

IN THE MATTER OF THE UNDERCOVER POLICING INQUIRY

APPLICATION FOR RESTRICTION ORDER (ANONYMITY) IN RESPECT OF HN349's COVER NAME (SUPPLEMENTING AN APPLICATION IN RESPECT OF REAL NAME MADE BY THE COMMISSIONER'S LAWYERS)

1. The following abbreviations are used herein:

"A/N" Application notice;

"DL" The Designated Lawyers i.e. Mark Spanton and Anna Peacock
within the MPS Directorate of Legal Services acting in their
capacities as such;

"I/S" Impact statement;

"RA" Risk Assessment;

2. This A/N is submitted further to and should be read together with the following:

- a. A/N restriction over real name made by the Commissioner's Lawyers dated 26.2.18.
- b. HN349's CLOSED I/S dated 26.2.18.
- c. HN349's partner's CLOSED I/S dated 3.2.18
- d. HN349's child's CLOSED I/S received by HN349 12.01.18
- e. CLOSED R/A dated 5.2.18 (with addendum 12.02.18) submitted by the MPS.

3. This application is for a restriction order granting anonymity to witness HN349 to last indefinitely. The terms sought at this stage are:

- No direct or indirect disclosure of HN349's cover identity (including any description or image capable of identifying HN349) beyond the Chairman or the Inquiry team;
- The Designated Lawyer reserves the right to make further submissions as to operation of this Restriction Order during the Course of the Inquiry.

4. This application is made on the following grounds:

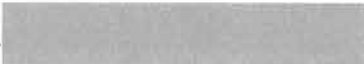

- a. Inquiries Act 2005, s17 (3) (fairness);
- b. Inquiries Act 2005, s 19 (3) (a) and Article 8 ECHR: the duty not to act in a way that is not compatible with the right to private and family life;
- c. Inquiries Act 2005, s 19 (3) (b) read with s 19 (4)(b) –(c) (fulfilment of the terms of reference and necessary in the public interest)

5. The MPS Commissioner's Lawyer team has made an application in relation to HN349's real name. HN349 supports that application and supplements it with this application to restrict their Cover Name.

Section 17

6. With respect to s.17 (3), the application of the statutory and common law principles of fairness require that both the real identity and cover identity of HN349 is not disclosed. The considerations which apply are highlighted below.

Section 19 (3)(a) and Article 8 ECHR

7. A Restriction Order protecting both HN349's real and cover identities 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.
8. The release of HN349's Cover Name would have a disproportionate and unjustified impact on his/her private and family life for the reasons set out below:
 - a. HN349 understood that he/she would always remain anonymous in respect of his undercover work. HN349 has maintained secrecy in respect of his/her work, but has developed a more public profile in his/her real name post-retirement (I/S paras 20-23), 

 - b. HN349's life and that of his/her partner and family have been affected by the deployment (I/Ss generally). HN349's partner and adult child have provided their own Impact Statements which tell of the past and continuing impact on them of the Inquiry and, in particular in respect of the adult child, particular concerns about the effect on their professional life.

- c. HN349 and their partner have had health problems (I/S paras 33-63; partner's I/S) and wish not to be disturbed at this stage of life.
 - d. HN349 expresses fear of media intrusion and further disruption to their life (I/S paras 4, 24-30).
 - e. HN349's adult child expresses concern on the impact of any publication on *their* professional and personal life (own I/S).
9. HN349's deployment was particularly unremarkable when considering the Terms of Reference and other deployments. HN349's targeting did not involve any successful cultivation of personal relationships within private spheres and was targeted towards groups that are not CPs. In fact, efforts to infiltrate failed. There is, therefore, no instrumental value in releasing the cover name and to so do (given the risk of the real name being exposed) would be a disproportionate interference with HN349's Article 8 rights.
10. Furthermore, the fact that the release of HN349's cover name would be contrary to HN349's reasonable expectation of privacy (I/S para 9) and HN349's subjective concerns about the possible consequences of this (I/S generally) are both relevant to an assessment of the reasonableness and fairness of release, its capacity to serve a recognisable public interest and its proportionality for the purposes of Article 8(2).

