IN THE MATTER OF THE UNDERCOVER POLICING INQUIRY

SKELETON ARGUMENT
ON BEHALF OF THE DESIGNATED LAWYER OFFICERS
HN7, HN321, HN330, HN333 & HN343

Filed pursuant to Inquiry directions dated 23 October 2017, para.5

For Hearing: 20-22 November 2017

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1. Introduction

1.1 The abbreviations "CL", "DL", "GNML", "HRA", "MPS", "NPOIU", "NSNP", "PF", "PII", "RO" and "SDS" are adopted herein and references to numbered articles relate to articles of the ECHR.

1.2 This skeleton argument is filed on behalf of the abovementioned DL officers in response to the written submissions of GNML, the NSNP and PF dated 04/10/17 and 05/10/17 and it therefore relates to the Inquiry's:

(1) ruling dated 03/08/17 on the RO application of HN7;

(2) minded to note dated 03/08/17 (insofar as relevant to the RO applications of HN321, HN330, HN333 and HN343).

2. General observations

2.1 To differing degrees, the responses to the Inquiry's abovementioned ruling and minded to note suffer from the following common flaws:

(1) attempting to gloss, revise or re-argue the Inquiry's *Restriction Orders: Legal Principles and Approach Ruling* dated 03/05/16 by reference to (old) arguments about open justice and art.10;

(2) assuming that "starting points" and "presumptions" must necessarily dictate outcomes and that outcomes must necessarily indicate starting points and presumptions;

(3) adopting a binary State vs. public conception of the interests at stake which disregards the independent rights and interests of former police officers, their families and others who assisted their undercover work and the triangulation of interests as between, first, those individuals (who are not parts of the State), secondly, others with an interest in the Inquiry and, thirdly, the police as an emanation of the State.

2.2 The answer to much of the above can already be found in the Inquiry's *Legal Principles and Approach Ruling* which identifies the general considerations relevant to RO applications and the analytical framework for their determination. The ruling and minded to note of 03/08/17 simply apply the approach comprehensively described in the *Legal Principles and Approach Ruling* in the context of particular, concrete cases.

3. Open justice & art.10

3.1 These are addressed in some detail and, insofar as necessary, taken into account in the Inquiry's *Legal Principles and Approach Ruling* (see esp. paras 82-89 and 200-204). There is no need for decisions taken under the latter ruling slavishly to recite the considerations set out therein and no basis for the submission that matters not so recited can be assumed not to have been taken into account or given proper weight (para.20 of the minded to note refers to and confirms the application of *Legal Principles and Approach Ruling*).

3.2 All of the general dicta about open justice and press freedom relied on in the submissions of GNML, the NSNP and PF relate to judicial, adversarial proceedings involving claims or charges of civil or criminal rights or liabilities and the determination of related issues. It must be remembered that no allegation, claim or charge of civil or criminal wrongdoing or liability has been made against HN7, HN321, HN330, HN333 or HN343.

3.3 Furthermore, such proceedings may only proceed *inter partes* and on the basis of specific allegations of past or threatened breach of duty or other private or public law claims. Accordingly, they cannot and do not involve the courts in the

speculative publication of names with a view to inviting or "soliciting" allegations of wrongdoing from members of the public (see *Counsel to the Inquiry's Note for the Hearing on 5 April 2017* dated 02/03/17, para.38).

3.4 By contrast, this is a quasi-judicial, inquisitorial proceeding which has no power to determine questions of civil or criminal liability (see the Inquiries Act 2005, s.2) and where there are no countervailing common law or Convention rights which can be said to be engaged or capable of requiring or favouring disclosure of the names of undercover officers:

(1) maintaining the anonymity of such officers would not impact on the art.6 rights of any third parties, including the NSNP, as these are not engaged (see the analysis in *Counsel to the Inquiry's Note on the Rehabilitation of Offenders Act 1974 and its Impact on the Inquiry's Work* dated 01/03/17, paras 44-55);

(2) neither would it impact on the art.10 rights of any third parties (*Kennedy v Charity Commission* [2014] UKSC 20, [2015] AC 455, per Lord Mance at [48], per Lord Toulson at [124]-[125] and per Lord Carnwath at [238]-[241], *R (Persey) v Environment Secretary* [2002] EWHC 371 (Admin), [2003] QB 794 (DC), per Simon Brown LJ at [48] and [52]-[53] and *R (Howard) v Health Secretary* [2002] EWHC 396 (Admin), [2003] QB 830, per Scott Baker J at [103]-[105]).

