

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

**OPEN APPLICATION FOR A RESTRICTION ORDER (ANONYMITY)
RE: HN339
SUBMITTED ON BEHALF OF THE MPS**

Restriction Order Sought

1. The MPS applies for a restriction order over the real identity of HN339 to last indefinitely in the following terms:
 - (1) No direct or indirect disclosure of HN339's real name (including any description or image capable of identifying HN339) 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 basis:

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 the duty to act in a way that is not incompatible with the right to private and family life under Article 8 ECHR

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, 23 October 2017 and 14 November 2017 in respect of former SDS officers.

Evidence in Support

4. This application is supplemented by a closed risk assessment dated 9 November 2017, which is not to be disseminated further than the Chairman and the Inquiry team.

Reasons

Section 17: statutory and common law fairness

5. Application of the statutory and common law principles of fairness requires that the real identity of HN339 not be disclosed. The considerations which apply are highlighted below in relation to 19(3)(b) and s.19(4).

Section 19(3)(a) and Article 8

6. A restriction order protecting HN339'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 HN339's real name would amount to a disproportionate interference with HN339's right to private and family life. The sources of harm and the level of risk are set out at §16 and §19 of the risk assessment.

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

8. The Chairman is invited to find that a Restriction Order protecting HN339'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) HN339 was attached to the SDS and infiltrated two groups that no longer exist. The deployment was brief in time and the extent of infiltration can be described as superficial.
- (b) The likely sources of and the level of risk of damage to HN339's private and family life is set out at §16, §18 and §19 of the risk assessment. It is in the public interest for HN339's real identity to be restricted on the basis that it would avoid or reduce the risk of causing damage to and/or interference with this officer's private and family lives.
- (c) HN339 believed that deployment was subject to obligations of confidentiality; has respected the confidentiality of his work; and has relied on his anonymity as a source of protection.
- (d) There is no known allegation of wrongdoing in respect of HN339 that would impair the effectiveness of the Inquiry's investigation of its terms of reference.

The public interest in disclosure of real identity

- 10. The MPS appreciates that the public interest in openness is a factor which weighs against the making of a Restriction Order in HN339's case. However, MPS submits that the public interest in disclosure of HN339's real name attracts very low or no 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 HN339 by his 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 importance of openness in the Public Inquiry.
- 12. In all the circumstances, the MPS makes this application for a Restriction Order over HN339's real name on the bases of fairness, s.19(3)(a) Inquiries Act 2005 and Article 8 ECHR; and the MPS submits the Restriction Order requested is both conducive to the Inquiry fulfilling its Terms of Reference and necessary in the public interest to avoid a risk of damage to the officer's and others' private and family lives.
- 13. No cover name application is made by the MPS.

MPS, Department of Legal Services

29 November 2017