

In the matter of Section 19 of the Inquiries Act 2005
Applications for restriction orders by non-police, non-state core participants
'Minded to' note

Introduction

1. I published directions concerning the timetable towards decisions on applications for restriction orders granting anonymity to core participants on 16 December 2015,¹ 27 January 2016,² 22 February 2016,³ 15 April 2016⁴ and 27 May 2016.⁵ On 3 May 2016 my Restriction Orders: Legal Principles and Approach Ruling was published.
2. In my further directions of 27 May 2016, at paragraphs 2 – 4, I explained why it was necessary to separate the timetables towards decisions in respect of applications for anonymity made on behalf of police officer core participants and non-police officer core participants respectively.
3. This 'Minded to' note expresses my provisional view upon applications for anonymity made on behalf of non-police core participants only.
4. Under directions given on 15 April 2016, applications for anonymity by non-police core participants were to be submitted, together with written submissions and any evidence or supplementary evidence in support, by 4pm on Tuesday 24 May 2016. Under directions given on 27 May 2016 (i) any responses to the anonymity applications were to be filed by 4pm on 21 June 2016 and (ii) the Chairman was to publish this 'Minded to' note by 4 pm on Tuesday 19 July 2016 *"in which he will indicate those applications that he is minded to grant and those that he is minded not to grant"*. I also directed: *"The Chairman will also publish a timetable towards decisions on the papers or decisions following written or oral argument."*
5. The Inquiry has received no responses from core participants objecting to the non-police officer applications considered in this Note. I apologise to core participants for the lateness of the Note, which was caused by the need to give priority to other Inquiry matters and some preliminary procedural steps it was necessary to take before publication.

¹ Cost of Legal Representation Awards - Ruling, dated 16 December 2015 at paragraph 44

² Preliminary Issue: Undertakings - Directions, dated 27 January 2016 at paragraph 9

³ Notice to Core Participants - Hearing Restriction Orders 22 March 2016, dated 22 February 2016

⁴ Preliminary Issues: Deceased Children and Restriction Orders (anonymity applications) – Directions, dated 15 April 2016 at paragraphs 6 and 7

⁵ Preliminary Issue: Restriction Orders (anonymity applications) - Further directions, dated 27 May 2016

Principles and Approach Ruling

6. At paragraph 44 of the Restriction Orders: Legal Principles and Approach Ruling of 3 May 2016 I anticipated that the grounds for anonymity advanced on behalf of non-police core participants were likely to comprise assertions that (i) disclosure would constitute a breach of Article 3 or Article 8 of the European Convention on Human Rights and would therefore amount to a breach by the Chairman of the duty imposed by section 6 of the Human Rights Act 1998, thus requiring a restriction order under section 19 (3)(a) of the Inquiries Act 2005 (“required by any statutory provision”) and/or that (ii) a requirement of disclosure would be unfair, contrary to common law or section 17 (3) of the Inquiries Act 2005.
7. However, at paragraph 43 of the Legal Principles and Approach Ruling I drew attention to the terms of section 19 (4)(b) of the Inquiries Act 2005, which provides that among the matters to which the Chairman must give particular attention when considering whether to make a restriction order (under section 19 (3)(b) of the Act) because it is *“conducive to the inquiry fulfilling its terms of reference or to be necessary in the public interest”* are the following:
 - “(d) the extent to which not imposing any particular restriction would be likely –*
 - (i) to cause delay or to impair the efficiency or effectiveness of the inquiry, or*
 - (ii) otherwise to result in additional cost (whether to public funds or to witnesses or others).”*
8. I drew attention to the interaction between rights under Article 3 and Article 8 of the European Convention on Human Rights and the competing interests of the public and the media under Article 10 at paragraphs 177 – 191 of the Legal Principles and Approach Ruling. At paragraphs 192 and 193 I referred to the room for manoeuvre given by section 19 (3)(b) of the Inquiries Act 2005 but the need in appropriate cases to carry out a separate Article 8 assessment.
9. I summarised the requirements of fairness at common law, whose standard should be commensurate with that required under section 17 (3) of the Inquiries Act 2005, at paragraphs 210 and 211 of the Legal Principles and Approach Ruling.
10. Finally, at Part 6, section C of the Legal Principles and Approach Ruling I set out the nature of the argument and evidence that I would expect to be considering in the event of an application for a restriction order made by or on behalf of an individual.

