

UNDERCOVER POLICING INQUIRY

In the matter of section 19(3) of the Inquiries Act 2005

Applications for restriction orders in respect of the real and cover names of officers of the Special Operations Squad and the Special Demonstrations Squad

Ruling

Rulings

1. I make the following rulings in respect of the officers identified below.

Nominal	Position
HN35	The real name cannot be published. As per 'Minded to' Note 5 dated 7 March 2018.
HN45	The real name cannot be published. The application for a restriction order in respect of the cover name is refused. As per 'Minded to' Note 2 dated 14 November 2017.
HN56	The real name cannot be published. As per 'Minded to' Note 6 dated 22 March 2018.
HN77	The real name cannot be published. As per 'Minded to' Note 6 dated 22 March 2018.
HN79	The real name cannot be published. As per 'Minded to' Note 6 dated 22 March 2018.
HN83	Neither the real nor cover name can be published. As per 'Minded to' Note 5 dated 7 March 2018.
HN118	The real name cannot be published. As per 'Minded to' Note 6 dated 22 March 2018.
HN298	The real name cannot be published. As per 'Minded to' Note 2 dated 14 November 2017.
HN300	The real name cannot be published. As per 'Minded to' Note 5 dated 7 March 2018.
HN302	Neither the real nor cover name can be published. As per 'Minded to' Note 5 dated 7 March 2018.
HN331	The real name cannot be published. As per 'Minded to' Note 2 dated 14 November 2017.
HN332	The real name cannot be published. As per 'Minded to' Note 2 dated 14 November 2017.
HN334	The real name cannot be published. As per 'Minded to' Note 2 dated 14 November 2017.
HN338	The real name cannot be published. As per 'Minded to' Note 2 dated 14 November 2017.

UNDERCOVER POLICING INQUIRY

Nominal	Position
HN339	The real name cannot be published. As per 'Minded to' Note 3 dated 15 January 2018.
HN345	The real name cannot be published. As per 'Minded to' Note 2 dated 14 November 2017.
HN349	Neither the real nor cover name can be published. As per 'Minded to' Note 6 dated 22 March 2018.
HN356/124	The real name cannot be published. As per 'Minded to' Note 3 dated 15 January 2018.

Reasons

2. The reasons for the rulings set out above are contained in the open and closed 'Minded to' notes relevant to each officer, published earlier.
3. I have received a written note from Ms Kaufmann QC and Ms Brander dated 8 May 2018, in which they make general observations, which have already been canvassed, both in writing and at an open hearing, to which I do not propose to respond again. I deal with their submissions relating to individual officers below.

HN83

Application for restriction over real and cover names. Neither real nor cover name can be published.

From 'Minded to' Note 5 dated 7 March 2018:

HN83 is a sexagenarian. HN83 was deployed against one group in the mid-1980s. The nature of the deployment and what I know of the personal circumstances of HN83, then and now, are inconsistent with personal wrongdoing during the deployment. The deployment created risks to the personal safety of HN83, which, to an extent which cannot be precisely estimated, remain. I am satisfied that the risks are real. Although it would be desirable for evidence about the deployment of HN83 to be given in public and under the cover name, to do so would run those risks to safety. The risks are contingent, and so do not engage Articles 2 or 3 of the Convention, but if they were to materialise, the harm would be significant. Article 8 is engaged. It is not necessary to fulfil the terms of reference of the Inquiry to run those risks. Accordingly, the interference in the right to respect for private life -physical integrity - would be neither proportionate nor justified under Article 8 (2).

A closed note accompanies these reasons.

Ruling

4. As the open 'Minded to' note makes clear, the principal reason for the order which I will make is founded on the interference in the right to respect for an aspect of private life – physical integrity –, arising from the deployment. I remain satisfied that the nature of the deployment and what I know of circumstances of HN83, then and now, are inconsistent with personal wrongdoing during it. It is unfortunate that a fuller explanation of this view cannot be set out in an open note: to do so would compromise the order which I will make and pose some risk to the safety of HN83. In the clearly unlikely event that doubt is cast on that view during the substantive phase of the Inquiry, I will revisit it. If the risks to safety remain, I cannot now conceive of circumstances which would require me to revoke the order.

HN302

Application for restriction over real and cover name. Neither the real nor cover name can be published.

From 'Minded to' Note 5 dated 7 March 2018:

HN302 is a septuagenarian. In the 1970s, HN302 was deployed into one group, which no longer exists, via two other groups which also no longer exist. The nature of the deployment was such as to create a real risk to the safety of HN302. To an extent which cannot be precisely quantified, that risk remains. Because it is contingent, it does not engage Articles 2 or 3 of the Convention, but if it were to mature the harm to HN302 would be serious, possibly even lethal.

HN302 admits to a fleeting sexual encounter with a person of the opposite sex who was associated with one of the two groups referred to (not that into which HN302 was deployed). The right of that person to know the identity of HN302 is outweighed by the risk to the safety of HN302.

Ruling

5. I accept the submission that “a proper investigation ought not to assume that it (the officer’s admission of a fleeting sexual encounter) is necessarily correct”. However, I cannot, at this stage of the Inquiry undertake such an investigation. Nor is it necessary to do so, because the reason for the order which I will make is the existence of a real risk to the safety of HN302. I do not accept the further submission that I should enquire into and, it seems, determine whether or not a criminal offence was committed: to do so would require me to infringe section 2(1) of the Inquiries Act 2005.

