

IN THE UNDERCOVER POLICING INQUIRY

SUBMISSIONS SERVED ON BEHALF OF THE NATIONAL CRIME AGENCY FOR HEARING 20-22 NOVEMBER 2017

Rehabilitation of Offenders Act 1974

1. The NCA will rely upon but does not wish to add to its written submissions on this issue dated 28 April 2017.

Anonymity applications

2. The NCA does not have a direct interest in any of the SDS anonymity applications currently being considered by the Inquiry. We therefore make no submissions as to the detail of any of the applications.
3. We do however make two short points relating to the Inquiry's approach to these (and other, future) anonymity applications.
4. First, we respectfully submit that the criticism that has been made of the way in which the Inquiry has considered the anonymity applications – in particular, its use of closed hearings for this purpose - is unfounded. It is almost inevitable that one or more closed hearings will be both necessary and desirable in determining applications of this nature. In the context of this Inquiry, such procedural hearings do not involve a departure from the openness principles set out in the previous Chairman's legal principles ruling – rather, they are the means by which the Inquiry decides how to apply those principles. Questions as to the stage at which such hearings are most appropriately held, and what steps should be taken before and after such hearings to ensure fairness are bound to be intensely case-specific. Given the need for the Inquiry to progress its work expeditiously, and also to avoid incurring unnecessary costs, it would be a mistake to over-formalise this procedure.

5. Second, we adopt the submissions made by the MPS in opposition to the ‘strict necessity’ test for the making of restrictions orders proposed by Guardian News and Media. For the reasons given in the MPS written submissions, such an approach would be contrary not only to the 2005 Act, but also to the previous Chairman’s legal principles ruling.

ANDREW O`CONNOR QC

RICHARD O`BRIEN

6 November 2017.