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11. I do not intend to repeat any of the foregoing passages in this Note, but I do intend to give short reasons why I am minded to make the decision indicated.

Arrangement of this Note

12. I shall summarise the applications and the grounds on which they are advanced, followed by an expression of my provisional view as to whether a restriction order should be made. The applications can be placed, usefully, into categories according to the factual basis for the grounds supporting them.
13. The majority of the applications rely on the extremely personal nature of the evidence that the core participants are to give to the Inquiry to support an argument that disclosure of the applicant's identity would constitute a disproportionate interference with their Article 8 right of respect for private and family life. For the purpose of reaching a provisional view upon the merits of the applications it has been necessary to assume that the proposed evidence is true and accurate. However, I have not heard the evidence and, as I have said before, I have not pre-judged it.
14. At the commencement of each category I shall list the applications and my provisional decision for ease of future reference by recognised legal representatives and the Inquiry team.
15. At the conclusion of this Note I shall make some explanatory observations about the consequences of restriction orders granting anonymity. For reasons that I shall endeavour to explain, an order for anonymity may not mean that literally no-one outside the Inquiry team may know of the identity of the witness. I hope that these observations will assist recognised legal representatives to provide advice to their clients on the subject of restriction orders.

Families of police officers

16. Those core participants who were married to an undercover officer and seek a restriction order giving anonymity are:

Inquiry reference	Cipher	Recognised legal representative	Decision
RO 1	KTC	Stefano Ruis	Minded to grant
RO 4	S	Stefano Ruis	Minded to grant

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17. **KTC** was married to a police officer before the officer was assigned to an undercover role. The marriage subsequently broke down and later they were divorced. In her application for anonymity it is asserted that KTC suffers from health problems some of which are related to the stress resulting from her former husband's activities. I have not been provided with medical evidence in support of these assertions.
18. KTC shares a home with her children of school age, her new partner and his children. The older of her children reacted badly when learning of his father's history. KTC's wider circle of friends and relations are unaware of her former husband's undercover history. While KTC has confided in her employer, her workmates are also unaware of it. KTC is fearful of publicity. She would be unwilling to remain a core participant if a restriction order in her favour was not made.
19. KTC has moved on from the events about which she will be giving evidence to the Inquiry. She wishes to avoid an association between her former and current circumstances in order to protect her private and family life from the interference that would inevitably attend the media reporting of the Inquiry proceedings. As I understand it, it is accepted that there is a countervailing public interest in disclosure of the Inquiry's proceedings and in the right of the media under Article 10 to report those proceedings. However, it is argued on KTC's behalf that publication of her name would be a disproportionate interference with her and her children's right of respect for their private and family life.
20. The principle of openness, fostering confidence in the Inquiry's proceedings, applies to each of these applications. However, in my judgement, the primary interest of the public concerns the substance of KTC's evidence and not the public identification of the person giving it. There will be no controversy about KTC's standing to give evidence as the unidentified wife of a former undercover officer. I accept, provisionally, that a requirement that her identity should be disclosed would amount to a disproportionate interference with her private and family life. I do not require medical evidence before reaching this view. Furthermore, and in any event, it is likely to be conducive to the fulfilment of the Inquiry's terms of reference that KTC should be permitted to give her evidence without being subjected to the anxiety of exposure among those with whom she has made her new life. In my view, the balance is clearly in favour of protecting KTC's private and family life from exposure.
21. I am minded to make an order restricting the publication of KTC's real name.
22. **S** was married to a police officer well before he was selected for undercover work. They separated when, some years later, S discovered that she had been misled as

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to his activities while acting undercover. She moved with her children to a new location where she has made new friends and formed new relationships. She has not confided in anyone outside a narrow circle of friends and family.

23. Although S relies in her application on health problems suffered by herself and her two of her children, I have not received medical evidence in support.
24. Of particular significance to S is the effect that publicity would have upon her professional working life. She is required to form relationships of trust with her 'client' group. Those relationships would risk breakage or severe distraction should S become associated with the matters about which she will give evidence to the Inquiry.
25. I accept, provisionally, that to require disclosure of S's name would constitute a disproportionate interference with S's private life in that the attendant publicity would almost certainly reduce her capacity to maintain, unharmed, the relationships required in her professional life. I do not require medical evidence to establish this aspect of S's application. There is no compelling public interest in the disclosure of S's true name but the receipt, anonymously, of S's evidence of her experience as the wife of an undercover police officer would undoubtedly be conducive to fulfilment of the Inquiry's terms of reference.
26. I am minded to make an order restricting the publication of S's real name.

