

UNDERCOVER POLICING INQUIRY

In the matter of section 19(3) of the Inquiries Act 2005

Applications for restriction orders in respect of the real and cover names of officers of the Special Operations Squad and the Special Demonstration Squad

Ruling

Rulings

1. I make the following rulings in respect of the officers identified below.

Nominal	Position
HN16	There will be a restriction order in respect of the real name but not of the cover name.
HN26	There will be a restriction order in respect of the real name but not of the cover name.
HN68	There will be a restriction order in respect of the real name but not of the cover name.
HN81	There will be a restriction order in respect of the real name but not of the cover name.
HN123	There will be a restriction order in respect of both real and cover names.
HN294	There will be a restriction order in respect of the real name.
HN321	There will be a restriction order in respect of the real name.
HN326	There will be a restriction order in respect of the real name.
HN329	There will be a restriction order in respect of the real name.
HN330	There will be a restriction order in respect of the real name.
HN333	There will be a restriction order in respect of both real and cover names.

2. The Inquiry is awaiting further information from the non-state core participants in the case of HN297.
3. There will be a closed hearing in the case of HN58 and HN104.

Reasons

HN16

4. I repeat the reasons given for refusing to make a restriction order in respect of the cover name in my open “minded to” note and accompanying closed reasons of 23 October 2017. No submissions were made to me about them and I therefore adopt and confirm them unaltered.
5. Ms Kaufmann QC made two principled submissions about HN 16’s application for a restriction order in respect of the real name: first, further disclosure of the material deployed in support of the application was required before it could be determined fairly; secondly, the public interest of openness required that it be refused.
6. The redaction exercise described in the “process map” published by the Inquiry has been undertaken in relation to the documents deployed in support of the application. An exercise similar to that required by rule 12 (4) of the Inquiry Rules 2006 has already been undertaken. I am satisfied that it has been properly performed and that all that can be disclosed has been disclosed. Ms Kaufmann submitted that the information given about the likely impact of the disclosure of HN 16’s real name on health and current employment and future prospects is scant. Her submission is correct: what has been published is a bare summary of the report of Dr Busuttil dated 6 March 2017 and of a full description of HN 16’s economic circumstances. However, nothing more can be said about HN 16’s health without infringing his right to keep details about it confidential or about his economic circumstances without infringing rule 12 (2). I do not consider that disclosure of these details to the non-state core participants is necessary for the determination of the application under rule 12 (4) (a). Ms Kaufmann did not submit that she, Ms Brander and their instructing solicitors should be shown this material in confidence under rule 12 (5) and did not point to any specific factor requiring further disclosure beyond the need for openness. This is not a criticism; but it does illustrate the circular nature of the argument. It is only by disclosing material which is, for good reason, restricted that informed submissions can be made as to why it should be disclosed. The circle can only be broken by the exercise of judgement by me. I have exercised that judgement. I am satisfied that it would not be fair to HN 16 or conducive to the efficient and cost-effective conduct of the Inquiry under section 17 (3) of the Inquiries Act 2005 to require further disclosure for the purpose of determining this application and so to set in train the exercise required by rule 12 (4).