3.5 In *R v HM Coroner for Bedfordshire, ex p. Local Sunday Newspapers Ltd* (2000) 164 JP 283, it was expressly recognised that the interest of open justice weigh less heavily in coroners' inquests than in criminal trials (per Burton J at [25] and [36]).

3.6 Even if dicta about open justice and press freedom in the context of ordinary civil and criminal proceedings were directly relevant in this context, it must be remembered that statutory restrictions and the doctrine of PII routinely apply in all such proceedings to protect and prevent the public identification of individuals who might not otherwise provide information in the public interest,

e.g. complainants of sexual offences, journalists' sources, undercover police officers and other confidential sources and informants.

4. The public interest in disclosing the identities of undercover officers

4.1 The Inquiry's terms of reference dated 16 July 2015 relate to all "undercover police operations conducted by English and Welsh police forces in England and Wales since 1968" and include, but are not limited to, the undercover operations of the SDS and NPOIU. Accordingly, it must be understood that the general arguments advanced on behalf of GNML, the NSNP and PF in relation to the public interest in identifying undercover officers apply to every operation the Inquiry considers.

4.2 Aside from general arguments about open justice and art.10 and the claim that the real and cover names of every undercover police officer should be published in order to see if anyone wishes to make allegations against them, the NSNP submissions dated 05/10/17, para.108 advance a number of more specific reasons for disclosure which are, on proper analysis, irrelevant:

(1) the non-undercover career progressions and trajectories of former undercover officers are outside the Inquiry's terms of reference irrespective of involvement in wrongdoing and, even on the NSNP argument, such issues would only require investigation in cases of established wrongdoing and, in any event, this would not require the release of real or cover names (para.108(c));

(2) the post-police careers of undercover officers and the activities of private investigators and security consultants are also outside the Inquiry's terms of reference (para.108(d));

(3) allegations relating to the non-undercover work of undercover officers made by individuals who did not know about their undercover work are also outside the Inquiry's terms of reference (para.108(e)).

4.3 Even if valid, the arguments in the NSNP submissions, paras 26-29 and 108(f) relating to the effects of non-disclosure on women who had intimate relationships with undercover officers and/or individuals who have suffered bereavement or racism are of no relevance in the cases of HN7, HN321, HN330, HN333 and HN343. Furthermore, it is not understood how HN333 saying he wishes to be left in peace, following his nine month SDS deployment in 1968-69, could be said to cause distress to anyone.

5. Expectations of confidentiality

Introduction

5.1 The DL officers did not in their submissions dated 17/07/17 and do not now seek to dispute or re-open the Inquiry's *Legal Principles and Approach Ruling*.

5.2 That said, it is important to understand what that ruling did (and did not) say about expectations and obligations of confidentiality or anonymity and, in particular, the true import of the findings at para.165 that: it is "likely that undercover officers will have embarked on their roles with a strong expectation that their employers would do everything that they properly could to protect them from public exposure"; and "any assurance or understanding of confidentiality must have been qualified and could not have been absolute, for the very good reason that every police officer is aware of the supremacy of a judicial decision on disclosure should the officer find that his activities have become relevant to a civil or criminal trial".