Relationship with an undercover police officer

27. Several applications for anonymity have been received from women who have been in a relationship with a police officer while the officer was performing an undercover role.⁶ I have listed the applicants in this category below, although the final entry relates to an application made by the child of such a relationship.

Inquiry reference	Cipher	Recognised legal representative	Decision
RO 3	C	Stefano Ruis	Minded to grant
RO 7	DIL/Rosa	Harriet Wistrich	Minded to grant
RO 7	TEB/Ruth	Harriet Wistrich	Minded to grant
RO 7	RAB/Alison	Harriet Wistrich	Minded to grant
RO 7	AKJ/Lisa	Harriet Wistrich	Minded to grant
RO 7	SUR/Naomi	Harriet Wistrich	Minded to grant
RO 7	Andrea	Harriet Wistrich	Minded to grant

⁶ As to the assertions made please note paragraph 13 above

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Inquiry reference	Cipher	Recognised legal representative	Decision
RO 7	Monica	Harriet Wistrich	Minded to grant
RO 13	AJA	Jules Carey	Minded to grant
RO 14	ARB	Jules Carey	Minded to grant
RO 15	Jacqui	Jules Carey	Minded to grant
RO 16	Lindsey	Jules Carey	Minded to grant
RO 17	TBS	Jules Carey	Minded to grant

28. **C** says in her application that through her environmental activism she became friendly with a man who, unknown to her, was an undercover police officer using a covert false identity. She was in a sexual relationship with him for a period of some months until he was exposed as a former undercover police officer and confessed to her. C understands that when their sexual relationship commenced the officer had left the police force but was continuing to use his police undercover identity in his new employment.
29. Subsequently, C brought a civil action in the High Court against the former officer's new employers. The action is currently stayed. On 10 October 2013 Master Roberts, having considered C's application for anonymity under rules 5.4A – 5.4D and 39.2 (4) of the Civil Procedure Rules, granted the application because it appeared that *"revealing the identity of the Claimant is likely to unfairly damage the interest of the Claimant and there is no countervailing public interest in disclosure"*.
30. Upon learning the truth about her relationship C suffered health problems. Her daughter was also affected adversely. I have not received medical evidence in support.
31. C seeks anonymity to protect her private and family life from further disruption caused by revelation of her damaging relationship in association with her name. Her relationship and its outcome are known only to a close circle of family and friends. Since C's evidence would concern the same subject matter as the stayed action, publication of her name in connection with the Inquiry would have the effect of undermining the High Court order in place. In common with several other applicants in this category, C would consider relinquishing her status as a core participant if her identity were not restricted from disclosure.
32. I shall address the applications of **Rosa, Ruth, Alison, Lisa and Naomi** together. The applicants, together with three other claimants, brought actions against the Commissioner of Police for the Metropolis (the Metropolitan Police Service) for damages. The factual basis for the claims was that each of the applicants had

entered into a sexually intimate relationship with a police officer who was using a covert false identity. They were therefore deceived into entering relationships that, had they known the truth, they would not have contemplated. One of the relationships resulted in children. The action was settled. A lengthy public apology was made on behalf of the Commissioner and undisclosed awards of damages were agreed.

33. On 20 October 2011 Lisa and Naomi made a written, without notice, application to the High Court for an order for anonymity pursuant to rules 5.4 and 39.2 of the Civil Procedure Rules. Rosa, Ruth and Alison made a similar application on 18 July 2012. The orders were granted for identical reasons as follows:

- “1. ... the action is one likely to attract publicity.*
- 2. ... publicity revealing the identity of the Claimants is likely unfairly to damage the interests of the Claimants.*
- 3. ... accordingly publication of details revealing the Claimants’ identity ought to be prohibited.”*

34. Ms Charlotte Kilroy, counsel for the applicants, points out that, because the evidence to the Inquiry will cover the same ground as the civil actions, if the Inquiry declines to make a restriction order to equivalent effect the purpose of the orders made in the High Court is likely to be undermined. Further, each of the first five applicants relied in the civil claim upon the effect of their experience upon their mental health. Their Article 8 rights had been invaded. To expose the applicants to a rehearsal of these matters using their real names would constitute a further breach. Three of the applicants had children whose Article 8 rights should also be considered. The Inquiry and the public has a legitimate interest in exposing the misconduct alleged; it is not, however, necessary for the fulfilment of the Inquiry’s terms of reference or otherwise in the public interest that the identities of the victims should be disclosed against their wishes.