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7. Ms Kaufmann's second submission was based on the need for openness. In paragraph 68 of his legal principles ruling Sir Christopher Pitchford identified five factors which favoured openness. Four of them were identified by Ms Kaufmann as of particular relevance to the determination of this application: encouragement of members of the public with evidence to give to do so; identification of the fact and victims of wrongdoing; public confidence in the proceedings of the Inquiry; and fairness towards non-police witnesses. I do not accept that publication of the real name of HN 16 is necessary at this stage of the Inquiry to fulfil any of those purposes. What is essential is publication of the cover name. Members of the public who knew HN 16 when deployed as an undercover officer will only have known HN 16 in the cover name. Publication of the cover name is, therefore, what is required to prompt evidence from them. If there was wrongdoing by HN 16, both the fact of wrongdoing and the identity of the victims will be revealed if they are prompted to give evidence about it by publication of the cover name. Public confidence in the proceedings of the Inquiry in respect of the deployment of HN 16 will be served by getting to the truth about it. Publication of the cover name, not the real name, is what is required to achieve this. At the stage at which evidence is to be given, fairness to non-state witnesses does not require disclosure of the real name to them.
8. I have also had regard to the fifth factor identified by Sir Christopher-the gravity of the subject matter. At this stage in the Inquiry publication of the real name of HN 16 is not required to satisfy the public interest.
9. The position would change if HN 16 were to admit an inappropriate intimate relationship or I were to find that such a relationship had occurred. In that event, the moral right of the other party to the relationship would almost certainly require the real name of HN 16 to be disclosed. That situation has not yet arisen and may not do so.
10. For the reasons explained above, I am satisfied that publication of the real name of HN 16 would interfere with the right of HN 16 to respect for private and family life and that the interference is not necessary to permit the terms of reference of the Inquiry to be fulfilled. Given that it is not necessary, it would be disproportionate and unfair to do so; and the public interest does not require it at this stage.

HN26

11. I repeat the reasons for refusing to make a restriction order in respect of the cover name in my open "minded to" note and accompanying closed reasons of 23

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October 2017. No submissions were made to me about them and I therefore adopt and confirm them unaltered.

12. Ms Kaufmann made the same principled submissions about HN 26's application for a restriction order in respect of real name as she did in the case of HN 16. In this case, too, she submitted, correctly, that the information given about the likely impact of disclosure of the real name on health is scant. I do not accept her submissions, for the same reasons as are stated in paragraphs 6, 7 and 8 of the reasons given in the case of HN 16.
13. For like reasons, I am satisfied that publication of the real name of HN 26 would interfere with the right of HN 26 to respect for private and family life and that the interference is not necessary to permit the terms of reference of the Inquiry to be fulfilled. Given that it is not necessary, it would be disproportionate and unfair to do so; and the public interest does not require it.
14. There is an additional reason for this decision, set out in the closed reasons of 23 October 2017, to which public reference cannot at this stage be made.

HN68

15. I repeat the reasons given for refusing to make a restriction order in respect of the cover name in my open "minded to" note and accompanying closed reasons of 3 August 2017. No submissions were made to me about them and I therefore adopt and confirm them unaltered.
16. Ms Kaufmann made no oral submission about the adequacy of disclosure in this case. In relation to her written submissions, I repeat the reasons set out in paragraph 6 in HN 16's case, apart from those personal to HN 16. She did rely on the need for openness. She submitted that the desire of the widow of HN 68 to maintain her privacy and her concern about the impact on her and her children of negative media interest was incapable of outweighing the need for openness. I disagree. As Sir Christopher acknowledged in paragraph 154 of his legal principles ruling, the harm to which I am required to have regard under section 19 of the Inquiries Act 2005 includes any form of harm, not just physical or psychological injury. The worry and distress caused to an elderly widow is capable of amounting to harm. Ms Kaufmann did not suggest that the widow's worry and distress were not genuine. I am satisfied that they amount to harm capable of outweighing the need for openness in this case. It is, therefore, necessary to examine what publication of the real name of HN 68 could achieve. Ms Kaufmann submitted that it would serve, as she put it, an instrumental purpose: to trigger a recollection on

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the part of members of the public of the identity of HN 68 if the publication of his cover name did not do so. This is a far-fetched proposition: it depends upon the discovery and publication of a contemporaneous photograph of HN 68 taken during his deployment, triggered by disclosure of his real name. (Ms Kaufmann was not, for the purpose of this submission, suggesting that I should serve a notice on the widow or any other person requiring them to produce such a photograph under section 21 (2) (b) of the Inquiries Act 2005-her submission was that publication of the real name would prompt the discovery and voluntary publication of the photograph by someone else.) I reject it.

