

IN THE UNDERCOVER POLICING INQUIRY

SUBMISSIONS OF GUARDIAN NEWS AND MEDIA LIMITED in respect of HN23, HN40, HN241, HN322, and HN348

1. This note is provided on behalf of Guardian News and Media Limited (“GNM”) in response to the Chairman’s directions of 4th January 2018. GNM has previously addressed associated applications in respect of other officers in written submissions dated 4th October 2017 and 20th November 2017. Those submissions are repeated in full.
2. GNM has concerns about the quality of information provided in each of these cases. Very limited details of each of the officers’ deployment have been provided. The evidence said to justify risk is vague, unparticularised, and highly redacted. The Metropolitan Police Service applications reveal almost nothing at all. GNM’s ability to challenge the proposed restriction orders is accordingly limited. With this preliminary concern, GNM advances the following submissions.
3. Limited public information has been revealed about **HN23**’s career. It seems that he has faced a previous misconduct investigation.¹ His impact statement suggests his primary concerns are the revelation of his identity or the press turning up on his doorstep.² The impact statement and risk assessment are general and vague. The reasons given in the “*minded to*” note suggest that the risk “*cannot be precisely quantified*”. These are inadequate concerns to justify a restriction order of both his real name and his cover name.
4. As regards **HN40**, his involvement as an undercover officer seems to have been recent and at the precise period when concerns arose about misuse of undercover officers. He was prosecuted in his cover name, raising concerns about the manipulation of the criminal justice system. The evidence is highly redacted and vaguely worded. The impact statement places weight on perceived negative comments from Doreen Lawrence. Such comments,

¹ Risk assessment, at p.6.

² Impact statement, at §36.

which reflected Doreen Lawrence's own concerns at the injustices her family faced, cannot be said to be sufficient to justify a restriction order. The medical evidence of Professor Fox has not been revealed. Although HN40 insists that none of his conduct was questionable, it is difficult to go behind this without revelation of his real and/or cover name, which would then permit those whom he targeted to give evidence about him.

5. **HN241** does not suggest in his impact statement that he targeted anyone who he considered to be violent. His only awareness of violent individuals were in other groups that other undercover officers infiltrated but he did not.³ He was not sufficiently concerned about his personal safety to take any security measures at home after his deployment.⁴ It appears that his identity as an undercover officer was recognised at least once during his deployment.⁵ His concerns relate to media intrusion and the possibility that his partner would worry about him.⁶ He received no assurances regarding anonymity.⁷ The only identified groups and individuals are said to be "low" or "very low" risks.⁸ In the circumstances, the justification for restricting both the real and cover names falls far short. The limited interference with private life identified is obviously outweighed by the importance of transparency in general to the inquiry, the potential for further evidence being revealed (as, for example, occurred following the publication of Rick Gibson's name), and the utilitarian role of openness (as set out in GNM's previous submissions). If the very limited risk identified in the evidence relating to HN241 justifies the restriction of publication of both his real and cover name, it is difficult to envisage any case in which such names can be published.
6. As regards **HN322**, the organisation he targeted as an undercover officer no longer exists. There is no suggestion of any potential physical risk and it is difficult to see how there could be given the limited nature of his deployment. The only justification for seeking a restriction order is that he is concerned about the potential increase in the vulnerability of his family. These concerns are not objectively verified.

³ Impact statement, at §5.

⁴ Impact statement, at §11.

⁵ Impact statement, at §13.

⁶ Impact statement, at §§23-24.

⁷ Risk assessment, at p.5.

⁸ Risk assessment, at p.6.

7. In respect of **HN348**, the identified risk is “*very low*”. The group infiltrated, the women’s liberation front, was non-violent. The key issues set out in the impact statement are: (a) the potential of being embarrassed if one member of the group infiltrated found out that HN348 was an undercover officer, (b) the difficulty in explaining her previous deployment to friends and family, and (c) the risk of media intrusion. None of these risks are sufficient to justify a restriction order. Indeed, the fact that NH348 was deployed to infiltrate an expressly non-violent group raises public interest issues in and of itself. The public is entitled to ask why precious police resources were spent in this way and to examine HN348’s involvement in this deployment. The public cannot do so without better information about her identity and without a public face to her story.

8. Overall, each of these applications poses the inquiry a particular problem. The majority of these applications are cases in which it is effectively suggested that a “*not irrational*” fear of media intrusion is sufficient to justify the non-publication of both an undercover officer’s real and cover name. GNM respectfully submits that this sets the bar far too low:
 - a. There is a highly legitimate public interest in these officers’ deployment, irrespective of its length or the alleged absence of misconduct allegations against them personally. What these officers seek is a serious interference with the media’s ability to properly report this inquiry in circumstances in which the likely impact on their lives is limited;
 - b. The media intrusion that they each portray is, in any event, exaggerated. It is highly unlikely that there will be hordes of reporters at any of their doors (particularly if the officers are correct that their deployments were historic, free of misconduct, or brief);
 - c. A risk of embarrassment, or media intrusion, is rarely sufficient to justify an interference with the principle of open justice in other legal proceedings (see, in particular, the authorities set out in GNM’s submissions of 4th October 2017, at §9(c)-(e)). Any such embarrassment and/or humiliation is the price paid for open justice. The remedy provided by the common law for any such embarrassment and/or humiliation is

normally provided by a judgment delivered in public which will refute unfounded allegations. Any other approach would result in wholly unacceptable inroads on the general rule (or, in this inquiry, with the presumption in favour of transparency).

9. In addition, there is a particular need for openness in this inquiry, given the overwhelming public concern at the conduct of undercover officers.⁹ This creates an additional need to demonstrate clearly that the Inquiry is impartial and fair. The process of the Inquiry should win the confidence of the public and restriction orders inhibit the allaying of public concern.¹⁰
10. If restriction orders are made in cases in which there is no objectively verifiable risk of harm, then this is likely to undermine public trust in the ability of the inquiry to get to the truth. If police officers' assertions of potential embarrassment or media interest are sufficient to prevent their real and/or cover names being published, the public may feel concerned that officers' interests are being unfairly prioritised over the rights of the victims of those who the officers targeted and infiltrated and over the public's right to follow and understand this important inquiry.

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Doughty Street Chambers
18th January 2018

⁹ Principles Ruling, at §§90-93.

¹⁰ Principles Ruling, at §104.