35. **Monica and Andrea** each claim that they had a sexual relationship with a (different) man who, unknown to them, was a police officer acting undercover using a false identity. Only several years after the relationships ceased did the applicants discover the truth. Monica and Andrea are considering civil action against the Metropolitan Police Service, and to that end have delivered a letter before action but, as yet, proceedings have not commenced and there is no High Court order for anonymity in place.

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36. Ms Kilroy argues that Monica and Andrea are in a similar position to Rosa, Ruth, Alison, Lisa and Naomi. Further, Andrea, in common with S (see paragraph 24 above), works in a profession that requires her to make trusting relationships with her 'clients' in which their respect for her advice and judgement is maintained. Publication of the details of her relationship together with her real name would tend to undermine her ability to work effectively.
37. All seven of the applicants represented by Ms Kilroy rely on psychological ill health caused by the trauma of discovery of their deception by undercover police officers and its consequences. I have not been provided with any medical evidence in support of these assertions and I shall have to resolve whether I need to see it.
38. **AJA and ARB** have also, with one other claimant, brought civil claims against, among others, the Commissioner of Police for the Metropolis in respect of deceptive intimate relationships conducted with them by an undercover police officer. On 12 January 2012 they too were granted anonymity in the action by the High Court. It is argued that disclosure of the applicants' true names would tend to undermine the order made in the High Court since the action covers the same subject matter as the applicants' evidence to the Inquiry. That subject matter touches the applicants' intimate private lives. They argue that disclosure of their names would be a disproportionate interference with their Article 8 right of respect for their private and family life. On the contrary, it would be conducive to the fulfilment of the Inquiry's terms of reference if witnesses in this category were encouraged to come forward without fear of personal exposure.
39. **Jacqui** was in a long term relationship with an undercover police officer who used a covert false identity. She has a son by that relationship. Many years after their separation, Jacqui discovered the officer's true identity. She brought a civil action against Commissioner of Police for the Metropolis that was subsequently settled on terms. On 21 March 2013 she too had been granted an order for anonymity in the proceedings in the High Court.
40. It is argued that the subject matter of Jacqui's evidence will be deeply personal. It will touch both her intimate private and family life and the harm occasioned to it and to her health by the revelation of her deception by a police officer. A requirement that her true identity should be disclosed would constitute a disproportionate interference with her Article 8 right of respect. It would be conducive to the fulfilment of the Inquiry's terms of reference if witnesses in this category were encouraged to come forward without fear of personal disclosure. I have not been provided with medical evidence in support of the application.

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41. **TBS** is Jacqui's son. While TBS's application is not dependent upon the application of his mother, many of the Article 8 and public interest factors that apply to her also apply to him. He had no control over events that caused him to be born into a family that was founded on deception, with whose consequences, TBS will say, he is still living.
42. **Lindsey** was for almost a year, in a sexual relationship with a man who, unknown to her, was married and a police officer using a covert false identity. Their relationship, while it lasted, was both physically and emotionally intimate. Lindsey relies on the same Article 8 and public interest arguments as other applicants deceived in a similar way.
43. Having regard to the common features of these applications I can consider them together. For reasons that appear from the analysis below, I have concluded that it is not necessary for me to require medical evidence before reaching a provisional view upon the merits of the applications.
44. With the exception of TBS, the applicants were themselves activists or moved in circles of environmental or other activism. This is the context in which the relationships they describe arose. However, I am aware of nothing in the activities of the applicants that would give rise to a particular need publicly to identify them.
45. The evidence in which the public does have a compelling interest is the deceit practised on women who entered sexual relationships with undercover officers. A number of important issues concerning individual and institutional attitudes and motivation, planning, policy, supervision, training, aptitude and personal vulnerability arise that it is unnecessary for present purposes further to define. The public identification of the 'victim' is not, however, a necessary part of that examination. It is the identification of the experience rather than the individual in which the public interest principally resides.
46. I recall that the Inquiry is not deciding the civil or other legal rights of any person or institution. In as public a manner as is possible to maintain public confidence in its proceedings, the Inquiry is investigating the subject matter of its terms of reference, for the purpose of making findings on matters of consequence and recommendations for the future conduct of undercover police operations. I do not consider that disclosure of the identity of a 'victim' of a police officer's sexual misconduct is required to maintain public confidence in the Inquiry's proceedings.⁷ For this reason, there is no more, and in my view rather less, reason to disclose the

