

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

**OPEN APPLICATION FOR A RESTRICTION ORDER (ANONYMITY)
RE: HN338
SUBMITTED ON BEHALF OF THE MPS**

Restriction Order Sought

1. The MPS apply for a restriction order over the real identity of HN338 to last indefinitely in the following terms:
 - (1) No direct or indirect disclosure of HN338's real name (including any description or image capable of identifying of HN338) beyond the Chairman and the 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.

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 and Article 8 ECHR: namely the duty to act in a way that is not incompatible with the right to private and family life under 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 in respect of Cairo and HN7, the 'minded to' note dated 25 October 2016 in respect of Jaipur and Karachi, and the 'minded to' notes dated 3 August 2017 in respect of former SDS officers.

Evidence in Support

4. This application is supplemented by a closed Appendix which is not to be disseminated further 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 identity of HN338 is not disclosed. The considerations which apply are highlighted below in relation to s.19(3)(a), s.19(3)(b) and s.19(4).

Section 19(3)(a) and Article 8

6. A restriction order protecting HN338's real 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.
7. Disclosure of HN338's real name would amount to a disproportionate interference with the officer's family's (in particular the officer's surviving spouse's) right to private and family life. It is reasonable to infer that there would be some public interest in HN338 by virtue of the officer's status as a former UCO and therefore some interference with the rights of the officer's surviving family.

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

8. The Chairman is invited to find that a Restriction Order protecting HN338'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 of real identity

9. The following public interest factors are pertinent:
 - (a) It is in the public interest for HN338's real identity to be restricted on the basis that it would avoid or reduce the risk of causing harm to this

officer's family, namely interference with their private and family lives.

- (b) HN338 is deceased. A significant period of time has lapsed since HN338's deployment; which was itself for a relatively short duration.
- (c) There is no evidence that N338 used a deceased child's identity.
- (d) There is no evidence that N338 engaged in misconduct.

The public interest in disclosure

- 10. The MPS appreciates that the general presumption in favour of openness is a factor weighing against the making of a restriction order in HN338's case. However, MPS submits that there is no identifiable public interest in disclosure of HN338's real name in circumstances where the real name is of no assistance to the Inquiry in fulfilling its Terms of Reference or to Core Participants or witnesses who would not have known HN338 by his or her real name.

Where the public interest balance lies

- 11. The MPS has considered the Chairman's Principles Ruling and has had particular regard to the presumption of openness in the Public Inquiry.
- 12. In all the circumstances, the MPS makes this application for a Restriction Order over HN338's real name on the basis of fairness and to avoid a risk of disproportionate interference with the right to private and family life of HN338's family. The MPS submits such an application is in the public interest and conducive to the Inquiry's terms of reference.

MPS, Department of Legal Services

27 September 2017