

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 Demonstration Squad

Ruling 5

1. Further to the hearing on 21 March 2018, I make the following rulings in respect of the officers identified below.

Nominal	Ruling
HN17	There will be a restriction order in respect of both real and cover names.
HN41	There will be a restriction order in respect of both real and cover names.
HN64	There will be a restriction order in respect of both real and cover names.
HN71	There will be a restriction order in respect of both real and cover names.
HN109	There will be a restriction order in respect of both real and cover names.
HN125	There will be a restriction order in respect of both real and cover names.
HN301	There will be a restriction order in respect of real name.
HN336	There will be a restriction order in respect of real name.
HN337	There will be a restriction order in respect of both real and cover names.
HN341	There will be a restriction order in respect of both real and cover names.
HN343	There will be a restriction order in respect of real name.
HN347	There will be a restriction order in respect of real name.

Reasons

HN17

2. HN17 is no longer a serving police officer. HN17 was deployed against a number of groups in the last 15 years of the existence of the SDS. If the true

UNDERCOVER POLICING INQUIRY

identity were to be discovered by members of them, HN17 would be at real risk of serious violence by them or their associates. Nothing in the nature of the deployment or of what is known about HN17's conduct of it could justify running that risk.

3. For reasons which can only be, and are, explained in the closed note which accompanied 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. That is not a risk which I am prepared to run. Even if Article 3 of the European Convention is not, on the facts, engaged, because the risk is contingent, Article 8 is; and the interference with HN17's right to respect for private and family life which would be occasioned by both the risk and occurrence of violence would not be justified under Article 8(2).
4. In her written submissions, Ms Kaufmann QC refers to the reference in the gisted risk assessment to HN17's "one or more arrests". On the information currently available, there was in fact only one arrest. She asks, rhetorically, how the Inquiry can investigate the possibility that HN17 was an agent provocateur "without hearing from those convicted". The implicit suggestion behind her question is that the publication of the cover name of HN17 will prompt at least some of them to come forward. On the information currently available, this is very unlikely. With or without publication of the cover name, the Inquiry will, if it deems it necessary, look into the convictions on the basis of information contained in surviving SDS files and, if available, accessible public records.
5. Ms Sikand, on behalf of Peter Francis, submits that he knows of nothing to suggest that the release of the cover name would lead to the identification of the real name. I am satisfied that there is such a risk, for the reasons explained in the closed note. She also submits that the reference to (multiple) arrests and convictions in the risk assessment suggests that HN17's claim that he acted with integrity is open to question. The premise of that submission is mistaken, for the reason already explained.

HN41

6. HN41 is a sexagenarian and is married and retired. HN41 was deployed against 2 groups in the 1970s and 1980s. The principal target group no longer exists. For reasons explained in the closed note which accompanied the "minded to" note of 25 January 2018, there would be a real, but unquantifiable, risk to the personal safety of HN41 if the real or cover name

UNDERCOVER POLICING INQUIRY

were to be published. There is no reason currently known to me which would require or justify publication of his real name. A promise of lifetime anonymity was made to HN41 on which HN41 was entitled to rely when undertaking the deployments. In this case, it is a relevant factor. It would be neither necessary to fulfil the terms of reference of the Inquiry nor proportionate to run the risk referred to by publication of real or cover name. Publication of either would interfere with the right to respect for the private life – physical integrity – of HN41 and would not be justified under Article 8(2) ECHR.

7. Such open evidence as can be provided by HN41 can be provided under a cypher. If open oral evidence is required from HN41, careful consideration will need to be given to the manner in which it is to be provided.
8. Ms Kaufmann and Ms Sikand seek particulars of the event of significant interest to the Inquiry witnessed by HN41. This is an issue which will be addressed when evidence from HN41 is obtained and the manner in which it can be provided has been determined.

HN64

9. HN64 was deployed against one group and reported on others in the 1990s. The deployment posed risks to the life and safety of HN64 which, to an extent which cannot be precisely quantified, remain. The risks are explained in the closed note which accompanied the “minded to” note of 14 November 2017. Nothing short of anonymity in respect of both real and cover names could obviate those risks. I would not be justified in running them. Even if Articles 2 and 3 ECHR are not engaged, because the risks are contingent and not immediate, Article 8 is. The interference which would be caused to the right to respect for the private life – physical integrity – of HN64 would be neither proportionate nor justified under Article 8(2).
10. In her written submissions, Ms Kaufmann referred to a presumption that HN64 was one of the officers who appeared in the “True Spies” TV programme. The “presumption” is mistaken. Where appropriate, the Inquiry is publishing the cover or real name of officers who appeared in the programme, as “Minded to” notes are published. There is no good reason to publish them out of sequence.

