)(a)

15. Anonymity is sought in order to protect S'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. Although close friends and family are aware of the circumstances of the applicant's relationship with Y this is not known to her wider group of friends, the local community or colleagues. If this was widely known then this would affect her personal life.

17. The circumstances referred to in this application are not common knowledge among the applicant's colleagues. She works in a large open plan office and she would be unable to remove herself and avoid unwanted attention if this position changed. Although any criticism of the applicant is unlikely, for the reasons set out in the following paragraph if her identity were disclosed this would affect her professional life.

18. It is essential that the applicant is able to build lasting relationships with her clients and she can only do so by gaining and maintaining their trust. She believes that she would be unable to do so if her clients were to learn of her link to Y. This is so because she would be unable to prevent misunderstandings arising from any reference to her in media [REDACTED]
[REDACTED] Her professional life rests heavily on her ability to maintain trust among her clients.

19. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] Although the applicant has seen an improvement in her health and her [REDACTED] condition is less likely to fluctuate, she believes that her ill-health is likely to be exacerbated if there is wider public awareness of her relationship with Y

20. The applicant also seeks to protect her children's Article 8 rights. [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] The applicant is concerned about the impact of disclosure on her children. Further the improvement in the applicant's health is closely linked to the ability of her children to cope [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.

s.13(3)(b)

22. In the event that anonymity is not granted the applicant would reconsider her participation in the inquiry. She has concerns that she would be unable 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 reluctant to expose herself and her children to the inevitable attention that would ensue if her name and personal details are in the public domain as this is likely to create relationship difficulties with and among children and cause her health to deteriorate.
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 children 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.

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