

IN THE MATTER OF THE PUBLIC INQUIRY INTO UNDERCOVER
POLICING

APPLICATION FOR RESTRICTION ORDER (ANONYMITY)
RE: N343
SUBMITTED ON BEHALF OF THE MPS

Restriction Order sought: granting anonymity to witness 'N343', to last indefinitely.

Terms of Restriction Order sought at this stage:

1. No direct or indirect disclosure of N343's true identity (including any description or image capable of identifying N343 or his domicile) beyond the Chairman and 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.

Statutory basis for application: s.17(3), s.19(3)(a) and s.19(3)(b) Inquiries Act 2005 ('the Act').

3. Grounds for application:
 - i. S.17(3) (fairness)
 - ii. S. 19(3)(a) Article 8 (right to private and family life)
 - iii. S. 19(3)(b) (conducive to inquiry fulfilling terms of reference and necessary in public interest) having regard to s.19(4)(b) (risk of harm or damage)

Legal principles:

4. Restriction Orders Legal Principles and Approach Ruling dated 3 May 2016 (the 'Principles Ruling').

Evidence in support (not for circulation wider than Chairman and Inquiry team unless otherwise stated):

5. This application should be read together with the following items:

- i. N343 MPS Risk Assessment dated 6 March 2017

Factual update: risk assessment was updated on 18/1/2018.

- iii. Personal Impact Statement of N343. This statement, which was drafted by N343 himself, is currently undated and lacks a statement of truth; a signed and dated version will be forwarded to the Inquiry in due course. The MPS asserts that the Inquiry may take the statement into consideration as part of this application, the absence of a statement of truth merely going to weight.

Outline reasons:

Section 17

6. Application of the statutory and common law principles of fairness require that the real identity of N343 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): Article 8

7. A Restriction Order protecting N343'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.
8. Disclosure of N343's true identity would result in a disproportionate interference with his right to private and family life, assessed as both serious and highly likely [Risk Assessment paragraph 16.2]. In particular:

- i. N343's subsequent career is likely to be affected by disclosure of his real name. There is likely to be significant media interest in him which will have an adverse impact on his career.

- ii. N343 holds a sincere subjective view that anonymity measures are necessary.

- iii. N343 has expressed a "great deal of worry and anxiety" about the Inquiry in general, and that it has already negatively affected his relationships. He is concerned that exposure will affect his family, friends, professional reputation, finance and subsequent mental health ("a lifetime destroyed") and have a "devastating and incalculable" impact [Personal Impact Statement p.2 paragraph 5; Risk Assessment paragraph 13.1, 14.1, 14.4]. It can be assumed that this anxiety will only increase if his real identity receives exposure.

9. There are no other protective measures that could be relied on in support that would mitigate the interference with his right to family life. *Sets out concern.*

It is reasonable to infer that there would be public interest in N343 simply by virtue of his former status as a former UCO, and this would be amplified by his *current situation*.

10. However, the legitimate aim of enabling the Inquiry to fulfil its Terms of Reference can be adequately met by confirmation of the fact of his deployment and sufficient details to identify his deployment (such as its target sector and its dates).

Sections 19(3)(b) and 19(4)

11. The Chairman is invited to find that a Restriction Order protecting N343'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 in s.19(4) of the Act read together with the Chairman's approach at paragraph 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 interests in non-disclosure

12. The following public interest factors are pertinent:
- i. N343 is a former UCO whose deployment concluded over 40 years ago and which appears, on the facts currently known, to have been unremarkable [Risk Assessment paragraphs 2-3; Personal Impact Statement p.1 paragraph 2, p.2 paragraph 2].
 - ii. N343 has lived his life since his deployment and his MPS career upholding the confidentiality of the SDS and of his status as a former UCO [Personal Impact Statement p.1].
 - iii. N343 has been unable to provide specific details of his target group(s) beyond the broad sector in which they operated [Risk Assessment paragraph 11]. The extent to which the evidence he is able to give is

going to be of primary interest to the CPs and the Inquiry is limited. This is further limited by the limits on recollection after so much time has passed.

- iv. There is no evidence that N343 used a deceased child's identity.
- v. There is no known misconduct in his case. It should be noted that the MPS does not apply to restrict the fact of his deployment or sufficient details to identify his deployment – this is the nearest equivalent to releasing his cover name, which remains unknown. This will facilitate the uncovering of any hitherto unknown misconduct, should it exist. Conversely, releasing N343's real name adds nothing to the Inquiry's ability to uncover misconduct carried out in a cover name.
- vi. *Sets out issue(s) relating to subsequent role(s) conducted after SDS deployment*

The public Interest in disclosure

- 13. The general presumption in favour of openness weighs against the making of a Restriction Order in N343's case. However, this must be viewed in light of the fact that the MPS will not be applying for a Restriction Order over N343's status as a former UCO or sufficient details to identify his deployment. The Inquiry will be able to fulfil its Terms of Reference without the publication of N343's real name. The effective participation of CPs and witnesses to the inquiry would not be impeded by N343's real identity being withheld. Confirmation of the deployment and its outline facts permits members of the public to come forward if they so wish.

Where does the public interest balance lie?

- 14. The MPS has considered the Chairman's Principles Ruling and has had particular regard to the presumption of openness in the Public Inquiry.

15. In all the circumstances, the MPS makes this application for a Restriction Order on the basis that confirmation of N343's status as a former UCO and sufficient details to identify his deployment is the most appropriate measure: it reflects the public interest balance and enables the Inquiry to fulfil its Terms of Reference.

MPS, Department of Legal Services
1st June 2017

