

IN THE MATTER OF THE UNDERCOVER POLICING INQUIRY

SUPPLEMENTARY SUBMISSIONS ON BEHALF OF HN7:
OPPOSITION TO PUBLICATION OF DETAILED "MINDED TO" REASONS
AND/OR GIST OF EXPERT EVIDENCE

1. These submissions are filed on behalf of HN7, a former member of the MPS Special Demonstration Squad ("SDS") represented by Mark Spanton and Anna Peacock within the MPS Directorate of Legal Services acting in their capacities as independent "Designated Lawyers" ("the DL").

2. The background is as follows:

(1) the Inquiry has disclosed a passage from a draft note recording that it is "minded to" grant the MPS application for a restriction order in relation to HN7's real and cover names on the basis of the report of the Consultant Psychiatrist Professor George Fox dated 02/01/17;

(2) the DL have made limited comments on the above passage querying the specificity of the information about HN7's age and deployment dates in the first line and the lack of any reference to his Convention rights under ECHR, arts 2-3 thereafter (please see paragraph 8 below in relation to HN7's age); and

(3) the Inquiry has also requested that the DL propose a gist of Professor Fox's report which is suitable for publication in conjunction with the "minded to" note, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

3. A proposed gist is **enclosed** herewith as requested but, having reflected on the matter and taken instructions from HN7, the DL need formally to object to its publication at this stage and to submit, for the reasons set out below, that the Inquiry should either:

- (1) publish the proposed "minded to" reasons in relation to HN7 as a final, definitive decision; or
- (2) revise those reasons so that they say no more than the following:

[REDACTED]

4. The need to publish sufficient information to allow informed and effective objection to be taken to any "minded to" decision is understood and accepted. However, the express premise of the "minded to" process is that the Inquiry

may be persuaded to change its mind. Were this not the case, the decision would be framed in definitive rather than provisional terms. Accordingly, it is currently contemplated that HN7's real and/or cover name may ultimately be published in conjunction with the Inquiry's proposed "minded to" reasons and a gist of Professor Fox's report.

5. The latter both contain highly sensitive and confidential medical information about HN7 and it is submitted that they cannot lawfully be made public by the Inquiry while there is any prospect that his true identity may also be disclosed.

6. Indeed, if the Inquiry's proposed "minded to" reasons and a gist of Professor Fox's report were published at this stage and there were then a challenge to the proposed approach, the DL would be bound to submit that the prior publication constituted a material change of circumstances meaning that - irrespective of the merits of the original "minded to" decision - publication of HN7's real and/or cover name would now:
 - (1) require a further report from Professor Fox as to the likely outcome for HN7 *bearing in mind the prior publication of detailed information about his mental health*; and

 - (2) be unfair, unlawful and incompatible with HN7's Convention rights under ECHR, arts 2-3 and 8 for reasons additional to those already underlying the "minded to" reasons.

7. This would in turn allow any challenger to complain that the prior publication of the "minded to" reasons and gist had effectively presented them with an unchallengeable decision as *a fait accompli*. It is submitted that these difficulties may only safely be avoided by publication of a final, definitive decision or sanitised "minded to" reasons along the lines set out above.

8. Without prejudice to the above, if the Inquiry were to publish its proposed "minded to" reasons on a final or provisional basis, the DL would further request that no reference be made to his age, not even to [REDACTED]

[REDACTED]

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20 July 2017

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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