

**IN THE MATTER OF THE PUBLIC INQUIRY INTO UNDERCOVER  
POLICING**

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**OPEN APPLICATION FOR A RESTRICTION ORDER (ANONYMITY)  
RE: HN45  
SUBMITTED ON BEHALF OF THE MPS**

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**Restriction Order Sought**

1. The MPS apply for a restriction order over the real identity of HN45 to last indefinitely in the following terms:
  - (1) No direct or indirect disclosure of HN45's real name (including any description or image capable of identifying him/her) beyond the Chairman and the Inquiry team;
  - (2) The Commissioner reserves the right to make further submission as to the effective operation of this Restriction Order during the course of the Inquiry.

**Legal Basis for the Application**

2. The Application is made on the following statutory basis:
  - s.17(3) of the Inquiries Act 2005: the duty to act with fairness in the procedure or conduct of an inquiry
  - s.19(3)(a) of the Inquiries Act 2005 and Article 8 ECHR: the duty to act in a way that is not incompatible with the right to private and family life under Article 8 ECHR
  - s.19(3)(b) read together with s.19(4)(b)-(d) of the Inquiries Act 2005: conducive to the Inquiry fulfilling its terms of reference or necessary in the public interest, having regard in particular to the matters mentioned in subsection (4).
3. The applicable legal principles have been comprehensively set out in the Chairman's Restriction Order: Legal Principles and Approach Ruling ("the Principles Ruling") of 3 May 2016. Regard has also been had to the restriction order rulings in respect of Cairo and the 'Minded to' note dated 25 October 2016 in respect of Jaipur and Karachi.

**Evidence in Support**

4. This application is supplemented by a closed Risk Assessment, which is not to be disseminated further than the Chairman and the Inquiry team.

## **Reasons**

### *Section 17*

5. Application of the statutory and common law principles of fairness require that the real identity of HN45 is not disclosed. The considerations which apply are highlighted below in relation to s.19(3)(b) and s.19(4).

### *Section 19(3)(a) and Article 8*

6. A restriction order protecting HN45's identity is required in order for the Inquiry to meet its duty under the Human Rights Act 1998 not to act in a way which is incompatible with a Convention right. The Convention right in issue is Article 8.
7. Disclosure of HN45's real name would amount to a disproportionate interference with his/her right to private and family life. In particular, HN45's subjective feelings about disclosure are set out at §14 of the Risk Assessment. It is reasonable to infer that there would be interest in HN45 by virtue of his/her status as a former UCO.
8. The level of risk posed by this interference with HN45's private and family life is set out in the Risk Assessment at §16.2.

### *Section 19(3)(b) and s19(4)*

9. The Chairman is invited to find that a Restriction Order protecting HN45's real identity is conducive to the Inquiry fulfilling its Terms of Reference or is necessary in the public interest having regard in particular to the factors set out at s.19(4) of the Act read together with the Chairman's approach at [152] of the Principles Ruling:

### The public interest in non-disclosure of real identity

10. The following public interest factors are pertinent:
  - (a) HN45 is a former UCO who was deployed into various groups that no longer exist. His/Her deployment took place over 40 years ago.
  - (b) HN45 states that there was a general assumption of anonymity within the SDS. He/She has respected the confidentiality of his/her deployment.
  - (c) The likely sources and the level of risk of physical harm to HN45 in the event of disclosure of his/her real identity are set out at §16.2 of the Risk Assessment.
  - (d) Detail concerning the risk of disproportionate interference with HN45's private and family life are set out at §14 and §16.2 of the Risk Assessment.
  - (e) There is no identifiable public interest in disclosure of HN45's real name in circumstances where the real name alone is not of assistance to the Inquiry in fulfilling its Terms of Reference or to Core

Participants or witnesses who would not have known HN45 by his/her real name.

The public interest in disclosure of real identity

11. The MPS appreciates that the general presumption in favour of openness is a factor which weighs against the making of a Restriction Order in HN45's case. However, a restriction over HN45's real name will not interfere with the Inquiry meeting its Terms of Reference or the effective participation of Core Participants and witnesses.

Where the public interest balance lies

12. The MPS has considered the Chairman's Principles Ruling and has had particular regard to the presumption of openness in the Public Inquiry.
13. In all the circumstances, the MPS makes this application for a Restriction Order over HN45's real name, on the bases of fairness, and to avoid a risk of disproportionate interference with HN45's right to private and family life. The MPS submits such an application is conducive to the Inquiry's terms of reference.

**MPS, Department of Legal Services**

**31 July 2017**