⁷ Compare the public interest in disclosure in *Re: Application by Guardian News and Media Limited and others* [2010] 2 AC 697, considered in *Restriction Orders: Legal Principles and Approach Ruling*, 3 May 2016, at paragraphs 184 - 189

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identity of the applicants in the Inquiry than there would be in civil proceedings in the High Court. The existence of a High Court order granting anonymity in civil proceedings is a significant factor in favour of the present applications. The absence of such an order in any individual case does not weaken the application because the nature of the evidence to the Inquiry will be the same in every case.

47. The evidence that will be scrutinised by the Inquiry and the public concerns the intimate details of the private and family life of the witnesses. It is not suggested that that evidence must be hidden from public view (save to the extent necessary to achieve the restriction ordered), only the association between that evidence and the identity of the person giving it.
48. I accept that notices given under section 21 of the Inquiries Act 2005 requiring the witnesses to give evidence concerning the intimate details of their private and family life would constitute an interference with their right of respect under Article 8 of the European Convention on Human Rights. It is not contended, as I understand it, that the public's right to be informed is not a legitimate objective for the purposes of Article 8 (2). It is contended that, in the circumstances of the Inquiry, a requirement that a 'victim' of these events should be publicly identified against his or her wishes would constitute a *disproportionate* interference with the right of respect for private and family life. Having regard to the matters to which I have drawn attention at paragraphs 44 - 47 above, I take the view that the balance between the public interest in openness and the Article 8 interests of the applicants lies in favour of making restrictions orders protecting the applicants from public identification. I do not need proof of ill health or the risk of ill health to reach this view.
49. Furthermore, the Inquiry must, in fairness, take account of the wishes and concerns of the witnesses. My provisional view is that core participants in this category have good reasons for seeking anonymity: in summary, to protect their past intimate private and family life from disclosure and to protect them from unwelcome and damaging attention in their current private and family lives. It is in the interests of the effective presentation of evidence and, accordingly, conducive to the Inquiry fulfilling its terms of reference, that they have the comfort of knowing that they will not be identified.
50. **HJM** (Sarah Hampton) was designated a core participant in this category in my first Core Participants Ruling of 21 October 2015, at paragraph 46. HJM did not submit an application for anonymity within the time limited by my directions. Indeed the Inquiry had been informed on 22 February 2016 that she would not be doing so. On 29 August 2013 Ms Hampton had obtained an order for anonymity for the purposes

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of civil proceedings in the High Court. The Inquiry has now been informed that Master Cook's order has been discharged on the application of Ms Hampton.

Miscarriage of Justice

51. I have received applications from core participants who seek anonymity on the ground that their public association with an arrest during protest would have a detrimental effect upon their private life.

Inquiry Reference	Cipher	Recognised legal representative	Decision
RO 5	AN	Mike Schwarz	Minded to grant
RO 6	RTD	Mike Schwarz	Minded to grant
RO 8	FCA	Mike Schwarz	Minded to grant
RO 11	GRD	Mike Schwarz	Minded to grant
RO 12	AH	Mike Schwarz	Not minded to grant

