

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

**OPEN APPLICATION FOR A RESTRICTION ORDER (ANONYMITY)
RE: HN83
SUBMITTED ON BEHALF OF THE MPS**

Restriction Order Sought

1. The MPS applies for a restriction order over the real and cover identities of HN83 to last indefinitely in the following terms:
 - (1) No direct or indirect disclosure of HN83's real name (including any description or image capable of identifying HN83) beyond the Chairman and the Inquiry team;
 - (2) No direct or indirect disclosure of HN83's cover identity (including any description or image capable of identifying HN83) beyond the Chairman and Inquiry team;
 - (3) 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: the duty to act in a way that is not incompatible with a Convention right, namely, the right to private and family life (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 and the 'minded to' notes issued to date in respect of various former SDS officers.

Evidence in Support

4. This application is supplemented by evidence which is not to be disseminated further than the Chairman and the Inquiry team:
 - a. a closed Risk Assessment and addendum;
 - b. a closed Impact Statement.

Reasons

Section 17

5. Application of the statutory and common law principles of fairness require that the real and cover identity of HN83 is not disclosed. The considerations which apply are highlighted below in relation to s.19(3)(a), (b) and s.19(4).

Section 19(3)(a) and Article 8

6. The sources of harm and the level of physical risk is set out at §§11 to 16 and 19 of the Risk Assessment. The same risk arises from disclosure of the real and cover names as there is a real risk that knowledge of HN83's cover identity will lead to HN83's real identity.
7. Based on those paragraphs of the risk assessment, disclosure of HN83's real and/or cover name would pose a physical risk to him and amount to an unjustified and/or disproportionate interference with HN83's right to a private and family life.
8. Separate to the physical risk, disclosure of HN83's real name would amount to an unjustified and/or disproportionate interference with HN83's and his or her family's right to private and family life. It is reasonable to infer that there would be some public interest in HN83 by virtue of HN83's status as a former UCO and for the reasons set out at §16.1 of the Risk Assessment. Those reasons do not include any allegations of wrongdoing.

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

9. The Chairman is invited to find that a Restriction Order protecting HN83'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

10. The following public interest factors are pertinent:
 - (a) HN83 is a former UCO. The likely sources and the level of risk of harm, including physical harm, to HN83 are set out at §§11 to 16 and 19 of the Risk Assessment. The same risk arises in relation to HN83’s real and cover names because there is a real risk that disclosure of the cover name will lead to disclosure of the real name.
 - (b) It is in the public interest for HN83’s real and cover identities to be restricted on the basis that it would avoid or reduce the risk of causing harm to this officer, namely, the risk of physical harm to HN83, and interference with HN83’s and his or her family’s private and family lives. The evidential basis for this is set out in the paragraphs of the Risk Assessment noted above.
 - (c) HN83 was provided an assurance by a senior officer that the work HN83 carried out was and would remain confidential. HN83 has honoured the confidentiality of the work.

The public interest in disclosure

11. The MPS appreciates that the public interest in openness is a factor which weighs against the making of a restriction order in HN83’s case, particularly as this application extends over both the real and cover identities.
12. However, MPS submits that there are no lesser alternative lesser measures to a restriction order over HN83’s real and cover names that would avoid or reduce sufficiently the risk of harm – particularly physical harm - to HN83.

Where the public interest balance lies

13. The MPS has considered the Chairman’s Principles Ruling and has had particular regard to the importance of openness in the Public Inquiry.
14. In all the circumstances, the MPS makes this application for a Restriction Order over HN83’s real and cover name on the basis of fairness, and to avoid a risk of physical harm and unjustified and/or disproportionate interference with HN83’s and his or her family’s right to a private and family life. The MPS also submits such an application is also in the public interest and conducive to the Inquiry’s terms of reference.

MPS, Department of Legal Services

25 January 2018

)