

In the matter of Section 19 of the Inquiries Act 2005

Applications for restriction orders by non-police, non-state core participants Ruling and further directions

1. On 10 August 2016 I issued a 'Minded to' Note in which I explained my reasons for reaching a provisional view upon each of the applications made in writing by non-police, non-state core participants for restriction orders whose effect would be to grant the applicant anonymity at the Inquiry.
2. As I noted at paragraph 5 of the Minded to Note the Inquiry had received no response objecting to any application made by a non-police, non-state core participant. That remains the position.
3. At paragraph 88 of the Minded to Note I indicated an intention to provide the 'Media' with the specific opportunity to respond in writing to the applications made and to the expression of my provisional views. I directed that any response should be filed within 14 days. That period was extended at the request of the Media.
4. In response to the invitation issued, the Inquiry has received a letter dated 30 August 2016 from Jan Clements, senior legal adviser for Guardian News and Media, acting on behalf of themselves, Times Newspapers Ltd, Associated Newspapers Ltd, the BBC, ITN, Sky News and the Press Association. The Media had a number of observations to make as to the provision of an adequate opportunity to respond to anonymity applications made by core participants and others and as to the importance of Article 10 in the decision-making process. The Inquiry replied to Ms Clement's letter on 31 August 2016.
5. As to the applications made by non-police, non-state core participants, the subject of my Minded to Note, Ms Clements wrote:

"In general, the Media has concerns that the approach set out in the Legal Approach Ruling has not been followed in relation to these applications. Of particular concern is the approach to Article 8, the lack of evidence provided in support of several of the applications and the absence of any reasoned consideration of the competing interests of the Media and whether anonymity may interfere with Article 10 (2) ECHR.

The Media reserves its position in relation to the individual restriction orders imposed by the Ruling insofar as they relate to non-state, non-police Core

UNDERCOVER POLICING INQUIRY

Participants as, at this stage, the significance of their evidence to the Inquiry is unknown. The greater the role of these witnesses to the Inquiry's terms of reference, the greater the public interest in reporting their evidence is likely to be. The media therefore asks to be provided with further information about the likely role of these individuals as and when that information becomes available to the Inquiry. Only then will it be able to make informed submissions as to the appropriateness of any restrictions to the publicity of their evidence. The Media should have the opportunity to make further submissions once that information is made available to it. The Media is also concerned that while, at present, you have indicated that these witnesses will be granted anonymity and that there remains a presumption that their evidence will be heard in open session, further restrictions may be imposed which could limit the Media's access to proceedings. Such restrictions would be a significant departure from the presumption of openness that the Inquiry has indicated shall apply to its proceedings and would need considerable justification. Should further restrictions be likely, it is submitted that the Media must be given prior notification and the opportunity to make informed submissions to the Inquiry prior to any final decision being made should they consider it appropriate to do so.

Individual media organisations reserve their right to request further evidence including confirmation of the identity of the applicants, details of the applications and/or evidence in support at a later stage as may be necessary."

6. I do not intend to engage with the criticisms made in the Media's submissions, whether explicit or implicit. The reasons given in my *Minded to Note* speak for themselves. The Media's considered position is that it does not, at this stage, intend to challenge the making of restriction orders in favour of those applicants I have listed in the *Minded to Note*.
7. The Media reserves the right to make further representations to the Inquiry once the significance of the core participants' evidence to the Inquiry's terms of reference emerges with greater clarity. As I emphasised at paragraph 78 of the *Minded to Note*, the making of a restriction order will not necessarily prohibit disclosure of a witness's identity to *any* person. The orderly and fair receipt of evidence by the Inquiry may require disclosure to a specific witness, group or other core participant. Also, at paragraph 84, I drew attention to the need for review upon a significant change of circumstances, such as the emergence of controversial issues of fact. I shall receive further representations on behalf of core participants, witnesses and/or the Media if and when the need for review of the terms of a restriction order arises. I have, by way of example, anticipated the possible need for review at paragraphs 58, 74 and 76 of the *Minded to Note*.

UNDERCOVER POLICING INQUIRY

8. In the absence of any intention by core participants or the Media to challenge the making of restriction orders whose purpose is to secure anonymity, so far as that is reasonably compatible with the fair receipt of evidence (where I have indicated that I am minded to grant the application), I can confirm that it is not necessary to hold an oral hearing of any of those applications. I confirm that I shall grant the applications in principle for the reasons I have given in the Minded to Note, subject to the setting of terms appropriate to the individual case. I shall invite the Inquiry's legal team to prepare draft orders and, if necessary, to enter into discussion with the recognised legal representatives for the applicants as to the precise terms of the orders proposed, with a view to agreement. In the absence of agreement I shall adjudicate. That process will start immediately. It would not be appropriate to impose a timetable at this stage.
9. I have expressed a provisional view that I should not grant AH's application (paragraph 67 of the Minded to Note). AH has no further representations to make and I confirm that the application is refused.

13 September 2016

Sir Christopher Pitchford
Chairman, Undercover Policing Inquiry