

IN THE MATTER OF THE INQUIRIES ACT 2005

AND IN THE MATTER OF THE INQUIRY RULES 2006

THE UNDERCOVER POLICING INQUIRY

**[OPEN] REVISED SUPPLEMENTAL APPLICATION ON BEHALF OF N16
FOR RESTRICTION ORDERS**

Introduction

1. N16 has previously submitted closed and open applications for restriction orders to the Inquiry. This document is intended to supplement the application made in light of three additional documents which are filed in support of N16's existing application for restriction orders: (i) the risk assessment prepared by David Reid dated 18 August 2017; (ii) the psychiatric report prepared by Dr Walter Busuttil dated 6 March 2017; and, (iii) the second additional personal statement prepared by N16 dated 15 June 2017.
2. This document organises the information contained in the three documents mentioned above and makes limited submissions on the basis of that information. It is not intended as a skeleton argument.
3. N16 maintains *his/her* application for the restriction orders sought in *his/her* original closed and open applications as set out in the draft order originally submitted.

The problem of jigsaw/mosaic identification

4. The latest risk assessment confirms [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] Hence, a pathway is clearly established. The author of the latest risk assessment has expressed concern at this prospect of a link between cover and real identities being established via this pathway, [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

(3) The legend used by N16 during *his/her* deployment [REDACTED]

[REDACTED] The details are set out at paragraph 5 of *his/her* additional personal statement of 28 April 2016. Again, notwithstanding *his/her* general assessment of risk, the assessor's comments on this potential pathway are revealing; "I accept that there is a genuine risk and at the heart of the mosaic effect for *his/her* as well as many other UC's" (sic) [¶ 19.1 (c)].

7. The risk assessor nonetheless accepts that these three features (and others) of N16's cover identity, [REDACTED] are "highly likely" to have been "shared with those s/he was exposed to potentially leading to *his/her* true identity being disclosed" [¶ 11.1]. The tentative conclusions reached as to current risk appear to be (understandably) based upon a lack of certainty or knowledge of individual facets of a particular risk profile raised by N16: for example, the assessor observes that "I can see ways in which the sterile corridor could theoretically be crossed, particularly if *his/her* target group have information that I am not aware of" [¶ 19.1 (h)].

8. The risk assessor does accept what has long been contended by N16, that the personal animosity and sense of personal betrayal that will be felt by a number of key individuals who have a history of violence at ¶ 10 of the latest risk assessment (see further, below); and does not dispute N16's contention that individuals within the groups to which s/he was deployed have developed skills over years of activism in researching the identities of potential victims and using family members and professional colleagues as a means to exert pressure on principal targets: "there are people linked to N16 with a clear capability to search after his/her identity" [¶ 10 and ¶ 19.1 of latest risk assessment; page 6 of N16's first personal statement of 12 February 2016; page 3 of N16's additional personal statement of 28 April 2016].
9. N16 submits that the current risk assessment should therefore be regarded as it is presented by the assessor: necessarily guarded, qualified and tentative. Given that the risk assessor accepts uncritically all that N16 has said about the propensity for violence by the individuals and groups that N16 had associated with during his/her deployment, [REDACTED] N16 would invite the Panel Chair to look beyond the risk 'scores' to the underlying and coherent rationale of the application as set out in the risk assessment and the documents previously supplied to the Inquiry by N16.

Article 3 - risk of physical assault

10. In his/her 2016 personal statements N16 identifies [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
The risk assessor concludes that [REDACTED]
[REDACTED]
[REDACTED] "a number of the individuals N16 reported upon during the course of his/her deployment are violent, or linked to others known to be violent" [¶ 15; ¶ 17.1].

11. N16 notes that the latest risk assessment concurs with *his/her* view that the groups infiltrated by him “*would have the capacity to do him/her harm and have done so to other people previously*” and does not dispute that “*his/her target group would be willing to wait a long time to exact their revenge*” and that it is unlikely that “*the authorities would be able to prevent any attack on him/her*” [¶ 10].

Article 3 - risk of psychological harm

12. For obvious reasons, this topic is not covered in the latest risk assessment. A full medical report has been obtained, in which the author opines:

[REDACTED]

...

[REDACTED]

13. Plainly, any measures protecting N16’s identity short of those applied for by this application for restriction orders risk harm to N16’s [REDACTED] health on the available evidence.

Article 8 - risk to occupation and reputation

14. N16 has provided a further personal statement which sets out details of *his/her* current occupation. In short, disclosure of *his/her* real identity, either directly by the Inquiry Chair should *his/her* application for restriction orders be refused, or by the process of jigsaw identification would inevitably cause serious and irreparable harm to *his/her* right to a private life. In particular, and placing reliance on the decisions of the House of Lords *R (Wright) v Secretary of State for Health* [2009] UKHL 3; [2009] 1 AC 739 (per Baroness Hale at paragraph 30 ff.) and the Supreme Court in *(L) v Commissioner of Police of the Metropolis* [2009] UKSC 3; [2010] 1 AC 410 (per Lord Hope at paragraph 23 ff), N16 submits that [REDACTED] [REDACTED] should *s/he* be exposed as a former undercover police officer which would amount to an interference with *his/her* right to a private life. [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

Conclusion

15. N16's application for the measures sought in the draft order is maintained and enhanced by the most recent material provided to the Inquiry.

SLATER & GORDON LLP

14th September 2017