52. **AN** was one of over 100 protesters arrested at a school room in Nottingham on 13 April 2009 on suspicion of conspiracy to commit aggravated trespass at Radcliffe-on-Soar power station. AN, who was then a named defendant, was convicted after a trial. The conviction was overturned on appeal by reason of the non-disclosure of the participation of an undercover police officer.
53. For reasons that AN does not wish the Inquiry to disclose AN has, as a result of his/her experience, suffered adverse consequences. AN wishes to avoid the exacerbation of those consequences that public identification at the Inquiry would be likely to bring about.
54. AN is a core participant at the Inquiry solely by reason of an involvement in criminal proceedings leading to a successful appeal. AN's identity is not, of itself, material to the issues that the Inquiry will be examining in relation to those events.
55. There is a limited public interest in the disclosure of AN's identity. A requirement that AN's true identity should be published by the Inquiry would, in my view, constitute a disproportionate interference with his/her right of respect for private life. The balance is in favour of making an order restricting publication of AN's name.
56. **RTD** was arrested with others at the Department of Transport on 7 December 2007. Also arrested was a person who is believed to have been an undercover police officer. The interest of the Inquiry in these events turns on the role, if any, played by an undercover officer in the protest at the Department of Transport on that day.

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57. RTD may be a significant witness to events both as to the circumstances in which an undercover officer attended the protest and the role played by that officer in events. RTD is concerned that any association with the arrest may cause reputational damage with RTD's employers. I am provisionally satisfied that RTD's concerns are genuine. However, until I know more about the factual issues to which RTD will contribute I am unable to reach even a provisional conclusion as to whether disclosure of RTD's name would be disproportionate on Article 8 grounds.
58. I conclude that at this time there is no necessity for the disclosure of RTD's name in the public interest. It would cause undue delay and unnecessary expense to interrupt the progress of the Inquiry for the purpose only of conducting a hearing into such a preliminary issue. This matter can be revisited at the appropriate time, namely during preparation for the evidential hearings in Module 1.
59. I am therefore minded to make a restriction order for anonymity at this time in fairness to the applicant and on the ground that it would be conducive to the fulfilment of the Inquiry's terms of reference to do so.
60. **FCA** is a core participant by virtue of involvement as a passenger, with several others, in an unlawful interception by the police of a coach carrying Iraq war protesters to Fairford in Gloucestershire on 22 March 2003. The public interest represented by the Inquiry is in the investigation of an assertion that information leading to the interception and the temporary detention of passengers was passed from an undercover officer to the Gloucestershire police.
61. **FCA** is concerned that if identified by the Inquiry as a former protester his/her current ability to work would be affected adversely. For the specific reason set out in the closed application I accept that this is a reasonable and probable concern. There is a limited public interest in disclosure. It is outweighed by **FCA**'s entitlement to respect for private life.
62. I am minded to make an order restricting publication of **FCA**'s name.
63. In 1996 **GRD** was one of a group of hunt saboteurs travelling in a vehicle that was stopped under an authorisation given under section 60 of the Criminal Justice and Public Order Act 1994. One of the group was an undercover police officer who subsequently made a witness statement to defence solicitors. **GRD** was not charged with any offence but others were. The section 60 authorisation was challenged at trial. The undercover officer did not give evidence. The defendants were found not guilty. The Inquiry's interest in these events concerns the non-disclosure to the defence of the participation of the undercover police officer. It appears that an application for public interest immunity may have been made to the

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court but it did not result in disclosure either at the criminal hearings or during subsequent civil proceedings for wrongful arrest.

64. GRD has a business that requires him/her to maintain a good working relationship with the police. GRD fears that, notwithstanding he/she was not charged with any offence, disclosure of his/her arrest in 1996 would generate publicity that would have a corrosive effect upon the good relations he/she currently enjoys.
65. I accept that there is at present a limited public interest in the publication of GRD's real name. The issue which the Inquiry is concerned to investigate is unlikely to require any controversial evidence from GRD. GRD has a genuine fear that his/her public association with these events may have a chilling effect on his/her business.
66. In my view, the balance lies in favour of protecting GRD's private life from disclosure. I am minded to make an order restricting publication of GRD's name.
67. **AH** was, along with AN, one of those arrested at Nottingham on 13 April 2009 and whose appeal to the Court of Appeal was subsequently successful. AH's name was published at the time of the court hearings. I have read the closed application. It discloses no grounds on which I could make a restriction order in order to respect AH's Article 8 rights or to ensure fairness towards him/her. I cannot find, on the arguments presented to me, that the absence of a restriction order for anonymity would cause delay, or impair the efficiency or effectiveness of the Inquiry or create additional cost. I am not minded to make the restriction order sought.

