

OFFICIAL**Re The Undercover Policing Inquiry**

APPLICATION FOR RESTRICTION ORDER (ANONYMITY)
RE: N7
SUBMITTED ON BEHALF OF THE MPS

Restriction Order sought: granting anonymity to witness 'N7', to last indefinitely.

Terms of Restriction Order sought at this stage:

- No direct or indirect disclosure of N7's true identity (including any description or image capable of identifying N7) beyond the Chairman and Inquiry team;
- No direct or indirect disclosure of N7'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), 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 2 (right to life), Article 3 (prohibition of torture, inhuman or degrading treatment), 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)

This application is, at this stage, made solely on the basis of the medical evidence that has been obtained in relation to the risk of psychiatric harm to N7.

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):

Expert report on N7 by Professor G C Fox, Consultant Psychiatrist, dated 2nd January 2017

Outline reasons:***Section 17: statutory and common law fairness***

1. A restriction order protecting N7's real and cover identities is required in the application of statutory and common law principles of fairness. N7 has suffered considerable psychiatric distress already as a result of post-traumatic

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stress disorder linked in part to his SDS activity. As set out below, his problems could be severely exacerbated were his real and cover identities to be released.

Section 19(3)(a): Articles 2 and 3

2. A restriction order protecting N7'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 which is incompatible with a Convention right. The Convention rights in issue are Articles 2, 3 and 8.
3. A doctor has concluded that disclosure of N7's true or cover identity would result in traumatic deterioration in his anxiety and depressive symptomology. If disclosure were to occur, there is a significant risk of completed suicide, 'significant' meaning that it is highly likely to occur (Medical report, paragraphs 4.9, 4.16 and 4.20). Disclosure is therefore incompatible with N7's rights under Articles 2 and 3.
4. This psychological trauma would itself also impact on N7's Article 8 rights, likely resulting in him receiving a further period of treatment as an in-patient.

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

5. A restriction order protecting N7'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:

"...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*
- (6) position at which the public interest balance should rest".*

The public interests in non-disclosure

6. It is clear that N7 has a history of significant psychiatric difficulties, which have become heightened by the prospect of his identity becoming publicly known. His subjective fear of harm, both for himself and for his family, whether or not objectively justified, is severe and is likely to have severe consequences in the event that his real name is disclosed. Professor Fox concludes that there is a significant risk that N7 will commit suicide should his identity be released. This risk of harm could be avoided or reduced by a restriction order.

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7. The risk of deterioration in N7's mental health is likely to be exacerbated by interference with his private life were his real or cover names to be released.

Where does the public interest balance lie?

8. 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.
9. 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 real and immediate risk serious psychiatric harm;
 - b) The interests of fairness demand non-disclosure of N7's identity.

1st June 2017

MPS, Department of Legal Services

Gist: Expert report on N7 by Professor G C Fox, Consultant Psychiatrist, dated 2nd January 2017