17. Ms Kaufmann submitted that publication of the real name of HN 68 might permit officers who had encountered him since his deployment to give evidence about him which might cast light on it and on his discharge of his duties as a manager: if they knew something to his discredit, they could say so. As far as those who served with him in the Special Demonstration Squad are concerned, the restriction order will be worded so as to permit his real name to be disclosed to them in confidence, if necessary to remind them of who he was. The possibility that officers who did not know of his service in the squad might be able to give useful evidence about him is speculative. It is not necessary to fulfil the terms of reference for the Inquiry to open up this avenue of speculation.
18. Given that publication of the real name would serve no instrumental purpose, the only reason for doing so is openness for its own sake. I repeat the views expressed in paragraphs 6, 7 and 8 of the reasons given in the case of HN 16 for rejecting this submission. I am satisfied that publication of the real name of HN 68 would interfere with the right to respect for the private life of his widow and that the interference is not necessary to permit the terms of reference of the Inquiry to be fulfilled. Given that it is not necessary, it would be disproportionate and unfair to do so; and the public interest does not require it at this stage.

HN81

19. I repeat the reasons given for refusing to make a restriction order in respect of the cover name in my open "minded to" note and accompanying closed reasons of 23 October 2017. No submissions were made to me about them and I therefore adopt and confirm them unaltered.
20. Ms Kaufmann's submissions were identical to those made in the case of HN16. For the same reasons as those given in relation to HN16, I do not accept them.

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21. I am satisfied that publication of the real name of HN81 would interfere with the right of HN 81 to respect for private and family life and is not necessary at this stage to permit the terms of reference of the Inquiry to be fulfilled. Given that it is not necessary, it would be disproportionate to do so. Neither the cover name of HN 81 nor the name of the group against which HN81 was deployed will be published immediately, to permit steps to be taken to mitigate the impact on HN 81's mental health.

HN123

22. HN 123 was deployed against a number of groups in the 1990s, at least one of which advocated and practised the use of violence. He retired from the Metropolitan Police Service on health grounds: he was diagnosed as suffering from significant mental health conditions resulting, at least in part, from the effects of his deployment. He has made a slow, but incomplete, recovery. He and his wife are concerned about the possibility that his true identity will be revealed during the Inquiry, both for reasons of safety and because of the potential impact on their health. Assessment of both has been made problematic by his refusal to cooperate with the risk assessor and the fact that, for a variety of reasons, no up-to-date psychiatric report has been obtained. Both he and his wife have, however, produced personal statements, which are and will remain closed, in which their concerns are expressed. I accept that they are genuine and not irrational. Overriding them would interfere with their right to respect for private and family life under article 8 ECHR.
23. Whether or not it is necessary to do so depends on a number of factors. First, and from the point of view of the Inquiry, foremost, is the role which he played in the groups against which he was deployed. The information available to me so far suggests that he did not conduct himself in a manner likely to give rise to allegations of misconduct. Further, and critically, the balance of that information suggests that the part which he may have played in activities connected with the Stephen Lawrence campaign was peripheral. The issue is contentious: Peter Francis suggests otherwise. Because he knows who HN 123 is, he can give fully informed evidence about the latter's deployment without his real or cover name being published. So, too, can other officers. It is true that members of the groups which he infiltrated and, possibly, other members of the public as well will not be able to give evidence about him unless his cover name is published. Whether or not the Inquiry needs to receive fully informed evidence about HN 123's activities during his deployment from them will probably depend on what he, Peter Francis and other officers can say about its purpose and outcome. No informed judgement

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about those matters can yet be made. All that I can do is to reach a provisional view about them.

