

# IN THE UNDERCOVER POLICING INQUIRY

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## SUBMISSIONS ON BEHALF OF PETER FRANCIS

RE

THE CHAIRMAN'S SUPPLEMENTARY 'MINDED TO' NOTE DATED 23  
OCTOBER 2017

RE RESTRICTION ORDER APPLICATIONS

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### Introduction

1. These submissions are made on behalf of Peter Francis ('PF') in response to the supplementary 'minded to' indications published by the Chairman in his Note dated 23 October 2017 ('the Supplementary Note') in relation to restriction orders and his Directions of the same date.
2. We note and welcome the Chairman's revised 'minded to' indications in relation to HN16, HN81 and HN26. We therefore make no further written submissions in relation to those officers. However, if there are to be written submissions on behalf of those who represent them, resisting this course, we would be grateful for an indication as to when such submissions will be available.
3. We note that the Chairman's Supplementary Note is silent on HN123 and HN333 and therefore assume that he is still 'minded to' impose restriction orders in relation to the real *and* cover names of both those officers. We of course stand by the submissions already made in relation to those officers in our 4 October note.
4. We will briefly address the following in these submissions:
  - i) The revised HN58 indication;
  - ii) The 'minded to' decisions in relation to HN123 – some additional observations.

## HN58

5. The Chairman has signalled a possible alternative course at [13] of the Supplementary Note: to disclose HN58's real name with a view to him giving evidence in his *real* name in relation to his SDS managerial duties but that evidence about his undercover activities be "given entirely in closed session". In other words, as we understand it, the Chairman is suggesting that HN58's *cover* name should be withheld and that he give evidence in the absence of the public as well as all other CPs and their lawyers. The Chairman states in his Supplementary Note that his initial 'minded to' decision to restrict *both* his real and cover name was due to "concern for the safety of HN58". We assume that this is the same reason why the Chairman is suggesting a completely closed hearing in relation to his undercover activities.
6. However the concern for N58's safety appears to be inconsistent with the MPS gisted risk assessment which states that "In summary, the risk to N58 of physical harm is assessed as **low**" if information is disclosed by the Inquiry which directly or indirectly leads to the identification of N58. Further, the Chairman's in the 3 August Note, summarises Professor Fox's view of the risk of psychological harm to HN58 if his cover name is disclosed as a low risk of very low harm ("a stress reaction") ([4] of 3 August Note).
7. It is therefore difficult to reconcile the completely different suggestion in relation to HN58's cover name with the 'minded to' decisions made in relation to HN16 and HN26, for example. The justifications for the disclosure of cover names in relation to those two officers are set out at [2] and [10] of the Supplementary Note (HN16: disclosure is necessary to afford an opportunity to any individual who may have had an intimate relationship with HN16 to provide evidence and information to the Inquiry about it; HN26: disclosure is necessary to permit the Inquiry's terms of reference to be fulfilled; activities in which HN26 participated during deployment are a matter of legitimate public concern; others could give potentially valuable evidence about those activities if alerted to the cover name) apply with equal force, in our submission, to HN58.
8. In our submission, the better and more principled course would be to withhold HN58's *real* name, but disclose his *cover* name *and* require him to give evidence about both his

managerial role and his undercover activities in his cover name. To clarify, it was a Special Branch requirement that all SDS managers should have been a former SDS officer (PF is only aware of one exception to this rule). As far as PF is aware, all SDS officers would have had a training period of up to nine months, followed by a three to five year undercover deployment. In order to become an SDS manager, it was necessary to take another posting outside the SDS, but usually within Special Branch, before returning to the 'back office' as a manager. There were only two SDS managers in place at any one time (a DCI and a DI). Their real identities will therefore be well known to the SDS officers they managed. It is therefore simply not necessary to disclose HN58's real identity, particularly if by doing so a closed hearing about his undercover activities becomes necessary. The very real concerns raised by PF about closed hearings are summarised at [56] of the previous Chairman's *Restriction Orders: Legal Principles and Approach Ruling*:

“...Mr Emmerson QC pointed to exigencies that would arise if Mr Francis were to give evidence in open proceedings, as he would unless his evidence was made the subject of a restriction order on the application of the police services. He would be giving evidence about practices that he regarded as unethical or unlawful. He would be covering the same or similar territory as that which the Metropolitan Police Service argued should be covered in private by other officers. If Mr Francis' evidence about these matters were to be disputed, counsel would be unable to put to Mr Francis at an open hearing that which had been or would be said about his evidence in a closed hearing. Mr Francis' evidence would be untested save by contradictory evidence given in closed proceedings. Mr Emmerson QC argued that if the Inquiry was to prefer the evidence of Mr Francis the inevitable inference would be that Mr Francis' evidence had not been reliably contradicted. In that event the purpose of a restriction order in respect of other officers would be defeated. If, on the contrary, the Inquiry was to accept the evidence given in a closed hearing and reject the evidence given by Mr Francis in an open hearing, the Inquiry would be required to explain its decision by reference to evidence it could not disclose. The only evidence publicly available would be the evidence of Mr Francis and the Inquiry would face some difficulty in explaining the reasons for its decision without disclosing at least part of the evidence heard in a closed session.”

## **HN123**

9. The 3 August 'minded to' note indicates that the Chairman is minded to grant a restriction order in respect of HN123's real and cover names, in the main due to his “slow and incomplete recovery” from his significant mental health conditions arising in part from

his undercover deployments ([9] of 3 August Note). In addition to the submissions already made, PF makes the following additional submissions.

10. Unlike HN7, for example, HN123 applied for CP status and was granted it. This would indicate that he wishes to play an active part in this Inquiry, notwithstanding his mental health conditions.
11. PF is of the view that it is difficult to reconcile a willingness to actively take part in the Inquiry, with a psychological fragility that is so great that the disclosure of a cover name would somehow further compromise it.
12. PF reiterates therefore that it is essential that HN123's cover name is disclosed so that those targeted by HN123 are able to give their account of the extent of his involvement in order for that issue of significant public interest to be properly and fairly resolved.

MAYA SIKAND

GARDEN COURT CHAMBERS

6 NOVEMBER 2017