

IN THE MATTER OF THE UNDERCOVER POLICING INQUIRY

APPLICATION FOR RESTRICTION ORDER (ANONYMITY) IN RESPECT OF HN35's IDENTITY SUBMITTED BY THE DESIGNATED LAWYERS

1. The following abbreviations are used herein:

- “DL” the Designated Lawyers Team i.e. Mark Spanton and Anna Peacock within the MPS Directorate of Legal Services acting in their capacities as such;
- “IA” Inquiries Act 2005
- “I/S” Impact Statement
- “SDS” Special Operations Squad / Special Demonstration Squad.

Restriction Order Sought

2. The DL apply for a restriction order over the identity of ‘N35’ to last indefinitely in the following terms:
- a. No direct or indirect disclosure of HN35’s identity (including any description or image capable of identifying HN35) beyond the Chairman and Inquiry team.

Legal Basis for the Application

3. This Application is made on the following statutory basis:
- s.19(3)(a) IA read with Article 8 (duty to act in a way not incompatible with the right to private and family life),
 - Alternatively, s.17(3) IA (duty to act with fairness) and
 - s.19(3)(b) IA read together with s.19(4)(b)-(d) IA (conducive to the Inquiry fulfilling its terms of reference or necessary in the public interest having regard to the matters mentioned in (4)).

4. 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 the 'Minded to' note dated 25 October 2016 in respect of Jaipur and Karachi.

Evidence in Support

5. This application is supplemented by a closed schedule and I/S. These documents should not be disseminated further than the Chairman and the Inquiry team.
6. At this stage, no Risk Assessment has been prepared. The Inquiry has indicated that it is prepared to consider impact led applications without the need for a risk assessment.
7. The DL reserve the right to seek a risk assessment and make further submissions in respect of a risk based application including any additional impact on HN35's private and family life. The DL reserves the right to make further submissions as to the effective operation of any Restriction Order during the course of the Inquiry.

Reasons

Section 19(3)(a) and Article 8

8. A restriction order protecting HN35'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.
9. Disclosure of HN35's identity would amount to a disproportionate interference with his right to private and family life. In particular, the effect of disclosure is set out in the impact statement §7-9 and includes a specific risk including risk of physical harm and interference with private life.

10. Disclosure of HN35's identity would amount to a disproportionate interference with the private and family life of third parties including a risk of physical harm: IS §11-12.

Section 19(3)(b) and s.19(4)

11. The Chairman is invited to find that a restriction order protecting HN35's 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 and cover identity

12. The following public interest factors are relevant:
- a. There is a risk of physical harm to HN35 and third parties and interference with their private and family lives in the event of release of HN35's identity.
 - b. The evidential basis for the risk of harm is contained in the I/S;
 - c. HN35 was not deployed as an undercover officer in the SDS, he was a cover officer for a short period (2 years). No allegations have been made against him.

The public interest in disclosure of real and cover identity

13. The DL appreciates the general presumption in favour of openness is a factor weighing against the making of a restriction order in HN35's case. The Inquiry will be able to fulfil its terms of reference without the publication of HN35's identity.

Where the public interest balance lies

14. The DL has considered the Chairman's Principles Ruling and has had particular regard to the presumption of openness in the Public Inquiry. In all the circumstances, the DL make this application for a Restriction Order over HN35's real and cover identities to avoid violation of HN35's Convention rights as detailed above. The DL submit that the Restriction Order sought is necessary in the interests of fairness, the public interest and is conducive to the Inquiry's terms of reference.

Section 17

15. Application of the statutory and common law principles of fairness require that the real and cover identity of HN35 is not disclosed. The considerations which apply are highlighted above in relation to s.19(3)(a), s.19(3)(b) and s.19(4).

THE DESIGNATED LAWYERS (UCPI)

17 November 2017