24. On the factual premise that HN 123's deployment only affected the Stephen Lawrence campaign peripherally and indirectly, it is not necessary for the fulfilment of the terms of reference of the Inquiry that his real or cover name should be published. If that premise proves to be wrong, I will have to revisit the issue.
25. Until recently, HN 123 has been a core participant and has been legally represented. He has asked to cease to be a core participant and a formal decision giving effect to his request will shortly be published. He is entitled to withdraw his instructions from his solicitors and has done so. In the light of the circumstances described in this and previous paragraphs, I am concerned that it may be difficult to obtain full evidence from him about his deployment, contemporaneous events in the Special Demonstration Squad and the long-term effects of both on him. I do not wish to lose the opportunity of doing so: what he has to say about them is potentially of importance to the Inquiry.
26. Ms Kaufmann's general submissions applied in the case of HN 123 as in all others. Given the unusual circumstances of his case, the only part of my response to them which is relevant to this application is that about further disclosure which I repeat. For the reasons explained above, disclosure of either real or cover name would interfere with the right to respect for the private and family life of HN 123 and his wife. The making of a restriction order in relation to his real and cover name may make fulfilment of the terms of reference of the Inquiry more difficult; but, for the reasons explained, it may be the best practicable means of doing so. At this stage, and on balance, the interference in the right to respect for private and family life of HN 123 and his wife would be disproportionate, unfair and unjustified. The public interest does not, at this stage, require it.

HN294

27. HN 294 is now deceased. He is survived by his widow, aged 85 and other family members. He was deployed as an undercover officer in 1968 and 1969 against one group which no longer exists and reported on others which also no longer exist. He may then have assumed a managerial role in the Special Demonstration Squad until 1974, although the nature of the role and its responsibilities have not yet been established. There would be no risk to the safety of his widow and family and minimal risk of intrusive media interest in them if his real name were to be published. Nevertheless, a member of his family has written on her behalf and in

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her interest to seek a restriction order in respect of his real name. The option of publishing his cover name is not available, because it is not known.

28. Ms Kaufmann made the same submission in relation to HN 294 as she did in the case of HN 68. As in that case, and for the same reasons, I reject the submission that there is anything more than a fanciful chance that publication of the real name would prompt recollection by a member of the public of his activities as an undercover officer. I do, however, acknowledge that the interference in the right to respect for private life of his widow would not be great. This is a case in which not much would be lost by publication of the real name, but nothing of instrumental value would be gained. I am satisfied that public confidence in the Inquiry would not be undermined by giving precedence to the rights of the widow. His deployment forms a small part of the background to the evolution of the Special Demonstration Squad.
29. Non-disclosure of his real name should not inhibit the giving of evidence by colleagues about his discharge of managerial duties because the restriction order will be worded so as to permit disclosure of it to them under an obligation of confidence.
30. For the reasons given, I am satisfied that publication of the real name of HN 294 would cause some interference with the right to respect for the private life of his widow and that the interference is not necessary to permit fulfilment of the terms of reference of the Inquiry. Given that it is not necessary, it would not be proportionate to do so.

HN321

31. HN 321 is now in his 70s. He was deployed against two groups which no longer exist, for one year, between September 1968 and September 1969. There is not and has never been any known allegation of misconduct against him. He undertook the role of an undercover officer on the understanding that his identity would be kept secret. He is concerned about possible media interest if his real name were to be revealed and is concerned, in particular, about the impact which this would have on his wife, also in her 70s. His concerns are not irrational. Further, he does not live in the United Kingdom. He is willing to cooperate with the Inquiry and to provide evidence to it, but only on condition that his real identity is not disclosed. The Inquiry has no effective power to compel him to give evidence or to provide information about his deployment. It is dependent upon his cooperation to receive either.

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32. I understand Ms Kaufmann to accept that in those circumstances, if the Inquiry is to receive anything of value from HN 321, it must not publish his real name. That is a realistic stance which I adopt.

HN326

33. HN 326 is in his 70s. He was deployed against three groups, two of which no longer exist in any form, for 2 ½ years between 1968 and 1971. He has been careful to preserve his anonymity and is worried about the consequences of disclosure of his real name, in particular of media intrusion. He suffers from conditions which may be exacerbated by worry. His cover name has been published.
34. Ms Kaufmann's submissions were identical to those noted in the case of HN 16. My reasons for rejecting them are the same.
35. I am satisfied that publication of HN 326's real name would interfere with his right to respect for his private life and that the interference is not necessary to permit the terms of reference of the Inquiry to be fulfilled. Given that it is not necessary, it would not be proportionate or fair to do so; and the public interest does not require it.