Justice campaigns

68. Two applicants seek orders for anonymity on the ground that they would be at risk of harm on disclosure of their identities.

Inquiry reference	Cipher	Recognised legal representative	Decision
RO 9	MWS	Mike Schwarz	Minded to grant
RO 9	MSS	Mike Schwarz	Minded to grant

69. **MWS and MSS** seek anonymity because they fear reprisals of some kind should their identities become known in connection with their family's campaign to secure justice, following the murder of their family member, Michael Menson. The family publicly and successfully campaigned to ensure that police officers investigating Michael's death treated it as a probable murder. Arrests were made and a prosecution resulted in convictions for murder. The Inquiry will investigate whether and, if so, to what extent the justice campaign was infiltrated by an undercover

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police officer. There is no present reason to think that the public disclosure of the applicants' names is required for this purpose.

70. The applicants consider that notwithstanding that several years have elapsed since their campaign's purpose was achieved they remain at risk from the unwanted attentions of those who resent their roles in the prosecution or harbour the same racist motivation that led to Michael's death, or both. In my assessment, the risk of physical reprisal is insubstantial but the applicants' fear is genuine. Their ability to give evidence without fear of exposure is required to secure fairness to them and, for that reason, is conducive to the fulfilment of the Inquiry's terms of reference. In my view, these considerations outweigh the limited public interest in their identification.
71. I am minded to make orders restricting publication of the names of MWS and MSS.

Political, environmental and other activism

72. I have received applications from core participants who seek anonymity on the ground that their association with past activism would have a detrimental effect on their private life.

Inquiry reference	Cipher	Recognised legal representative	Decision
RO 2	NRO	Stefano Ruis	Minded to grant
RO 18	VSP	Jules Carey	Minded to grant

73. In his/her application to be designated a core participant **NRO** stated that from 2001 to date he/she was a "core member" of the WOMBLES group, a "key member at national and international levels" of Indymedia and a "key member of ... Activix". Nonetheless, neither his/her professional nor academic employers are aware of this activism. NRO fears that should his/her involvement with political activism become widely known, he/she might, through misconception and misunderstanding, lose their respect. NRO also considers that he/she may be at risk of recrimination from far right activists.
74. I do not place much weight upon NRO's fear of recrimination from the far right. If there is a residual risk it has been present throughout NRO's many years as an activist. However, I accept that NRO's fear of harm to his/her professional and working life on disclosure of his/her identity is genuinely held. At this stage I am unaware of any reason particular to NRO's circumstances why his/her name would require disclosure in the public interest. I would be minded to make a restriction

order on the ground that NRO's right of respect for private life outweighs any countervailing interest in disclosure.

75. **VSP** has been active in political protest for many years. VSP has an important contribution to make to the work of the Inquiry because he/she is in a position to describe the interaction between at least one undercover police officer and targeted protest groups. VSP is concerned that the police will misrepresent his/her involvement, or that the true nature of his/her involvement will be misconstrued. For this reason VSP fears that publication of his/her participation in the Inquiry will have a detrimental effect upon his/her employment and career prospects. I am provisionally satisfied that these concerns are genuine. However, until I know what are the factual issues that will arise in VSP's evidence I cannot reach even a provisional view as to whether disclosure of VSP's name would, on balance, constitute a disproportionate interference with his/her Article 8 right to respect for private life.
76. There is, however, no *present* necessity for disclosure of VSP's true name. As in the case of RTD (paragraph 58 above) it would be inefficient, costly and cause undue delay to embark upon an exploration of factual issues at this stage of the Inquiry.
77. I am minded to make a restriction order for anonymity at this time in fairness to the applicant and on the ground that it would be conducive to the fulfilment of the Inquiry's terms of reference to do so.

