

From: Jane Deighton
To: Piers Doggart; Undercover Policing Inquiry
Subject: HN 81
Date: 20 September 2017 15:27:54

Dear Piers

HN81

We are writing to seek to persuade the Chairman that to hear HN81's application for his cover name to be protected by a Restriction Order in a closed hearing would be irrational, procedurally unfair and unjust. In addition we suggest it would also be more efficient to permit our participation at an initial hearing of the issue rather than to have a multi-stage process. The Chairman's appreciation of how crucial this decision is to the Inquiry is clear from paragraph 6 of his Minded To Note of 3 August 2017. The Chairman will no doubt understand its particular importance to those whom HN81 was deployed against/reported on, and the wish to have the Inquiry proceed with HN81's cover name being referred to openly.

The reasons for our position are:

1. Closed hearings, by definition, defeat the requirement for openness in this Public Inquiry. They should accordingly only be adopted where it is absolutely necessary to do so.
2. Exclusion of all those CPs other than those seeking the Restriction Order from the hearing denies any equality of arms in this part of the Inquiry.
3. The NPNSCPs have not been consulted about whether to have a closed hearing.
4. There is a real risk that what takes place at, and the findings of, a closed hearing will be and/or be seen to be unfair. This risk could be mitigated by the participation of NPNSCPs. Further, excluding them denies the Inquiry of the benefit of their assistance:
 - (i) Such exclusion is damaging to the Inquiry, its efficiency and its credibility.
 - (ii) The exclusion will lead to the Chairman conducting the closed hearing exclusively on the evidence currently provided by the MPS or HN81.
 - (iii) There is no provision for those accused of creating the risk to HN81 to answer the accusations.
 - (iv) The evidence that will be heard will be unchallenged and untested by the NPNSCPs. The lack of an opportunity to challenge is of particular concern because of the context of HN81's activities. HN81, we are told, infiltrated a group which worked with Duwayne Brooks, within the Lawrence family support campaigns, and within some other Black Justice Campaigns. He was deployed around the Lawrence Inquiry. A finding of the Lawrence Inquiry was that the MPS was institutionally racist. That finding means in practice that the work of, the choice of information provided by HN81, the judgements and priorities of HN81 must be seen and understood in that context. We submit that they must, therefore, be treated with the utmost caution.

(v) Equally the evidence of the risk assessment by the MPS should be treated with caution.

(vi) It might be helpful to look at an example. The risk to HN81 is assessed “*on the basis that some people will accept that proposition (that HN81 was a spy in the Lawrence camp) whether or not that basis is (or is not) valid*”, para 16.1 . “*If HN81’s real identity was revealed I assess the likelihood of an attack as medium (3) as it could be reasonably foreseen. I also take into account the comments of HN81*”, para 16.ii (ii). This analysis could be read to mean that there is a risk that someone could be triggered to physical violence against HN81 because they believed he spied on the Lawrence camp. On Macpherson’s analysis there is a danger that the intelligence and risk assessment may be informed by a stereotype of violence on the part of some black people.

Of course we don’t know, because of the redactions, whether the risk assessor is referring to a particular person and what the colour of that person is. It may be that this is not an expression of a stereotype. But even so the fact that it could be, while the NPNSCPs and the accused are excluded from the process, can only damage the credibility of the Inquiry.

(vii) The identification of the risk as emanating from a belief that HN81 was a spy in the Lawrence camp opens a line of enquiry that may assist the Inquiry in determining the risk. It could be useful to hear submissions from “the Lawrence camp”, some of whom are CPs about these issues, Such submissions might include their views on whether such a belief is likely to trigger violence in the context of their knowledge of their own “camp “, and of the undercover policing of their “camp”, and whether, in the event there is shown to be a credible risk of violence, they could be asked if they could assist in reducing that risk.

(viii) It would, we suggest, assist the Inquiry to hear submissions from those directly affected on the issue of justification with any interference in HN81’s Article 8 rights at the same time that it hears from the MPS and HN81 As referred to above it is welcomed that the Chairman recognises in his Minded To Note that the issue around HN81 was one of the reasons for setting up the Inquiry. He recognises that he can see “ *no means of resolving disputed questions of fact*” without the cover name being published. There is however nothing in the application disclosed to us about the extent of the dispute of fact nor on the potential effect on the participation of NPNSCPs in the Inquiry if the cover name is not released by the Inquiry.

(ix) Further there are no submissions from others than the police and their witnesses as to the issue of the approach to reputational damage and the stress it might cause. Might it not be sensible for the Inquiry to hear submissions at the same time it hears from the MPS and HN81 as to whether it is ever appropriate or compelling for a police officer to claim that being known as an UCO damages his/her reputation, or to claim a shield against the impact of his/her own misconduct?

5. Excluding NPNSCPs from a hearing is open to being interpreted as denying them the respect their role of CPs and their experience should attract.

6. The reasons for and conduct of the Closed Hearing

(i) No open reasons for a closed hearing were given in the Directions or Minded To Note.

(ii) Limited reasons were given in your email of 8 September 2017: *“Discussion around how the release of the cover name can be reconciled with HN81’s legitimate interests does not require any sharing with non-state core participants of potentially restricted material, including the cover name. Nor can I see that I would be assisted by receiving submissions on ‘the issue of the closed hearing’ at this stage; given the substance of the legitimate interests outlined in the ‘minded to’ note, it should be apparent that the details of these need to be discussed in private”*

(iii) The reasons in the September email are underpinned by the assumption that to open the hearing would necessarily involve sharing potentially restricted material including the cover name. It is hoped that we have shown above that this is not the case. It is clear from 4 above that the NPNSCPs have much to offer a hearing without restricted material being disclosed.

(iv) We welcome your email of 4 September granting us permission to make submissions in advance of the closed hearing if we considered it necessary to do so. However that email does not accord with the determination on 8 September that the Chairman was not prepared to extend our costs award. My instructions are just to write this document.

7. Excessive Redactions

The material has been redacted to an extent which appears to go beyond the aim of disclosure not defeating the purpose of the application. By way of example the gisted medical report contains one line of substantive material ie *“ Report includes the opinion that should HN81’s identity, covert or real be disclosed there is a high risk of health issues”* . It is unlikely that for instance the nature of the health issues, the details of the consultation or previous treatment or issues or many of the matters normally included in medical reports could defeat the purpose of the application – yet they are all omitted. One would expect there to be an expert’s statement, and even that has been omitted. We ask that the redactions be reconsidered so that we are able to make submissions on a properly informed basis.

8 Submissions after a Closed Hearing

We welcome your indication that submissions will be invited from all CPs should the outcome of the closed hearing be other than disclosure of the cover name and would welcome the opportunity to make them. However the injustice of the closed process in itself remains. Further it is hard to see how submissions made after a closed hearing and provisional decision could have the same weight as those made during a hearing.

This letter is submitted in advance of the group's submissions which are now due on October 5, as requested. We have endeavoured not to duplicate them -- and we adopt them as they now stand.

You will be aware that the matters expressed in this letter are of concern to the participants of G group, as well as to other core participants

We look forward to hearing from you. If the Chairman is not persuaded by our arguments, we would be grateful for his reasons.

Regards

Jane Deighton for Duwayne Brooks
Read and approved by Nia Williams for Michael Mansfield
