

IN THE MATTER OF THE PUBLIC INQUIRY INTO UNDERCOVER
POLICING

APPLICATION FOR RESTRICTION ORDER (ANONYMITY)
RE: N333
SUBMITTED ON BEHALF OF THE MPS

Restriction Order sought: granting anonymity to witness 'N333', to last indefinitely.

Terms of Restriction Order sought at this stage:

- No direct or indirect disclosure of N333's true identity (including any description or image capable of identifying N333) 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), s.19(3)(a) and s.19(3)(b) Inquiries Act 2005 ('the Act').

Grounds for application:

- S.17(3) (fairness)
- S. 19(3)(a) Article 8 (right to private and family life)
- 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):

- N333 Risk Assessment dated 2nd May 2017

Outline reasons:

Section 17

1. Application of the statutory and common law principles of fairness require that the real identity of N333 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): Article 8

2. A Restriction Order protecting N333's identity is required in order for the Inquiry to meet its duty under the Human Rights Act 1998 not to act in a way

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which is incompatible with a Convention right. The Convention right in issue is Article 8.

3. Disclosure of N333's true identity would result in a disproportionate interference with N333's right to private and family life. Owing to the ease in which N333 is able to be traced in N333's real identity there are no other protective measures that could be relied on in support that would mitigate the interference with N333's right to family life. Open source research would easily uncover N333's home address and, seemingly, N333's MPS career (Risk Assessment paragraph 10.4). N333's real identity is in the public domain in *a different context*. It is reasonable to infer that there would be public interest in N333 simply by virtue of N333's former status as a former UCO. *Other reason for possible increased media interest.*
4. However, the legitimate aim of enabling the Inquiry to fulfil its Terms of Reference can be adequately met by confirmation of N333's cover identity and status as a UCO.

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

5. The Chairman is invited to find that a Restriction Order protecting N333'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 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

6. The following public interest factors are pertinent:
 - (1) N333 is a former UCO. Details of deployment.*
 - (2) N333 has lived life since deployment and N333's MPS career upholding the confidentiality of the SDS and of N333's status as a former UCO.*

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- (3) The extent to which the evidence N333 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) N333 did not use a deceased child's identity, although it should be noted that there is no application to apply for a restriction over the officer's cover name in any event.

(5) *Further reason*

The public Interest in disclosure

7. The general presumption in favour of openness weighs against the making of a Restriction Order in N333's case. However, this must be viewed in light of the fact that the MPS will not be applying for a Restriction Order over N333's cover identity or status as a former UCO. The Inquiry will be able to fulfil its Terms of Reference without the publication of N333's real name. The effective participation of CPs and witnesses to the inquiry would not be impeded by N333's real identity being withheld. Confirmation of the cover identity permits members of the public to come forward if they so wish.

Where does the public interest balance lie?

8. The MPS has considered the Chairman's Principles Ruling and has had particular regard to the presumption of openness in the Public Inquiry. This application is similar in some respects to certain other officers of a similar vintage such that the Chairman's decision is capable of having an effect on future applications.
9. In all the circumstances, the MPS makes this application for a Restriction Order on the basis that confirmation of N333's cover identity and status as a former UCO is the most appropriate measure falling short of confirmation of N333's real identity that reflects the public interest balance and enables the Inquiry to fulfil its Terms of Reference.

MPS, Department of Legal Services
02 May 2017