

Re The Undercover Policing Inquiry

**APPLICATION FOR RESTRICTION ORDER (ANONYMITY)
RE: N123
SUBMITTED ON BEHALF OF THE MPS**

Restriction Order sought: granting anonymity to witness 'N123', to last indefinitely.

Terms of Restriction Order sought at this stage:

- No direct or indirect disclosure of N123's true identity (including any description or image capable of identifying N123) beyond the Chairman and Inquiry team;
- No direct or indirect disclosure of N123's cover identity beyond the Chairman and Inquiry team.
- The Commissioner reserves the right to make further submission as to the effective operation of this Restriction Order during the course of the Inquiry.

Statutory basis for application: s.17(3) and s.19(3)(b) Inquiries Act 2005 ('the Act').

Grounds for application:

- S.17(3) (fairness)
- S. 19(3)(b) (conducive to inquiry fulfilling terms of reference and necessary in public interest) having regard to s.19(4)(b) (risk of harm or damage)

Legal principles:

Restriction Orders Legal Principles and Approach Ruling dated 3 May 2016 (the 'Principles Ruling').

Evidence in support (not for circulation wider than Chairman and Inquiry team unless otherwise stated):

- Risk assessment prepared in relation to N123, dated 30th June 2017.

Outline reasons:

Section 17: statutory and common law fairness

1. A restriction order protecting N123's real and cover identities is required in the application of statutory and common law principles of fairness, in light of the risks outlined in the risk assessment.

Sections 19(3)(b) and 19(4)

2. A restriction order protecting N123's identity is conducive to the Inquiry fulfilling its ToRs or is necessary in the public interest having regard in particular to the factors set out in s.19(4) of the Act. The Inquiry Chairman has indicated the approach he will take at paragraph 152 of the Principles Ruling:

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“...when considering whether to make an order restricting disclosure of any relevant particular piece of information on public interest grounds I will be required to:

- (1) identify the public interest in non-disclosure;*
- (2) assess the risk and level of harm to the public interest that would follow disclosure of that information;*
- (3) identify the public interest in disclosure;*
- (4) assess the risk and level of harm to the public interest that would follow non-disclosure of that information;*
- (5) make in respect of that information a fact sensitive assessment of the position at which the public interest balance should rest”.*

The public interests in non-disclosure

3. It is in the public interest for N123’s identity to be restricted on the basis of that it would avoid or reduce the risk of causing him/her harm, whether that harm be physical, psychiatric or through interference with his/her private and family life. The evidential basis for this is the risk assessment.
4. It is in the public interest for N123’s identity to be restricted on the basis that it would avoid or reduce the risk of causing harm to his/her family and other third parties connected with his/her deployment. The evidential basis for this is the risk assessment.
5. It is in the public interest for N123’s identity to be restricted on the basis it would avoid or reduce the risk of damage to effective policing.

The public interests in disclosure

6. The presumption in favour of openness weighs against making a restriction order in N123’s case. It is accepted that withholding the cover and real names of N123 may limit to an extent the ability of the Inquiry to scrutinise his/her deployment in the public domain.

Where does the public interest balance lie?

7. The MPS has considered the Chairman’s Restriction Order ruling dated 3 May 2016. The MPS has particular regard to the presumption of openness in the Public Inquiry and the public interest in investigating these matters as openly as possible.
8. However, in the particular circumstances of this case we make this application and invite the Chairman to conclude that the public interest favours non-disclosure. In short:
 - a) Anonymity is necessary to avoid the creation of a risk of harm to N123, to other avoid the creation of a risk of harm to other persons and to avoid damaging effective policing;
 - b) The interests of fairness demand non-disclosure of N123’s identity.

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3rd July 2017

MPS, Department of Legal Services