Practical considerations

Extent of anonymity

78. The Inquiry must know the true identity of its core participants and witnesses. The terms of the restriction orders the Inquiry makes should address the question whether the true identity of the core participant or witness should not be disclosed to (i) *any other* person or (ii) *to any person other than* specified core participants, witnesses or persons.
79. This question needs to be addressed because there will be circumstances in which an order for complete anonymity may have to give way to the need to bring fairness and practicability to the process of receiving evidence. If the former wife of an undercover officer is giving evidence the officer himself will know or will need to know the identity of the witness. In the case of a core participant who is giving evidence about the deceptive nature of her relationship with an undercover officer, it is likely that the undercover officer will either know or have to be told the identity of

the witness. It may well be necessary for the officer's employer also to know the identity of the witness in order that supervision, management and systemic issues can be addressed. During the civil actions brought against the Commissioner of Police for the Metropolis (referred to at paragraph 27 and following above), although in court the claimants would have been known by their ciphers, both the officers against whom the misconduct was alleged and the defendant employer and legal representatives would have known the claimants' identities. Only in that way could the evidence have been sensibly received and challenged. The effect of the orders made in the High Court would have been to prohibit disclosure of the claimants' true identities outside a circle comprising the judge, the parties to the action, their legal representatives and the officers accused.

80. Similar considerations will apply to any circumstances in which a witness is giving controversial evidence about the conduct of an undercover police officer to the Inquiry. It may be that the officer can only sensibly respond to such evidence if made aware of the identity of the witness who is giving it.
81. In my Restriction Orders: Legal Principles and Approach Ruling of 3 May 2016 at Part 6, section D, I set out the means available to the Inquiry to render restriction orders effective. Not all restriction orders granting anonymity will be in the same terms. Each order will have to be tailored to meet the requirements of the individual case.
82. Where the applicant is already the subject of an order for anonymity in the High Court, the applicant and the Inquiry team will need to give attention to the question whether the terms of a restriction order made by the Inquiry are compatible with it. It may be necessary for an application to be made to the High Court for a variation of its order.
83. Applicants should now give specific attention to the terms of the order that they seek. I shall invite the Inquiry team to prepare draft orders for discussion in those cases where there is no challenge to my provisional view that a restriction order should be made.

Change of circumstances

84. By section 20 (2) and (4) of the Inquiries Act 2005 the chairman may add to or vary or revoke the terms of a restriction order by making a further order during the course of an inquiry. The restriction orders I am provisionally minded to make are subject to changes in circumstances. For example, it may be that during the course of the Inquiry controversial issues of fact will arise that require me to re-consider

whether it is necessary to disclose the name of a witness at least to a limited circle, so as to enable another witness, in fairness, to respond to accusations made.

85. If I were required by circumstances to re-visit a restriction order already granted, and if I were satisfied that full anonymity was no longer sustainable, I would have available more than one possible solution: I could vary the restriction order so as to permit disclosure to a specific core participant or witness or group of core participants or witnesses and/or I could impose reporting restrictions, or I could simply revoke the order.

Receiving the evidence

86. The Inquiry has already expressed, in the Legal Principles and Approach Ruling, its starting point that oral evidence will be received in open sessions. That will be the aim of the Inquiry whether the evidence is given anonymously or not. However, in order to protect orders for anonymity, it may be that some of the evidence will need to be received in 'private' or 'closed' sessions. By a 'private' session I mean one in which restricted persons and not the public are present and there is in place an order prohibiting publication of the proceedings outside the hearing room. By a 'closed' session I mean one in which those present comprise only the Chairman, the Inquiry's legal team, the witness and the witness's legal representatives.
87. If, having considered this Note, any applicant decides to withdraw consent to designation as a core participant, they are, of course, at liberty to do so, but it should be understood that similar issues may arise if and when the Inquiry makes a request to the applicant for a witness statement or requires the witness to attend the Inquiry to give oral evidence. Before publication, the non police, non-state core participant applicants were given advance sight of those parts of this Minded to Note that were relevant to them. No core participant sought to withdraw consent to designation. I am grateful for the pragmatism and commitment that the core participants have shown.

Next steps

88. I intend to give the 'Media'⁸ the opportunity to respond in writing, if it wishes, to the contents of this Note before making a decision as to whether the Inquiry should proceed to consider the terms of the restriction orders under consideration. I shall direct that the Media, within 14 days from the date of publication of this Note, shall make any written submissions to the Inquiry that it wishes. If written submissions are made the Inquiry will circulate them to core participants.

⁸ See Restriction Orders: Legal Principles and Approach Ruling, 3 May 2016, at paragraph 2

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89. If no written submissions are received from the Media the Inquiry team will contact recognised legal representatives with a view to entering discussions as to the terms of the restriction orders I shall be invited to make.

10 August 2016

Sir Christopher Pitchford
Chairman, Undercover Policing Inquiry