

**IN THE MATTER OF THE PUBLIC INQUIRY INTO UNDERCOVER  
POLICING**

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**APPLICATION FOR RESTRICTION ORDER (ANONYMITY)  
RE: N321  
SUBMITTED ON BEHALF OF THE MPS**

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**Restriction Order sought**

1. The MPS apply for a restriction order over the real and cover identity of N321 to last indefinitely in the following terms:
  - (1) No direct or indirect disclosure of N321's real or cover name (including any description or image capable of identifying N321) 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:
  - a. s.17(3) of the Inquiries Act 2005: the duty to act with fairness in the procedure or conduct of an inquiry;
  - b. s.19(3)(a) of the Inquiries Act 2005 and Article 8 ECHR: the duty to act in a way that is not incompatible with the right to private and family life under Article 8 ECHR;
  - c. 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 a closed schedule and 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 neither the real nor the cover identities of N321 are disclosed. The considerations which apply are highlighted below in relation to s.19(3)(b) and s.19(4).

### **Section 19(3)(a): Article 8 (true identity only)**

6. A Restriction Order protecting N321's true identity is required in order for the Inquiry to meet its duty under the Human Rights Act 1998 not to act in a way which is incompatible with a Convention right. The Convention right in issue is Article 8.
7. Disclosure of N321's true identity would result in a disproportionate interference with N321's right to private and family life. N321 has particular concerns about the effect on N321's partner [Risk Assessment 14.1; Personal Impact Statement paragraph 11], and also on their children. It is reasonable to infer that there would be public interest in N321 simply by virtue of N321's former status as a former UCO. N321's employment and position within the community, as well as that of N321's children [Personal Impact Statement paragraphs 15 and 17; Risk Assessment paragraph 5.9] would amplify the harm caused.

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

8. The Chairman is invited to find that a Restriction Order protecting N321's real and cover identities 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 in s.19(4) of the Act read together with the Chairman's approach at paragraph 152 of the Principles Ruling:

*"...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**

9. The following public interest factors are pertinent:

- (1) N321 is a former UCO whose deployment was brief in duration and concluded many years ago. [See Risk Assessment paragraphs 2-3; Personal Impact Statement paragraphs 5-10].
- (2) N321 has lived life since deployment and N321's MPS career upholding the confidentiality of the SDS and of N321's status as a former UCO [Personal Impact Statement paragraphs 3, 18-19].
- (3) The extent to which the evidence N321 is able to give is going to be of primary interest to the CPs and the Inquiry is limited. This is further limited by the limits on recollection after so much time has passed.
- (4) N321 did not use a deceased child's identity.

The public Interest in disclosure

10. The general presumption in favour of openness weighs against the making of a Restriction Order in N321's case. It is accepted that withholding the cover name of N321 will limit the ability of the Inquiry to scrutinise N321's deployment in the public domain. However, N321 could still assist the Inquiry in fulfilling its terms of reference by giving general evidence on N321's deployment (such as N321's recruitment, working practices and oversight by management).

Where does the public interest balance lie?

11. The MPS has considered the Chairman's Principles Ruling and has had particular regard to the presumption of openness in the Public Inquiry. In all the circumstances, the MPS makes this application for a Restriction Order on the basis that the public interest requires both the real and cover names of N321 to be restricted.

**MPS, Department of Legal Services**  
**26<sup>th</sup> July 2017**