

Preliminary Issues: Deceased Children and Restriction Orders (anonymity applications)

Directions

Deceased children

1. In the costs award Ruling of 16 December 2015, at paragraph 45, I announced that in due course a preliminary hearing may be required upon the issues (1) whether the state has a duty to disclose to the parents of a deceased child that the identity of that child was used for police purposes and (2) if there is a public interest test to be applied what does it comprise and how is it to be measured. A provisional date for the hearing of these issues was postponed to enable the hearing as to the legal principles applying to the making of restriction orders under section 19 of the Inquiries Act 2005 to take place first.
2. I am now in a position to set a timetable towards the hearing of the deceased children issues.
3. At present Mrs Barbara Shaw is the only core participant in Category [F] Relatives of deceased children. Mrs Shaw is represented by Jules Carey of Bindmans LLP. Mr Carey also represented RDCA and Gordon Peters at the core participants preliminary hearing held on 7 October 2015. I indicated at paragraph 46 of my Ruling of 16 December 2016 that I would invite Mr Carey, if so instructed, to apply for designation as recognised legal representative for RDCA and/or Mr Peters and for a costs award for the purpose of representing either or both of them, together with Mrs Shaw, at the deceased children preliminary hearing. That invitation will be sent to Mr Carey at the same time that these directions are published.
4. Also at paragraph 46 of my Ruling of 16 December 2015 I expressed a preliminary view that no other non-police, non-state core participant had a sufficient interest in the deceased children preliminary issue to justify participation in it, but that I would provide Ms Harriet Wistrich of Birnberg Peirce and Partners with the opportunity to make further written submissions as to the reason why one or more of her clients had such an interest. An invitation to make those further submissions, if so instructed, will be sent to Ms Wistrich at the same time that these directions are published.
5. Accordingly, the following is the timetable that I shall set towards the deceased children hearing:

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- (1) Jules Carey of Bindmans LLP, if so instructed, shall submit written applications for designation as recognised legal representative and costs awards in respect of RDCA and Gordon Peters by 4pm on Tuesday, 26 April 2016;
- (2) Harriet Wistrich of Birnberg Peirce and Partners, if so instructed, shall make written submissions in support of her clients' application to participate in and to be funded for representation at the deceased children preliminary hearing by 4pm on Tuesday, 26 April 2016;
- (3) The Chairman will respond to any application made under paragraph (1) and/or (2) above by 4pm on Thursday, 12 May 2016;
- (4) The Inquiry counsel team will circulate a note by 4pm on Tuesday, 17 May 2016;
- (5) Skeleton arguments from interested core participants to be filed by 4pm Wednesday 1 June 2016 [Note: for these purposes 'interested core participants' includes Mrs Shaw and anyone else with prior authorisation from the Chairman under paragraph (3) above to participate in the deceased children hearing];
- (6) By 4pm on Wednesday, 8 June 2016 the Inquiry will indicate whether an oral hearing is necessary;
- (7) If the hearing is to take place, by 4pm on Wednesday, 15 June 2016 the Inquiry will circulate a consolidated bundle of authorities;
- (8) Hearing, if required, on 22 June 2016.

Restriction orders (anonymity applications)

6. In a Directions Ruling of 27 January 2016, at paragraph 9, I published a substituted timetable towards oral hearings as to restriction orders (legal principles) and restriction orders (anonymity applications). The first of those hearings took place on 22 and 23 March 2016. The date for an oral hearing of anonymity applications has not yet been fixed. The oral hearing for argument as to legal principles has given the Inquiry the opportunity to reflect upon the most effective way of proceeding towards decisions or hearings upon anonymity applications. First, I have concluded that further space needs to be built into the timetable to allow for the possibility that the Inquiry will need to seek additional evidence before proceeding to hearings or decisions. Secondly, it seems to me to be too early for the Inquiry to fix the date of any anonymity hearing before the Inquiry knows when the evidence in support will be ready.

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7. Accordingly, the following is the timetable that I shall issue towards anonymity hearings in substitution for that of 27 January 2016:

- (1) The restriction order legal principles ruling will be published on or before Tuesday, 3 May 2016;
- (2) By 4 pm on Tuesday, 24 May 2016, the core participants shall 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. Publicly funded core participants are reminded that prior approval must be sought for the instruction of an expert;
- (3) Submissions and evidence will be checked by the Inquiry to ensure proper separation of open and closed content. The open material will be circulated to core participants;
- (4) Any responses to applications for anonymity to be filed by 4pm on Tuesday, 21 June 2016. Subject to further application to the Chairman there will be a single joint response from non-police, non-state core participants to applications made by current or former police officers;
- (5) Following receipt of the responses at paragraph (4) above the Chairman will consider the applications made and make decisions as to whether further evidence is required and whether for this or any other reason further consideration of the application should be postponed. A further timetable towards decisions in writing and/or the hearing of anonymity applications will be issued in due course.

15 April 2016

Sir Christopher Pitchford
Chairman, Undercover Policing Inquiry