5.3 Although it is obviously right that the relevant expectations and obligations of confidentiality were not and are not absolute or unqualified, it is important to note that:

(1) the Inquiry's recognition of their qualified nature specifically related to police officer awareness of the scope for disclosure in the different context of a judicial civil or criminal trial (see above);

(2) the Inquiry went on to say that these expectations and obligations are nevertheless "material and weighty" considerations (para.166);

(3) the observation that they are "not likely, except in unusual circumstances, to make the difference between disclosure and non-disclosure" was itself qualified by the rider "if disclosure is necessary in the fair pursuit of fulfilment of the Inquiry's terms of reference" (para.166);

(4) that rider must itself be read together with the Inquiry's "Conclusion of Summary of Findings" which emphasised that breaches of expectations of confidentiality represent a type of harm or damage whose avoidance may justify an RO and that the weight to be attached to such an expectation will require examination of whether it was an expectation of unqualified protection (paras A.8, B.1(2), B.2(1) and C.4);

(5) that examination could not conceivably stop at an assessment of whether the expectation is or was unqualified (or is or was - reasonably or unreasonably - understood to be unqualified) and must also entail an assessment of the nature, terms and extent of any qualifications.

5.4 Accordingly, the weight to be attached to the expectations and obligations of confidentiality held by and owed to undercover officers in the SDS in turn depends upon and requires an examination of their nature, terms and extent.

Outline of DL officers' position

5.5 It is submitted that:

(1) the public interest, and the conduct and the (express and implied) assurances and undertakings of the MPS, have given rise to very strong expectations and obligations of confidentiality held by and owed to SDS undercover officers;

(2) as a matter of public law, the Inquiry is obliged to respect and may not lawfully frustrate those obligations absent the consent of the individual

concerned or, at the very least, some overriding public interest in publication;

(3) *prima facie* evidence of serious misconduct or wrongdoing on the part of an undercover officer in the course of his or her undercover work or of some involvement in particular matters of specific interest to the Inquiry may or may not give rise to such an overriding public interest, depending on the facts and whether or not the alleged misconduct or wrongdoing was or would have been within or outside the officer's orders or instructions;

(4) the speculative benefits of "soliciting" or fishing for allegations of misconduct or wrongdoing on the part of undercover officers are not by themselves sufficient for these purposes, otherwise no potential undercover officer or other confidential source or informant could be given a meaningful assurance of confidentiality;

(5) the above applies as a matter of fairness and under the HRA, s.6 and the Inquiries Act 2005, ss.19(3)(b) and (4)(b)-(c) and 22.

Nature, terms and extent of the relevant expectations and obligations

5.6 The confidentiality of information about the identities of confidential police sources, including undercover officers and other confidential informants, and the very strong public interest in its protection are well-established in a number of contexts:

(1) *The general law of confidence at common law and in equity*

The law protects the identities of confidential police sources through the causes of action of breach of confidence (*Attorney General v Guardian Newspapers Ltd (No. 2)* [1990] 1 AC 109 (HL)) and misuse of private information (*Campbell v MGN Ltd* [2004] UKHL 22, [2004] 2 AC 457). In both cases, this protection is not subject to being overridden by a simple balancing exercise, it applies and must be respected unless a different outcome is necessary:

(a) in the case of breach of confidence, obligations of confidence may yield to the defence of iniquity or in cases where "disclosure is required in the public interest", albeit that publication to the world will rarely be "required" (see *Attorney General v Guardian Newspapers Ltd (No. 2)*, per Lord Goff at pp.282F-283B);

(b) in the case of misuse of private information, the protection may yield to the countervailing Convention rights of others (*In Re S (A Child) (Identification: Restrictions on Publication)* [2004] UKHL 47, [2005] 1 AC 593, per Lord Steyn at [17], recently affirmed in *PNM v Times Newspapers Ltd* [2017] UKSC 49, [2017] 3 WLR 351).