Sections 19 (3) (b) and 19 (4)

11. The Chairman is invited to find that a Restriction Order protecting HN349's real and cover identity is conducive to the Inquiry fulfilling its Terms of Reference or is necessary in the public interest having regard to the factors set out in 19 (4)

of the Act read together with the Chairman's approach at paragraph 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:

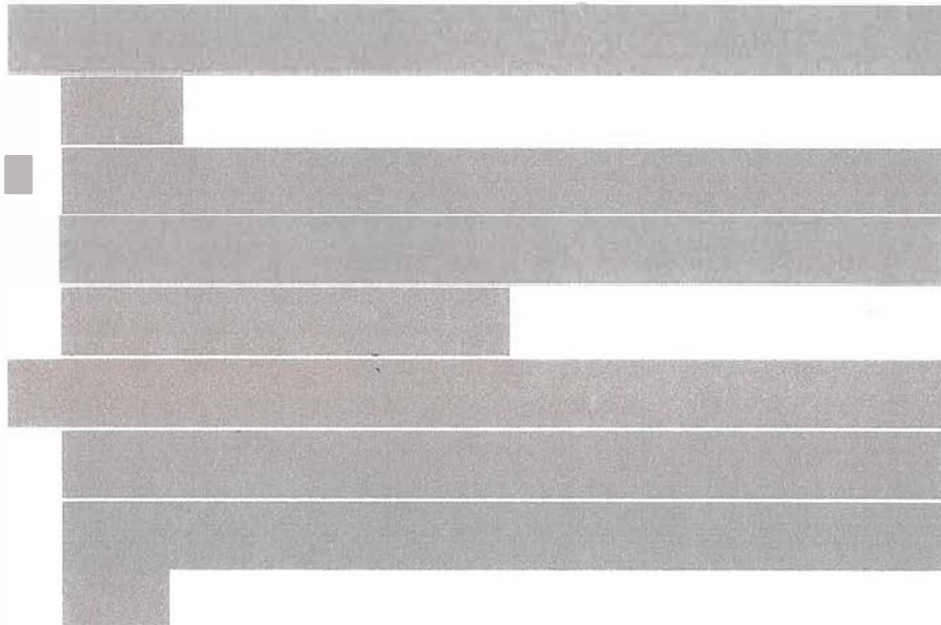
- (1) Identify the public interest in non-disclosure;*
- (2) Assess the risk and level of harm to the public interest that would follow disclosure of that information;*
- (3) Identify the public interest in disclosure;*
- (4) Assess the risk and level of harm to the public interest that would follow 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 cover name

12. The following points are pertinent to the assessment of the public interest:

- a. Whilst HN349 was deployed undercover and devoted significant time, effort and personal sacrifice, the deployment was ultimately unsuccessful in that HN349 was unable to get close to the group so targeted (I/S para 12). Therefore, publication of his/her cover name will serve no purpose in relation to the terms of reference of the Inquiry or be of any instrumental value in gathering evidence or aiding CP participation.

- b. There is sufficient risk that disclosure of the Cover Name would lead to the real name and such a risk should not be taken, particularly when the same is disproportionate to the benefits where HN349's deployment is of historical/peripheral interest only. The following are highlighted:



The public interest in disclosure:

13. The general presumption in favour of openness weighs against the making of a restriction order and the rationale for that presumption needs to be borne in mind. However, as HN349's deployment was ultimately unsuccessful, publication of his/her cover name will not serve any identified purpose in furtherance of the public interest.

Where does the public interest balance lie?

14. The release of HN349's cover name will not assist the Inquiry in fulfilling its Terms of Reference but will undermine the public interest in maintaining his/her anonymity. Such evidence that the Inquiry may wish to hear from HN349 would not be diminished by giving evidence in a cipher.

THE DESIGNATED LAWYERS (UCPI)

28th February 2018