

## IN THE MATTER OF THE UNDERCOVER POLICING INQUIRY

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### APPLICATION FOR RESTRICTION ORDER (ANONYMITY) IN RESPECT OF HN125's REAL NAME AND COVER NAME SUBMITTED BY THE DESIGNATED LAWYERS

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1. The following abbreviations are used herein:
  - “DL” the Designated Lawyers Team i.e. Mark Spanton and Anna Peacock within the MPS Directorate of Legal Services acting in their capacities as such;
  - “IA” Inquiries Act 2005
  - “SDS” Special Operations Squad / Special Demonstration Squad.

#### **Restriction Order Sought**

2. The DL apply for a restriction order over the real and cover identity of ‘N125’ to last indefinitely in the following terms:
  - a. No direct or indirect disclosure of HN125’s real name (including any description or image capable of identifying HN125) beyond the Chairman and Inquiry team;
  - b. No direct or indirect disclosure of HN125’s cover identity (including any description or image capable of identifying HN125) beyond the Chairman and Inquiry team;
3. The DL also invite the Inquiry to release HN125 from further involvement in the Inquiry and to confirm that it will not seek a witness statement from him /her. In short, the basis for the applications is the serious impact on HN125’s physical and mental health should either his /her real or cover identity be revealed or if s /he is required to provide a witness statement.

## **Legal Basis for the Application**

4. This Application is made on the following statutory basis:
  - s.19(3)(a) IA read with Article 3 (prohibition against torture and inhuman or degrading treatment) and Article 8 (duty to act in a way not incompatible with the right to private and family life),
  - Alternatively, s.17(3) IA (duty to act with fairness) and
  - s.19(3)(b) IA read together with s.19(4)(b)-(d) IA (conducive to the Inquiry fulfilling its terms of reference or necessary in the public interest having regard to the matters mentioned in (4)).
  
5. 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**

6. This application is supplemented by a closed schedule and two medical reports: a psychiatric report dated 17 February 2017 by Dr Busuttill and a medical report from a consultant dated 23 May 2017 addressing a degenerative physical condition,. These documents should not be disseminated further than the Chairman and the Inquiry team.
  
7. At this stage neither a Risk Assessment nor an Impact Statement have been prepared and the application is based, in the first instance, upon HN125's health should his/her identity be revealed.
  
8. The DL reserve the right to make additional submissions in respect of an impact and / or risk based assessment including the impact on HN125's private and family life. The DL reserves the right to make further submissions as to the effective operation of any Restriction Order during the course of the Inquiry.

## Reasons

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

9. A restriction order protecting HN125'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 rights in issue are Article 3 and Article 8.
10. In light of the contents of the medical reports, there is an objectively verified immediate risk of serious harm to HN125's physical and mental health of a type and severity to engage Article 3 if HN125's real or cover identity were disclosed.
11. Disclosure of HN125's real and cover name would also amount to a disproportionate interference with his/her right to private and family life. In particular, the objective effect of disclosure is set out in the medical reports. The level of risk posed by this interference is set out in the medical reports.

### *Section 19(3)(b) and s.19(4)*

12. The Chairman is invited to find that a restriction order protecting HN125's real identity and cover 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:

*"...when considering whether to make an order restricting disclosure of any relevant particular piece of information on public interest grounds I will be required to:*

- (1) identify the public interest in non-disclosure;*
- (2) assess the risk and level of harm to the public interest that would follow disclosure of that information;*
- (3) identify the public interest in disclosure;*
- (4) assess the risk and level of harm to the public interest that would follow non disclosure of that information;*
- (5) make in respect of that information a fact sensitive assessment of the position at which the public interest balance should rest".*

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

13. The following public interest factors are relevant:

- a. There is an objectively verified, substantial risk of serious, physical harm to HN125 in terms of the impact on his /her mental and physical health and deterioration thereof, in the event of release of HN125's real and / or cover identity.
- b. The evidential basis for the risk of harm is contained in the medical reports;
- c. HN125 had a short deployment which was unremarkable. No allegations have been made against him /her.

The public interest in disclosure of real and cover identity

14. The DL appreciates the general presumption in favour of openness is a factor weighing against the making of a restriction order in HN125's case. The Inquiry will be able to fulfil its terms of reference without the publication of HN125's real or cover identities.

Where the public interest balance lies

15. The DL has considered the Chairman's Principles Ruling and has had particular regard to the presumption of openness in the Public Inquiry. In all the circumstances, the DL make this application for a Restriction Order over HN125's real and cover identities to avoid violation of HN125's Convention rights as detailed above. The DL submit that the Restriction Order sought is necessary in the interests of fairness, the public interest and is conducive to the Inquiry's terms of reference.

*Section 17*

16. Application of the statutory and common law principles of fairness require that the real and cover identity of HN125 is not disclosed. The considerations which apply are highlighted above in relation to s.19(3)(a), s.19(3)(b) and s.19(4).

**THE DESIGNATED LAWYERS (UCPI)**

16 November 2017