

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 Demonstrations Squad Ruling

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

Nominal	Position
HN23	There will be a restriction order in respect of the real and cover name.
HN40	There will be a restriction order in respect of the real and cover name.
HN58	There will be a restriction order in respect of the real and cover name.
HN127	I refuse to make a restriction order in respect of the real name.
HN241	There will be a restriction order in respect of the real and cover name.
HN297	I refuse to make a restriction order in respect of the real name unless, by 4pm on Thursday 8 March 2018, the Inquiry receives evidence which casts serious doubt on the evidence contained in the witness statement of 'Mary'.
HN322	There will be a restriction order in respect of the real name.
HN348	There will be a restriction order in respect of the real name.

Reasons

HN23

2. HN23 was deployed against one group and reported on other groups in the 1990s. The nature of the deployment gave rise to risks to HN23's life and safety which, to an extent which cannot be precisely quantified, remain. They are more fully set out in the closed note which accompanied the 'Minded to' note of 14 November 2017. On my understanding of the law, publication of the cover name would not give rise to an infringement of Articles 2 or 3 of the European Convention on Human Rights ('the European Convention'), but only because the risk is not "real and immediate" or "present and continuing". It is contingent; but if the contingency were to occur, HN23's life and safety would be at risk. For the reasons explained in the closed 'Minded to' note the contingency is real. Ms Kaufmann QC submits that the Inquiry should disclose the nature of the group against which HN23 was deployed and at least an outline of the facts giving rise to the contingency. I am satisfied that neither can be done without undermining the application and the order which I will make. Nothing short of anonymity in respect of real and cover name could obviate the risks

to the life and safety of HN23. Those risks engage Article 8 of the European Convention. Publication of the cover name of HN23 combined with a description of the nature of the group infiltrated might prompt information or evidence about the deployment from others. However, it would be both disproportionate and unjustified to run those risks.

HN40

3. HN40 was deployed against two groups in the last decade of the existence of the Special Demonstration Squad. If the true identity were to be discovered by members of them HN40 would be at real risk of serious violence by them or their associates. For reasons which can only be, and are, explained in the closed note accompanying the 'Minded to' note of 14 November 2017, publication of the cover name would be likely eventually to lead to the discovery of the real name. Ms Kaufmann submits that the Inquiry should disclose the nature of the group against which HN40 was deployed and at least an outline of the facts giving rise to the likelihood of discovery of the real name. As in the case of HN23, I am satisfied that neither can be done without undermining the application and the order which I will make. Ms Sikand, on behalf of Peter Francis, submits that HN40 (like HN23) may have been authorised to participate in acts of violence while deployed which cannot satisfactorily be investigated without publication of the cover name. I disagree. The issue can be addressed in two ways: on the specific facts with HN40 and with the managers of HN40, in closed session; and on the giving or otherwise of such authorisation generally, with the managers, in open session. As in the case of HN23, the risk to HN40 is contingent and, so, falls to be considered under Article 8 of the European Convention, not Article 3. I am satisfied that it would be both disproportionate and unjustified to run that risk.

HN58

4. HN58 was the Detective Chief Inspector in charge of the Special Demonstration Squad between 1997 and 2001. He has important evidence to give to the Inquiry about his discharge of his duties in this capacity, some of which are identified in the 'Minded to' note of 20 December 2017. His deployment as an undercover officer earlier in his career creates unusual difficulties for the manner in which his evidence is to be received. There is no solution which can fully satisfy all competing requirements. The first, on which emphasis is laid by Ms Kaufmann, for the non-police, non-state core participants and by Ms Sikand for Peter Francis, is the need to investigate his undercover deployment, in particular for two purposes: to ascertain whether he committed any wrongdoing during his deployment; and to understand whether, and if so how and to what extent, his conduct of his deployment influenced

UNDERCOVER POLICING INQUIRY

the manner in which he discharged his duties as Detective Chief Inspector between 1997 and 2001. The second is the need for him to account publicly for his discharge of those duties. The third is the need to minimise – if possible, avoid – any real risk to his personal safety. A fourth consideration – his own wish to avoid unwelcome intrusion into his private and family life – is not a factor which can play any significant part in the determination of his application for a restriction order in respect of his real and cover name.

