

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

'Minded To' Note 7

1. Further to the oral submissions received at the hearing on 21 March 2018, I am minded to make to make a restriction order in respect of the real name of HN155 under section 19 (3) of the Inquiries Act 2005

Reasons.

HN155 Application for restriction over real name. The real name cannot be published.

2. HN155 is in his 60s and married. His wife knows the fact of his deployment, but not its details. He was deployed against one left-wing group between 1980 and 1983. His deployment is of interest to the Inquiry because it included regular contact with a Member of Parliament (who cannot be identified with confidence because his recollection of the identity of the MP is unclear). Publication of his cover name, which will occur, may prompt members of the group or others to provide evidence about his activities during the deployment. The threat posed to his physical safety by former members of the group and/or sympathisers is nil or negligible. He will, however, inevitably be the subject of unwelcome media attention and is understandably concerned about the impact which that will have on his wife. Publication of his real name by the Inquiry is not necessary to permit it to fulfil its terms of reference.
3. The real name of HN155 and allegations about the circumstances in which he came to leave the Metropolitan Police Service (which he strongly disputes) are known to responsible journalists. I invited submissions from Guardian News and Media Ltd, the Metropolitan Police Commissioner, and those who represent HN155 on the question whether or not the responsible journalists are, as a matter of the civil law of confidence or misuse of private information, entitled to publish that which they know about HN155. I have received written submissions from all three and oral submissions from Mr Sanders QC on behalf of HN155. I am grateful for all of them. There is no disagreement between them on the applicable law – in the briefest of summaries, that a claimant must establish that the information of which he seeks to prevent publication has the “necessary quality of confidence” and will be harmed by its publication, but will fail in his claim for injunctive relief if the information is

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already sufficiently in the public domain or it is in the public interest for it to be published. All sides submit, and I readily accept, that it is not for me to decide whether the information possessed by the journalists about HN155 should be the subject of injunctive relief.

4. Mr Sanders submits that if the Inquiry published the real name of HN155 (strictly, if a restriction order in respect of his real name is refused), the Inquiry would be infringing his and his wife's right to respect for their private and family life under Article 8 of the European Convention on Human Rights and would be prohibited from doing so by section 6 of the Human Rights Act 1998. I do not accept this analysis. The obligation on the Inquiry is not to take steps which amount to a disproportionate and unjustified interference in that right. If, as in some circumstances might be the case, it would be futile to make a restriction order, I do not conceive that any such obligation would be imposed. The thrust of Article 8 is to require real respect for real, not theoretical, rights.
5. However, in response to questions by me, Mr Sanders asserted that "the necessary quality of confidence" attached to the conjunction of the real name of HN155 and his deployment as an undercover officer, that it had not been lost by prior publication, and that it was not in the public interest for it to be published. These points are at least arguable. He further submitted that the responsible journalists who have this information might themselves conclude that it was not in the public interest to publish it. I do not know what their view is, save to note that in earlier submissions, Guardian News and Media Ltd have asserted that it is, as a matter of principle, in the public interest that the real name of all undercover officers should be published. Mr Sanders stated, again in response to questions by me, that provided funding was available, HN155 would bring proceedings to restrain publication of the information if publication was threatened and the Metropolitan Police Commissioner did not bring proceedings herself. In those circumstances, I accept that there is a real prospect that steps which might be effective will be taken to restrain publication of the information if necessary. I therefore revise my previous view that the making of a restriction order in respect of the real name would be futile. It may not be.
6. For the purposes of the Inquiry, publication of the real name of HN155 by the Inquiry would amount to a disproportionate and unjustified interference in his right and that of his wife to respect for their private and family life.
7. The public interest balance in litigation between an undercover officer and a publisher may not be the same as the balance which must be struck under section 19 (3) of the Inquiries Act 2005. That is not for me to decide. I am only concerned with what the Inquiry should do and my decision is limited to that.

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28 March 2018

Sir John Mitting

Chairman, Undercover Policing Inquiry