UNDERCOVER POLICING INQUIRY

HN71

11. HN71 was deployed against 2 groups in the last 15 years of the existence of the SDS. If the true identity were to be discovered by members of them HN71 would be at real risk of serious violence by them or their associates. Nothing in the nature of the deployment or in what is known of HN71's conduct of it could justify running that risk.
12. There is some risk that if the cover name of HN71 were to be published, the real name might be discovered. This is not a risk which I am prepared to run. Even if Articles 2 and 3 ECHR are not, on the facts, engaged, because the risk is contingent not immediate, Article 8 is; and interference with HN71's right to respect for private and family life which would be occasioned by both the risk and occurrence of violence would not be justified under Article 8(2). The nature of these risks is set out in the closed reasons which accompanied the "minded to" note of 25 January 2018.
13. Both Ms Kaufmann and Ms Sikand question the judgement expressed above because no risk assessment has been obtained. I know enough about the risks attendant upon the deployment from risk assessments and material provided in the cases of other officers for it to be unnecessary to obtain a risk assessment in this case. Ms Sikand stated her understanding that the decision is made purely on the perceived psychological impact. Her understanding is mistaken.

HN109

14. The reasons for the decision which I make in the case of HN109 are set out in the closed note which accompanied the "minded to" note of 15 January 2018. They cannot be made public.
15. Ms Kaufmann and Ms Sikand submit that the evidence of HN109 must be received to permit the Inquiry to fulfil its terms of reference. I agree that it must. Careful thought will need to be given as to how this is to be achieved. It is not, in principle, acceptable that the evidence should be given entirely in closed session. The public, and those whom it affects, need to hear it. Measures can be taken to protect identity. My intention is that all evidence relevant to the discharge of the managerial duties of HN109 should be given and tested in public, with the aid of such measures. Only that part of the evidence which gives rise to risks to the safety of others would need to be heard in closed session.

UNDERCOVER POLICING INQUIRY

16. Ms Sikand submitted, on express instructions, that HN109 had appeared in the TV programme “True Spies”. On the basis of material held by the Inquiry, which I have re-examined, I believe this submission to be mistaken. If further material is provided to the Inquiry which casts doubt upon that belief, I will reconsider it.

HN125

17. HN125 is in his 60s and is retired. He was deployed against one left-wing group in the 1980s. As far as is known to me, his deployment was unremarkable and there is no reason which would require or justify publication of his real name. He has suffered for at least 35 years from an incurable aggressive medical condition. It has recently deteriorated. Expert medical opinion, which I accept, is that the stress of participation in the Inquiry would cause relapse and deterioration in his condition. So too would any public exposure of his role as an undercover officer. His condition is more fully explained in the closed note which accompanied the “minded to” note of 25 January 2018.

HN301

18. HN301 is in his 70s. He was deployed between 1971 and 1976 against one group – the International Socialist – which became subsumed into another, and reported on others. There is no reason currently known to me which would require or justify publication of his real name. Publication of his cover name, which has occurred, is all that is required to prompt evidence from those who encountered him in his undercover role, if they have any to give. Publication of his real name is unnecessary to permit the terms of reference of the Inquiry to be fulfilled and would be a disproportionate and unjustified interference in his and his family’s right to respect for their private and family life under Article 8 ECHR. It would not be difficult to trace him if his real name were published. His family circumstances, which are fully set out in his impact statement, require that there should be no avoidable interference in them, even of a kind produced only by publicity resulting from legitimate media interest.

UNDERCOVER POLICING INQUIRY

HN336

19. HN336 is in his 70s. He was deployed against two groups – the International Marxist Group and peripherally the British Communist Party – and provided intelligence on others between 1969 and 1972. None of them still exist. There is no reason currently known to me which would require or justify publication of his real name. With the approval of former senior officers, he spoke about undercover policing and his own deployment on the TV programme “True Spies” under the pseudonym “Dan”. He believes that if his real name were to be published he would attract media attention which may be intrusive. His concern is not irrational. Publication of his cover name, which has occurred, will permit any member still living of the groups with whom he was involved to give evidence about him. Publication of his real name would serve no useful purpose. The infringement of his right to respect for his private and family life and that of his family would not be justified under Article 8(2) ECHR.

HN337

20. HN337 is a septuagenarian who was deployed against 4 groups in the 1970s. Associates of those with whom HN337 came into contact during the deployment pose a real but unquantifiable risk to life and safety. It is possible that if the cover name were published other individuals who pose no risk to HN337 could give evidence which might be of interest to the Inquiry. There is no reason currently known to me arising out of the deployment which would require or justify publication of the real name of HN337.