5. Ms Kaufmann and Ms Sikand submit that, for the first requirement to be fulfilled, his cover name must be published– to permit those against whom he was deployed and with whom he came into contact during his deployment to provide and give evidence about it. They submit that it is only by this means that any misconduct on his part would be exposed. I accept that that is so. They submit that inadequate information has been disclosed about the risk to HN58's safety to permit them to make constructive submissions about it. I also accept this submission.
6. There is a compelling public interest in HN58 giving evidence about his managerial role in public and in a manner which can permit the public to reach their own judgement about the truthfulness and reliability of his evidence, by witnessing his demeanour and by hearing him in his natural voice.
7. I have reconsidered whether or not further details of HN58's deployment – for example, naming the group against which he was deployed and the dates of his deployment – could be published to permit more fully informed submissions to be made openly about risks to his safety. I remain satisfied that they could not be. I also remain satisfied that a small, contingent, but nevertheless real, risk to his safety, arising out of his deployment, remains. Closed reasons explain why.
8. Ms Kaufmann and Ms Sikand advanced two proposals for squaring the circle: HN58 should give evidence under his cover name about his deployment, but under no, or a different, cypher, and should give evidence about his managerial duties, on a different occasion, in his real name under his current cypher; and he could give that evidence from behind a screen. In the course of oral submissions, they recognised that the first proposal was not viable: its implementation would, inevitably, alert the interested observer to the fact the sole undercover officer to give evidence in his cover name without a cypher or without one allocated by Operation Herne was doing so for a reason. That reason would be obvious: to protect the identity of a manager, known to have been deployed as an undercover officer, from whom no evidence about his deployment had, notionally, been heard. The device would be transparent and its use would serve to link HN58 the manager with HN58 the undercover officer. If there is a means of connecting cover name to real name, HN58 would be easily

UNDERCOVER POLICING INQUIRY

identifiable. For reasons briefly explained in the closed note, I am satisfied that there is a real risk that the connection would be made and, if made, would lead to the ready identification of the whereabouts of HN58. In that event, the contingency which would give rise to a real risk to his safety would occur.

9. The second proposal would not obviate that risk but would deprive the public of the opportunity of observing HN58 giving evidence about his discharge of his managerial duties. Given the importance of his evidence to the Inquiry, that is not a course which would command public confidence; and it is not acceptable to me.
10. I am satisfied that the least unacceptable solution is for HN58 to give evidence about his deployment in closed session and for him to give evidence about his discharge of his managerial duties in his cypher, in public, in his natural voice, and with only such measures taken to conceal his true identity as do not prevent members of the public from observing his demeanour. I acknowledge that by taking this course the possibility of discovering unlawful or personal misconduct by him during his deployment will be much diminished. I will hear only his evidence and that of other officers about it. It is unlikely that such contemporaneous documents as survive would reveal it. Although what I know about his personal and family history is inconsistent with the occurrence of such misconduct, I cannot, of course, at this stage, exclude the possibility that it occurred. I have, necessarily, to make a judgement on his application on incomplete evidence. My judgement is that it is far more important to examine in public his conduct of his managerial duties than his conduct of his deployment. It is possible that his own experience influenced his view of the conduct of officers deployed while he was in operational charge of the Special Demonstration Squad, but it cannot have been the cause of it. The information available to the Inquiry, thus far, suggest that such conduct occurred long before his deployment and was occurring when he took up office as Detective Chief Inspector. What matters to the Inquiry is what he knew about it and what, if anything, he did about it.
11. I have dealt, at far greater length in the case of HN58, than I have in the case of other officers, with the manner in which I anticipate his evidence will be given. Ms Kaufmann faintly suggested that it was not necessary to do so to determine his application. I disagree. It is necessary to look forward and to consider how the evidence of this important witness can be received by the Inquiry in such a manner as to permit fulfilment of the terms of reference. Given the existence of a contingent but real risk to the safety of HN58, the means which I have identified are the only ones which can avoid disproportionate and unjustified interference with his right to respect for his private life – his physical integrity under Article 8 of the European

UNDERCOVER POLICING INQUIRY

Convention – while permitting the Inquiry to fulfil its terms of reference. I therefore confirm the ruling which I was minded to make on 20 December 2017 and will make a restriction order in respect of both his real and cover name.

12. The evidence of HN58 about the deployment of officers whose evidence will be given in closed session only will also be given in closed session, for the purpose of protecting their safety.
13. The fact that HN58's evidence about his own deployment will be given in closed session will not prevent evidence from being given publicly by him about other events and practices which occurred within the Special Demonstration Squad while he was deployed. Some exploration of the origin of practices which did occur during his time as a manager can, therefore, be undertaken with him.

HN127

14. HN127 was a cover officer from 1997 to 2001. He was the cover officer for, amongst others, HN15 and HN104 ("Carlo Neri"). He was the recipient of information given to him by a deployed officer about a relationship conducted during the deployment and knew of at least one other. He was the author of a memorandum dated 20 October 2000 which is of significant interest to the Inquiry. He was the recipient of information provided by other officers about matters concerning the Stephen Lawrence campaign. He can provide valuable evidence to the Inquiry and should, in principle, do so in public and in his own name, unless to do so would cause significant harm to him and/or to his family. There is no known risk to his or their safety. His evidence is likely to be of significant public interest and will attract media attention. This will, no doubt, be unwelcome to him and his family members. The interference which this will cause to his and their right to respect for their private and family life under Article 8 of the European Convention is outweighed by the public interest in him accounting for his actions and giving evidence about those of others in public and in his own name.
15. A closed note supplements these reasons.