(2) *Public interest immunity ("PII")*

In *DIL v Commissioner of Police of the Metropolis* [2014] EWHC 2184 (QB), Bean J reviewed a number of authorities establishing the very strong public interest in protecting the identities of confidential police sources including both civilian informants and undercover officers (at [25]-[36] and [39(1)] and see also the earlier decisions of *R v Hardy* (1794) 24 St Tr 199, at cols 808-819 and *Home v Bentinck* (1820) 2 Brod & B 130, per Dallas CJ at p.162). This public interest is an interest of "the State as a whole" and not just of the police or the government and, accordingly, it is not forfeited or overridden by misconduct on the part of the latter (*R (Mohamed) v Foreign Secretary* [2009] EWHC 152 (Admin), [2009] 1 WLR 2653 (DC), per Thomas LJ at [32]).

(3) *Negligence*

It is also well-established that police forces assume responsibility for and (unusually) owe a common law duty of care to their confidential sources and that this duty requires the protection of their identities and information about them (*Swinney v Chief Constable of Northumbria (No.1)* [1997] QB 464 (CA), *Swinney v Chief Constable of Northumbria*

(No.2) (1999) 11 Admin LR 811 and *An Informer v A Chief Constable* [2012] EWCA Civ 197, [2013] QB 579).

(4) *Common law fairness*

Common law principles protect witnesses from unfair exposure to objective and subjective fears, concerns and adverse impacts as a result of publicity (*In re Officer L* [2007] UKHL 36, [2007] 1 WLR 2135 and *Adebolajo v Ministry of Justice* [2017] EWHC tbc (QB)).

(5) *Convention rights*

HRA, s.6 may oblige public authorities, such as courts, to take positive steps to protect individuals, including by refraining from, and preventing the publication or disclosure of, information about them where this would be incompatible with Convention rights under ECHR, arts 2-3 (*Venables v News Group Newspapers Ltd* [2001] Fam 430, *In re Officer L* [2007] UKHL 36, [2007] 1 WLR 2135 and *In re Times Newspapers Ltd* [2008] EWCA Crim 2396, [2009] 1 WLR 1015) and/or art.8 (*X (formerly known as Mary Bell) v O'Brien* [2003] EWHC 1101 (QB)). In this regard, it is important to note that in the case of *Officer L* the police officers in question were not undercover officers and did not have any freestanding expectations of anonymity and in the more comparable case of *Times Newspapers Ltd* the accused members of the special forces were given anonymity notwithstanding that they were charged with criminal offences, i.e. there was at least a *prima facie* case of wrongdoing against them.

5.7 So far as concerns the extent to which DL officers undertaking a non-evidential, intelligence-only role within the SDS might - before, during or after his or her service - have reasonably expected the public avowal or disclosure of that service and/or his or her identity in the course of a civil or criminal trial (as envisaged in the Inquiry's *Legal Principles and Approach Ruling*, para.165):

(1) *Criminal proceedings*

the clear expectation and indeed practice was that undercover identities and roles were protected either by individuals appearing as defendants or witnesses "in role" (irrespective of the propriety of this approach) or by the making of a claim for PII or, failing this, the abandonment of any prosecution as envisaged in *Al Rawi v Security Service* [2011] UKSC 34, [2012] 1 AC 531, per Lord Mance at [102] and per Lord Clarke at [154];

(2) *Civil proceedings*

similarly, the individual undercover officers would have anticipated the protection of their identities and roles in civil proceedings through settlement, the making of a PII claim and/or an application for anonymity and screening or, failing this, the imposition of a stay on the grounds elaborated in *Carnduff v Rock* [2001] EWCA Civ 680, [2001] 1 WLR 1786.

5.8 The SDS undercover officers undertook work on behalf of the State and in the interests of society as a whole which was stressful and dangerous and which had a profound and permanent life-changing impact on them, their families and their histories. This impact was not just life-changing in the biographical sense that it changed the course of their lives, it also involved unique psychological stresses and experiences which changed them as individuals (see e.g. A D Macleod, "Undercover Policing: A Psychiatrist's Perspective" (1995) 18 IJLP 239). Undertaking this work has also had important consequences for the individuals concerned in terms of their interactions with others and the need to preserve their personal security and avoid publicity.

5.9 The above was undertaken on the understanding that both sides would keep it secret and most if not all of the undercover officers would not have done this work otherwise.