21. In the mid-1990s HN337 played a managerial role in and in relation to the Special Demonstration Squad. There are allegations of misconduct on the part of deployed undercover officers during this period about which it is likely that HN337 will be able to provide information and give evidence. HN337 was in part responsible for the recruitment and initial deployment of HN 81, but played no part in the deployment of HN 81 into the group allegedly used to infiltrate the Lawrence family campaign. The evidence which HN337 can provide is likely to be of value to the Inquiry.

22. HN337 does not live in the United Kingdom. There is, accordingly, no statutory means by which this officer can be compelled to provide evidence to the Inquiry. It can only be obtained with the cooperation of HN337, which is currently promised. In her written submissions, Ms Kaufmann submitted that there is a strong public interest in HN337 accounting publicly for the discharge of managerial duties and stated that “it is to be hoped that an officer who

UNDERCOVER POLICING INQUIRY

purports... to have behaved appropriately during his/her time in the SDS would be willing to give evidence voluntarily...". I share both sentiments. On the basis of HN337's declared willingness to cooperate with the Inquiry, evidence about the discharge of managerial duties (except where it gives rise to a risk to the safety of other deployed undercover officers) will be given publicly and voluntarily, albeit under a cypher. Careful thought will need to be given as to how this is to be achieved. It is unfortunate that, because of her early departure from the hearing, Ms Kaufmann forswore the opportunity to explain how this important evidence was to be obtained without making the restriction orders for which HN337 has applied. Ms Sikand, who did address the issue, recognised that it might result in the loss of evidence from HN337, but submitted that was a price worth paying to send a message to recalcitrant officers: that unless they were willing to give evidence under their cover name, no restriction order would be made in respect of their real name. In the case of HN337 this course of action would be of doubtful legality and would run at least the risk of the loss of valuable evidence. It would be of doubtful legality because it would interfere with the right to respect for private and family life of HN337 and partner, who suffers from a long-term physical health condition. If, as a public authority, the Inquiry owed a duty under section 6 of the Human Rights Act 1998 to HN337 while resident outside the United Kingdom, it might be unlawful to do so. In any event, the theoretical advantage to be gained by that course is far outweighed by the risk of loss of the evidence.

HN341

23. HN341 was deployed in the 1970s against 2 groups. The deployment was potentially dangerous. If the true identity were now to be disclosed there would be a real, but unquantifiable, risk to the life and safety of HN341. There is a significant risk the publication of the cover name would permit individuals who might wish HN341 harm to discover the true identity. I am not prepared to run that risk. It is not necessary to do so to permit the Inquiry to fulfil its terms of reference. There is no reason currently known to me which would require or justify publication of the real name. Given the nature of the deployment, it is unlikely that members of the groups against which HN341 was deployed would wish to provide information or evidence to the Inquiry.
24. Worry about the possibility that the identity of HN341 might be disclosed has caused great concern to HN341's partner who is gravely ill. Publication of either real or cover name would interfere with the right to respect for the private and family life of HN341 and his partner (both in respect of the physical integrity of HN341 and the health and well-being of the partner of

UNDERCOVER POLICING INQUIRY

HN341). It would be neither proportionate nor justified under Article 8(2) ECHR.

25. These reasons are supplemented and explained in greater detail in the closed note accompanying the “minded to” note of 14 November 2017.

HN343

26. HN343 is now over 70. He retired from the Metropolitan Police Service over 20 years ago. He was deployed into a variety of left-wing groups in the early 1970s. His past as an undercover officer has been kept secret from everyone in his family and social circle. He is still economically active and has a legitimate concern, the cause of which cannot be stated in this ruling, that if oral evidence were to be given without steps being taken to conceal his identity, he would be the subject of unwelcome media interest which would interfere with his private and family life. It would also impair and might destroy his earning capacity. If others have information or evidence to provide about his deployment, publication of his cover name, which has occurred, may provide the necessary prompt. Publication of his real name is not necessary to permit the Inquiry to fulfil its terms of reference. The interference which it would cause in his and his family’s right to respect for private and family life would be neither proportionate nor justified under Article 8(2) ECHR.

HN347

27. HN347 is in his 70s. He was deployed against one group – the Irish National Liberation Solidarity Front – which no longer exists, between 1971 and 1973. He has expressed concern about the physical safety of himself and his family if his real name were to be published and is concerned about the risk of media intrusion and the impact which this might have on his family. The first concern may be misplaced, but the second is not irrational. It is unlikely that any member of the targeted group who is still living will be prompted into providing information or evidence about his deployment. Publication of the cover name which has occurred will provide the necessary prompt. Publication of his real name would serve no useful purpose. The infringement of the right to respect for his private and family life and that of his family would be neither proportionate nor justified under Article 8(2) ECHR.

28 March 2018

Sir John Mitting

UNDERCOVER POLICING INQUIRY

Chairman, Undercover Policing Inquiry