HN241

16. HN241 is a septuagenarian who was deployed against one group in the early 1970s. For a variety of reasons, which are summarised in the closed note which accompanied the 'Minded to' note of 14 November 2017, the risk to the safety of HN241 is difficult to quantify. At the suggestion of Ms Kaufmann and Ms Sikand I have revisited the material which underpins that note and have re-evaluated the double contingency which would give rise to the risk of serious harm to HN241. I remain satisfied that there is a real risk that if the cover name were to be published,

the real name might be discovered by those who might wish harm to HN241 and that, if they were to discover it, they would use violence to do so. The risks are contingent and so do not engage Article 3 of the European Convention, but do engage Article 8. In the case of HN241, the deployment is of historical interest. Although the risks are not as clear-cut as in the cases of HN23 and HN40, I remain satisfied that the publication of the cover name would be both disproportionate and unjustified under Article 8.

HN297

17. HN297 is deceased. He was deployed against two groups between 1974 and 1976. He and his then wife separated over 30 years ago. He is survived by two adult children. Publication of his cover name ("Rick Gibson") has prompted the provision by 'Mary' (in respect of whom an order restricting disclosure of her real name has been made) of a witness statement signed in her real name about her intimate relationship with him, in his cover name, during his deployment. She is entitled to know who he was, in his real name. His then wife requested time to inform their children about the evidence of 'Mary', but did not indicate that she had evidence to provide to call into question the truthfulness of 'Mary's' account. In a document dated 17 February 2018 she and her two children urged me to make a restriction order in respect of the real name of HN297. They called the evidence of 'Mary' into question on two conflicting grounds, neither of which are substantiated in the document. They are not legally represented. Because it is possible that they have evidence to support one or other ground, I will give them a final opportunity to provide this. If they do, I will reconsider this ruling before making a final order. At present I have no reason to doubt the evidence of 'Mary'. Further, it is supported by the statements made in the application for core participant status dated 30 November 2017 by Richard Chessum. If that remains the position, there can be no good reason for delaying the communication to 'Mary' and so to delay providing information to her about the true identity of HN297.
18. The former wife of HN297 and her children are understandably concerned about possible media intrusion and suggest that "All parties" should be afforded anonymity. The former is not a ground of sufficient weight to justify withholding information from 'Mary' about the identity of HN297; and the second is a proposition which, if accepted, would make the conduct of the Inquiry problematic.

HN322

19. HN322 is in his 70s. He had a varied 30 year police career, retiring in the mid-1990s. Documents which I have seen, but which have not yet been published, show that he attended a small number of public meetings held to prepare for the anti-Vietnam war

demonstration in London on 27 October 1968 in the company of another officer in the Special Demonstration Squad and reported on them to the founding head of the squad, Conrad Dixon. His recollection that he was not deployed may, therefore, be wrong; but the nature of the reporting suggests that it was a traditional Special Branch deployment, not an infiltration. Nothing of which I am aware contradicts his recollection that he left the squad soon after. He may be asked to provide a statement to the Inquiry, but is unlikely to be called to give evidence. No useful purpose would be served by publishing his real name. Nothing of which I am aware contradicts his recollection that he did not have a cover name. He is concerned about the impact which publication of his real name would have on his family and on himself. He would like to spend his retirement in peace. The interference which publication would cause to his right and that of his family to respect for their private and family life under Article 8 of the European Convention, small though it would be, would not be proportionate to the non-existent gain to the Inquiry (and so to the public interest) resulting from publication and so would not be justified.

HN348

20. HN348 is in her 70s. She was deployed between 1972 and 1973 against the Women's Liberation Front, a non-violent group, which posed, and poses, no threat to her. She cannot remember her full cover name and no official record of it exists. She believes that the first element of her cover name was "Sandra". The group against which she was deployed was small. If any former member can be prompted to remember her by a name, only her cover name can serve that purpose. No useful purpose would be served by publishing her real name. She can give evidence about her deployment as "Sandra" and so assist the Inquiry to discover why an undercover officer was deployed against an apparently harmless group. She is concerned that the publication of her real name would lead to unwelcome media attention and, perhaps, to damage to her reputation amongst her wider social circle. Her concerns are not irrational. Publication of her real name would interfere with her right to respect for private and family life under Article 8 of the European Convention, is not proportionate to the non-existent gain to the Inquiry (and so to the public interest) resulting from publication and so would not be justified.

20 February 2018

Sir John Mitting
Chairman, Undercover Policing Inquiry