HN329

36. HN 329 is now in his 70s. He was deployed against 2 groups which no longer exist, for one year between 1968 and 1969. He does not wish his real name to be published, to avoid interference in his private life and damage to his reputation, by association with other undercover officers against whom allegations of misconduct have been made. His cover name has been published.
37. Ms Kaufmann's submissions were identical to those noted in the case of HN16. My reasons for rejecting them are the same. I acknowledge that the interference in the right to respect for private life described above is not great. I am satisfied that it is not necessary to permit the terms of reference of the Inquiry to be fulfilled. Accordingly, despite the fact that it would not be great, it would not be proportionate or fair to disclose his real name; and the public interest does not require it.

HN330

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38. HN 330 is now in his 80s. He was deployed against one group, which no longer exists, for no more than a few weeks in 1968. He would like to be left in peace. His cover name can be disclosed.
39. Ms Kaufmann's submissions were identical to those noted in the case of HN 16. My reasons for rejecting them are the same. Given the brevity and antiquity of the deployment, this is one of the clearest of cases in which publication of the real name could serve no useful purpose. It is not necessary to permit the terms of reference of the Inquiry to be fulfilled. Given that it is not, it would be disproportionate and unfair to do so; and the public interest does not require it.

HN333

40. HN 333 is now in his 70s. He was deployed for 9 months in 1968 and 1969 against a left-wing group which no longer exists as such. There is not and never has been any known allegation of misconduct against him. No real threat to his personal safety or to that of his family would arise from surviving members or associates of his target group. Subsequent to his deployment, he performed valuable duties in another police role. There is a real, if unquantifiable, risk that if his cover name were to be published, it would lead to the identification of his real name. In those circumstances, a very small risk to life and limb would arise from those with an interest in his later activities. The nature of both risks is set out in the closed reasons which accompanied the "minded to" note of 3 August 2017 and this ruling.
41. Ms Kaufmann's submissions were identical to those noted in the case of HN 16 as to disclosure of HN333's real name. She also submitted that non-disclosure of his cover name would prevent members of the public from providing evidence about his deployment. She emphasised the fact that the risk to safety was very small. In those circumstances, she submitted that both cover and real name could safely be released. Although I acknowledge that the risk to the safety of HN 333 is very small, it is not a risk which I would be prepared to run unless, at a minimum, it was necessary to do so for the purpose of fulfilling the terms of reference of the Inquiry. It is not. His deployment was short and appears to have been unremarkable. There are other officers still living who can give evidence about similar deployments undertaken in the early days of the Special Operations Squad. HN 333 will provide or give evidence publicly, albeit not in his real or cover name. Little, if anything, will be lost by non-disclosure of his real or cover name.
42. Further, this is a case in which the expectation of lifetime confidentiality held by HN 333 is a relevant factor. He was entitled to rely upon it when he undertook the valuable duties which give rise to the very small risk to his safety. He does not

assert that he would not have undertaken them otherwise; and I doubt that it was at the forefront of his mind when he did so. From what I know of his career, I believe that he simply did his duty when asked to do so. Nevertheless, it would, in my view, be artificial and wrong to require a conscious causative link between expectation and subsequent action in every case. An officer ought, other things being equal, to be able to rely on a reasonable expectation of confidentiality arising from the nature of his work and/or from what he was told by his employer. Given that there is nothing known about his deployment which would require this expectation to be displaced, it should be fulfilled.

43. I am satisfied that publication of the real or cover name of HN 333 would interfere with his right to respect for his private life and would also be unfair to him. For the reasons explained, the interference is not necessary to permit the terms of reference of the Inquiry to be fulfilled. Given that it is not necessary, it would not be proportionate to do so.

5 December 2017

Sir John Mitting
Chairman, Undercover Policing Inquiry