IN THE MATTER OF THE PUBLIC INQUIRY INTO UNDERCOVER POLICING

OPEN APPLICATION FOR A RESTRICTION ORDER (ANONYMITY)
RE: N26
SUBMITTED ON BEHALF OF THE MPS

Restriction Order Sought

1. The MPS apply for a restriction order over the real identity of N26 to last indefinitely in the following terms:

   (1) No direct or indirect disclosure of N26's real name (including any description or image capable of identifying N26) beyond the Chairman and the Inquiry team;

   (2) The Commissioner reserves the right to make further submission as to the effective operation of this Restriction Order during the course of the Inquiry.

Legal Basis for the Application

2. The Application is made on the following statutory bases:

   s.17(3) of the Inquiries Act 2005: the duty to act with fairness in the procedure or conduct of an inquiry.

   s.19(3)(a) of the Inquiries Act 2005: the duty to act in a way that is not incompatible with a Convention right, namely the prohibition of torture and inhuman or degrading treatment or punishment (Article 3), and the right to private and family life (Article 8).

   s.19(3)(b) read together with s.19(4)(b)-(d) of the Inquiries Act 2005: conducive to the Inquiry fulfilling its terms of reference or necessary in the public interest, having regard in particular to the matters mentioned in subsection (4).

3. The applicable legal principles have been comprehensively set out in the Chairman's Restriction Order: Legal Principles and Approach Ruling ("the Principles Ruling") of 3 May 2016. Regard has also been had to the restriction order rulings in respect of Cairo and the 'Minded to' note dated 25 October 2016 in respect of Jaipur and Karachi.

Evidence in Support

4. This application is supplemented by closed evidence, which is not to be circulated wider than the Chairman and the Inquiry team. A gisted Risk Assessment has been provided.

Reasons

Section 17

5. Application of the statutory and common law principles of fairness require that the real identity of N26 is not disclosed. The considerations which apply are highlighted below in relation to s.19(3)(b) and s.19(4).

Section 19(3)(a) and Article 3

6. There would be a real and immediate risk of treatment contrary to Article 3 if N26's real name was disclosed. The sources of harm and the level of risk are set out at §§15, 17.2, 19.1-19.2 (pp.35-37) of the Risk Assessment.

Section 19(3)(a) and Article 8

7. Disclosure of N26's real name would amount to a disproportionate interference with his or her right to private and family life. The sources of harm and the level of risk are set out at §§17.1-17.4 and 19.1-19.2 (pp.35-38) of the Risk Assessment.

Section 19(3)(b) and s19(4)

8. The Chairman is invited to find that a Restriction Order protecting N26's real identity is conducive to the Inquiry fulfilling its Terms of Reference or is necessary in the public interest having regard in particular to the factors set out at s.19(4) of the Act read together with the Chairman's approach at [152] of the Principles Ruling.

<u>The public interest in non-disclosure</u>

9. The following public interest factors are pertinent:

   (a) N26 is a former UCO who was deployed into his or her target group or groups. The likely sources and the level of risk of physical harm to N26 are set out at §§15, 17.2, 19.1-19.2 (pp.35-37) of the Risk Assessment.

   (b) N26 was promised lifelong anonymity before commencing his or her role: §3.4 of the Risk Assessment.

<u>The public interest in disclosure</u>

10. The general presumption in favour of openness weighs against the making of a Restriction Order. However, a restriction over N26's real name does not interfere with the Inquiry meeting its terms of reference.

Where the public interest balance lies

11. The MPS has considered the Chairman's Principles Ruling and has had particular regard to the presumption of openness in the Public Inquiry.

12. In all the circumstances, the MPS makes this application for a Restriction Order over N26's real name on the basis of the risk of harm to N26 and his or her family and disproportionate interference with N26's right to private and family life.

MPS, Department of Legal Services

20 July 2017