

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

**OPEN APPLICATION FOR A RESTRICTION ORDER (ANONYMITY)
RE: HN41
SUBMITTED ON BEHALF OF THE MPS**

Restriction Order Sought

1. The MPS apply for a restriction order over the real and cover identity of HN41 to last indefinitely in the following terms:
 - (1) No direct or indirect disclosure of HN41's real name (including any description or image capable of identifying HN41) beyond the Chairman and the Inquiry team;
 - (2) No direct or indirect disclosure of HN41's cover identity (including any description or image capable of identifying HN41) beyond the Chairman and Inquiry team;
 - (3) The Commissioner reserves the right to make further submissions 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 bases:

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: the duty to act in a way that is not incompatible with a Convention right, namely, the right to life (Article 2); the right not to be tortured or subject to inhuman or degrading treatment (Article 3); and the right to private and family life (Article 8).

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 and 'minded to' notes so far published in respect of former SDS officers.

Evidence in Support

4. This application is supplemented by a closed risk assessment, which is not to be circulated wider 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 and cover identity of HN41 is not disclosed. The considerations which apply are highlighted below in relation to s.19(3)(a), (b) and s.19(4).

Section 19(3)(a) and Articles 2, 3 and 8

6. The sources of harm and the level of physical risk are set out at §§11 to 16 and §19 of the Risk Assessment. The identified risks arise from disclosure of both the real and cover names as there is a real risk that knowledge of HN41's cover identity will lead to HN41's real identity.
7. Based on those paragraphs of the risk assessment, disclosure of HN41's real and/or cover name would:
 - (a) amount to an objectively verified, present and continuing risk of death, torture and inhuman or degrading treatment to HN41.
 - (b) amount to a disproportionate interference with HN41's right to a private and family life.
8. Separate to the physical risk, disclosure of HN41's real name would amount to a disproportionate interference with HN41's and his or her family's right to private and family life. It is reasonable to infer that there would be some public interest in HN41 by virtue of HN41's status as a former UCO and for the reasons set out at §19.5 of the Risk Assessment. Those reasons do not include any allegations of wrongdoing.

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

9. The Chairman is invited to find that a Restriction Order protecting HN41'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:

"...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

10. The following public interest factors are pertinent:

- (a) HN41 is a former UCO. The likely sources and the level of risk of physical harm to HN41 are set out at §§11 to 16 and §19 of the Risk Assessment. The same risk arises in relation to HN41’s real and cover names because there is a real risk that disclosure of the cover name will lead to disclosure of the real name.
- (b) It is in the public interest for HN41’s real and cover identities to be restricted on the basis that it would avoid or reduce the risk of causing physical harm to HN41, and interference with HN41’s and his or her family’s private and family lives. The evidential basis for this is set out in the paragraphs of the Risk Assessment noted above.
- (c) HN41 was provided an assurance by a senior officer that the work HN41 carried out was and would remain confidential. HN41 has honoured the confidentiality of the work.

The public interest in disclosure

11. The MPS appreciates the weight to be given to openness is a factor weighing against the making of a restriction order in HN41’s case, particularly as this application extends over both the real and cover identities.

12. However, MPS submits that:

- (a) There are no lesser alternative lesser measures to a restriction order over HN41’s real and cover names that would avoid or reduce sufficiently the risk of death or serious physical harm to HN41.
- (b) The public interest in disclosure of HN41’s real name attracts low weight in circumstances where the real name alone is of no assistance to the Inquiry in fulfilling its Terms of Reference or to Core Participants or witnesses who would not have known HN41 by his or her real name.

Where the public interest balance lies

13. The MPS has considered the Chairman’s Principles Ruling and has had particular regard to the importance of openness in the Public Inquiry.

14. In all the circumstances, the MPS makes this application for a Restriction Order over HN41’s real and cover name on the basis of fairness, and to avoid a risk or death or serious harm and a disproportionate interference with

HN41's and his or her family's right to a private and family life. The MPS also submits such an application is also in the public interest.

MPS, Department of Legal Services

19 December 2017