5.10 It is not now open to any part of the State (including the Inquiry) retrospectively to change the basis on which these individuals undertook this work absent some

very good, evidence-based, case-specific reason for doing so. This would not be done in the case of serving or former members of the intelligence services or the special forces or their civilian covert human intelligence sources and it should not be done in the case of the SDS. A generalised desire to "solicit" or fish for allegations of wrongdoing (or to allay related public concerns) can never be sufficient for these purposes otherwise no potential police undercover officer or source could be given a meaningful assurance of confidentiality. Similarly, a change of opinion on the part of the State or the public as to whether the work itself or the way in which it was carried out were justified and proportionate also cannot absolve it from observing the obligations and expectations the State chose to create.

5.11 In terms of the kind of serious misconduct or wrongdoing which might justify the avowal or publication of a former undercover officer's identity or role, it is submitted that this would have to be at the extreme end of the spectrum. Furthermore, a critical factor would be whether the individual was acting in accordance with their orders or instructions. Confidentiality cannot be offered to would-be State informants on the basis that it will be waived in the event of an allegation of wrongdoing - otherwise no-one would agree to become a covert human intelligence source. Indeed, the Inquiry's *Legal Principles and Approach Ruling*, para.100 rightly recognises that wrongdoing will not necessarily justify the loss of anonymity.

5.12 Accordingly, it is submitted that the expectations and obligations of confidentiality held by and owed to the DL officers had and still have an inbuilt weight which cannot lawfully be outweighed or overridden by a general, speculative desire to invite or "solicit" allegations of wrongdoing or misconduct.

Analogous obligations and expectations of confidentiality which are also not unqualified and which could also not be overridden by a general public interest in checking for wrongdoing

5.13 The fact that publicity may have a chilling effect on the provision of information in the public interest and the consequent need to protect the identities of

potential sources who would not otherwise provide such information is recognised in other (different) contexts. Complainants of sexual offences are thus given anonymity under the Sexual Offences (Amendment) Act 1992, s.1 and journalists' sources are protected by the Contempt of Court Act 1981, s.10. While the expectations and obligations of confidentiality conferred or protected by these provisions are also qualified rather than absolute (see the 1992 Act, s.3 and the 1981 Act, s.10), they too have an inbuilt weight which cannot readily be outweighed or overridden (see *Goodwin v UK* (1996) 22 EHRR 123, *News Group Newspapers Ltd v Commissioner of Police of the Metropolis* [2015] UKIPTrib 14_176-H, [2016] 2 All E.R. 483 and *R (Miranda) v Home Secretary* [2016] EWCA Civ 6, [2016] 1 WLR 1505).

5.14 It is submitted that a public inquiry considering the incidence of false allegations of sexual offences or false stories in the media could not and would not identify every complainant or journalists' source simply to see whether the public wished to make allegations against them. There is no justification for the State to treat former undercover officers any differently, particularly in connection with work undertaken by them on the orders and instructions of the State itself.

6. Assurances of confidentiality

6.1 For the avoidance of doubt, the position of the DL officers on the expectations and obligations of confidentiality held by and owed to them do not rest or depend solely on claims about <u>express</u> assurances, guarantees or undertakings by the MPS. These were given to some but not all undercover officers, but it is submitted that <u>implied</u> assurances and the fact these matters were understood and "went without saying" were more than sufficient to found expectations and obligations of confidentiality.

6.2 Many members of the security and intelligence services and the special forces are likewise not given express assurances, guarantees or undertakings about the protection of their identities, but they can and do expect that their identities will not be disclosed publicly, including if they have to give evidence in legal proceedings.

6.3 This point was emphasised by the Canadian Supreme Court in *R v Named Person B* [2013] 1 RCS 405, a case concerning the Canadian doctrine of "informer privilege" which evolved as an off-shoot of common law "Crown privilege" or PII. See per Abella J at [18]:

> *In R. v. Barros, 2011 SCC 51 (CanLII), [2011] 3 S.C.R. 368, this Court held that "not everybody who provides information to the police thereby becomes a confidential informant" (para. 31). The Court was clear, however, that "the promise [of protection and confidentiality] need not be express [and] may be implicit in the circumstances" (para. 31, citing Bisaillon v. Keable, 1983 CanLII 26 (SCC), [1983] 2 S.C.R. 60). The legal question is whether, objectively, an implicit promise of confidentiality can be inferred from the circumstances. In other words, would the police conduct have led a person in the shoes of the potential informer to believe, on reasonable grounds, that his or her identity would be protected? Related to this, is there evidence from which it can reasonably be inferred that the potential informer believed that informer status was being or had been bestowed on him or her? An implicit promise of informer privilege may arise even if the police did not intend to confer that status or consider the person an informer, so long as the police conduct in all the circumstances could have created reasonable expectations of confidentiality.*

7. Position of Peter Francis

7.1 It is submitted that nothing can be reliably gleaned about the expectations of confidentiality of the DL officers from the statements or experiences of PF.

7.2 PF has not provided any evidence about what was said to him about anonymity, confidentiality or publicity when he was recruited to or serving in the SDS or what he understood or expected in that regard. Para.14 of his RO submissions dated 07/03/16 simply state, "as far as a promise of life-long confidentiality is concerned, Peter Francis will say that he was never promised this".

7.3 However, PF was for a number of years very keen not to be publicly identified as a former undercover officer or a member of the SDS. He brought a civil claim against the MPS under a pseudonym and when he first made public disclosures about the SDS he did so under other pseudonyms and without disclosing his real or cover names. Indeed, he only revealed those details and his identity at a time of his choosing and after he had carefully established a particular public profile

and position as someone who had turned against the MPS and moved over to the camp of the Guardian and its journalists.

7.4 By contrast, HN7, HN321, HN330, HN333 and HN343 have chosen not to co-operate with SDS-related newspaper articles, books or television programmes and they have no wish to appear or dispense their views in the media.

8. Evidence about expectations of confidentiality and the effect of disclosure on the recruitment and retention of undercover officers

8.1 The DL officers consider it self-evident that the public identification of undercover officers by the Inquiry would have a damaging effect on their future recruitment and retention more generally and (therefore) the effectiveness of the police and (therefore) the incidence of crime and disorder and the wider public interest. This would particularly follow if there were publication on a blanket or wholesale basis or without regard to whether the individual in question had acted in accordance with their orders and instructions.

8.2 Indeed, a number of the DL officers have made clear that they would not have served with the SDS (a non-compulsory, voluntary posting) if they had understood that their real or cover names might later be made public.

8.3 The Inquiry's *Legal Principles and Approach Ruling* identifies "Respect for an expectation of confidentiality by undercover police officers, in the interests of fairness, confidence among the work force and recruitment" as a possible factor in favour of anonymity (para.69(5)) and "the need to avoid or reduce a risk of damage to effective policing" is capable of justifying an RO (paras A.2(2) and A.4).

8.4 The Inquiry's *Legal Principles and Approach Ruling*, paras 155, 161 and 165 also identifies a need for further evidence on the subject and confirms its intention to consider carefully the evidence relating to assurances of confidentiality given to SDS undercover officers and to err on the side of caution where this is missing or sketchy. The Inquiry's *Risk Assessments: Note to Core Participants* dated 20/10/16, para.22 further refers to it having "already received

evidence of possible damage to the capacity of the police service to prevent and detect crime caused by disclosure of confidential sources".

8.5 The DL officers' submissions dated 17/07/17 asked about the evidence referred to above and any other evidence obtained by the Inquiry as to:

(1) the assurances and undertakings of confidentiality and anonymity given to police undercover officers and their resultant expectations and understandings;

(2) the likely consequences of non-observance of the above in the context of this Inquiry for the future recruitment and retention of police undercover officers and other covert human intelligence sources.

8.6 Correspondence with the MPS and the Inquiry has established that the Inquiry has thus far obtained the following evidence about these issues:

(1) *Risk Assessment Briefing Note* of "Jaipur" dated 08/12/15, pt 1 (published on Inquiry website in redacted form);

(2) witness statement of "Cairo" dated 12/02/16, 30/06/16 and 20/07/17, paras 13-24 and 65-70 (published on Inquiry website in redacted form);

(3) witness statements of Alan Pughsley and Jon Boutcher as the serving and former chairs respectively of the Undercover Working Group (not disclosed).

8.7 Although items (1)-(2) above are helpful and supportive of the DL officers' position, the DL have urged the Inquiry to consider obtaining more detailed evidence from relevant MPS senior managers about these matters (submissions dated 17/07/17 and letters dated 11/08/17 and 19/09/17). A response to the DL's letter to the Inquiry dated 19/09/17 is awaited.

8.8 In this regard, other court and tribunal decisions refer to MPS witnesses giving evidence on such matters and it would appear likely that better evidence could be obtained, although some of the relevant ground may be covered in the statements of Messrs Pughsley and/or Boutcher (see e.g. *DIL v Commissioner of Police of the Metropolis* [2014] EWHC 2184 (QB), per Bean J at [5] and *Keane v Information Commissioner* [2016] UKUT 0461 (AAC), per Judge Wikeley at [13] and [16]).

9. HN7

9.1 Strictly speaking, nothing further needs to be said on behalf of HN7 in connection with the MPS application for an RO in relation to his real and cover names as the Inquiry has issued its ruling dated 03/08/17 and RO dated 04/09/17 and these have not been challenged.

9.2 So far as concerns the process adopted, it is emphasised that the submissions made on behalf of HN7 dated 20/07/17 submitted that the Inquiry should either publish its then proposed minded to reasons as a final decision or publish considerably revised and much less detailed minded to reasons (para.3). The reality is that the particular facts and sensitivities of the case precluded meaningful third party challenge to an outcome that was effectively inevitable. However, the DL did not urge one fait accompli over another.

9.3 The ruling on HN7 dated 03/08/17 makes clear that publication of his real or cover name is highly likely to result in his death by suicide as a result of his mental health. The submissions of GNML, the NSNP and PF do not: (a) suggest any public or third party interest capable of justifying this outcome or any grounds for gainsaying the opinion of Professor Fox; (b) outline anything that could have been said against an RO if the ruling had been published in a "minded to" form; or (c) dispute the submission that such publication would have precluded HN7's subsequent identification. In the circumstances, the NSNP suggestion that more (identifying) information about HN7 should now be released so that they may develop submissions in favour of his identification (and likely death) beggars belief.

10. HN321, HN330, HN333 and HN343

10.1 It is submitted that the approach taken to the above DL officers in the Inquiry's minded to note dated 03/08/17 was correct and the points made in their risk assessments, impact statements and submissions dated 17/07/17 and in the MPS applications are repeated.

10.2 For the avoidance of doubt, there was, in the event, no application for an RO in respect of HN343's cover name and, furthermore, HN330 has confirmed that he probably did use a cover name recently suggested by another non-DLO undercover officer and that he will not be applying to restrict its release.

10.3 In all these cases, the principal concern of the DL officers is with public identification as a former SDS undercover officer. In the light of their MPS risk assessments, HN321, HN330 and HN343 do not have grounds for thinking that release of their cover names will lead to their identification and have not made a cover name RO application. By contrast, HN333 has the separate concerns elaborated in support of his application for an RO over his cover name.

11. Conclusion

11.1 The ruling and minded to note dated 03/08/17 are supported and it is emphasised that these are not necessarily one-off decisions as the Inquiry has power to review them in the light of any material change of circumstances.

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IN THE MATTER OF THE UNDERCOVER POLICING INQUIRY

SKELETON ARGUMENT ON BEHALF OF THE DESIGNATED LAWYER OFFICERS HN7, HN321, HN330, HN333 & HN343

SPECIAL DEMONSTRATION SQUAD "TRANCHE 1" RESTRICTION ORDER APPLICATIONS

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