HN349

Application for restriction over real and cover names. Neither real nor cover name can be published

From 'Minded to' Note 6 dated 22 March 2018:

HN349 is in his 70s. He had an unblemished police career and subsequent employment and has served the communities in which he has lived, as he still does. He was recruited to serve in the Special Operations Squad in the early 1970s and served for about a year. He adopted a cover name, which was not the name of a deceased child, but did not create a legend. He attempted to infiltrate anarchist groups by attending meetings, but failed to do so. He decided that undercover police work was not for him and, with the consent of his superior officers, left the field. He is concerned that if he were to be identified, he and his family would be the subject of unwelcome media attention. These concerns are genuine and not irrational. He also has concerns for his safety and for that of his family which, although genuine, are almost certainly misplaced. There is a small risk that if his cover name were to be published, his real name could be identified. It is very unlikely that his deployment needs to be investigated at all to permit the Inquiry to fulfil its terms of reference. If it does, witness statement from him is all that is likely to be required. Publication of his real or cover name would interfere, to some extent, with his right to respect for private and family life. It would be neither proportionate nor justified under Article 8(2) of the European Convention.

Ruling

6. In this case, for the purpose of determining his application for a restriction order I have accepted that his account of his failed attempt to infiltrate anarchist groups by attending meetings is unlikely to be contradicted. It is not, as Ms Kaufmann puts it, "the police position". For the purpose of determining applications for restriction orders in respect of names, I must sometimes make a judgement about whether or not what I have been told is likely to be true. I cannot conduct a full inquiry into the facts before making that judgement. This is such a case.

HN77 and HN298

HN77: Application for restriction over real name. The real name cannot be published. Cover name 'Jacqueline Anderson' has been published.

From 'Minded to' Note 6 dated 22 March 2018:

HN77 was deployed in the early 2000s against a number of anarchist and environmentalist groups. The risk posed to her physical safety from former members and

UNDERCOVER POLICING INQUIRY

associates of such groups is nil or negligible. Her evidence is likely to attract significant and unwelcome media interest. She has refused to cooperate with the Herne inquiry or the risk assessor instructed by the Metropolitan Police Service.

The evidence which she could provide to the Inquiry is, however, of significant interest, for at least the following reasons. She was deployed as an undercover officer, despite failing the psychometric testing then administered to would-be undercover officers. Much of her reporting was apparently regarded by senior officers as being of little value. A decision was made by a senior officer (HN36) to terminate her deployment on the basis that it could no longer be justified under the Regulation of Investigatory Powers Act 2000. She terminated her own deployment. She complained about her treatment by superior officers. All of these issues need to be publicly explored to permit the Inquiry to fulfil its terms of reference.

Her cover name will be published. It is not, at this stage, necessary to allow the above issues to be explored for her real name to be published. She has evidently demonstrated a wish to preserve her privacy. Infringement of it, and so of her right to private life would not, at this stage, be justified under Article 8(2) of the European Convention. If, however, it proves necessary for the Inquiry to serve a notice on her under section 21 (1) or (2) of the Inquiries Act 2005 to provide a written statement or to attend to give evidence, it will be served on her in her real name and any steps required to be taken under section 36 will also be taken in her real name.

HN298: Application for restriction over real name. The real name cannot be published. Cover name 'Michael Scott' has been published.

From 'Minded to' Note 2 dated 14 November 2017:

HN298 is in his 70s. He was deployed against two groups between 1971 and 1976, one of which was involved in the anti-apartheid campaign. In the course of his deployment he was arrested at a demonstration against the British Lions rugby tour to South Africa on 12 May 1972 for obstruction of the highway and of a police officer. He was prosecuted in summary proceedings in his cover name. He was convicted of both offences and fined and made the subject of a conditional discharge. His actions were approved by his line management. Not long after his deployment, he left the police service, since when he has had nothing to do with the police.

It is possible that, if his cover name is published, members of the groups against whom he was deployed will remember him and be able to give evidence about him. For that to happen, it is not necessary that his real name should be published. He has politely declined to cooperate with the Metropolitan Police risk assessor. In consequence, the Inquiry does not know whether he wishes to protect his real name. If he were to do so,

UNDERCOVER POLICING INQUIRY

and no new information adverse to him were to emerge, the interference with right to respect for his private life under Article 8(2) of the European Convention which would be occasioned by publication of his real name would not be justified. For the time being, on the application of the Metropolitan Police Service, his real name should not be published. This decision will be reviewed when he has made his own position clear.

Ruling – HN77 and HN298

7. I reject the suggestion that applications for restriction orders must await clarification of an officer's own position. Applications must be determined, to permit document processing and the obtaining of witness statements to occur.

HN332

Application for restriction over real name. The real name cannot be published.

From 'Minded to' Note 2 dated 14 November 2017:

HN332 is in his eighties and in poor health. The Inquiry has been provided with a short medical report itemising the serious medical conditions from which he suffers, including one which is life-threatening. His daughter has provided a witness statement in which she says that he suffers from a very poor memory and from confusion. It must, therefore, be unlikely that he could provide useful evidence to the Inquiry.

He served in the Special Operations Squad/Special Demonstration Squad in a managerial capacity in the 1970's. He was the signatory of a significant memorandum dated 17 December 1971. But for his age and health, I would have refused the application for a restriction order in respect of his real name, on the basis that a senior public servant should be willing and, if not, required, to account for his actions publicly. For the reasons explained, no useful purpose would be served by adopting that course; and to do so would risk impairing the peace of mind and even health of a man in his twilight years.

I am minded to make a restriction order which will be in place during his life.

Ruling

8. I have explained the reasons for making a restriction order in respect of his real name. The implied suggestion is that, if the significant memorandum, of which he was the author, were to be disclosed to non-state core participants now, rather than in the substantive phase of the Inquiry, a submission might be made that his real name should be published. Given what I have disclosed about his state of health and well-being, I would be astonished if such a submission were to be made.

HN345

Application for restriction over real name. The real name cannot be published. Cover name 'Peter Fredericks' has been published.

From 'Minded to' Note 2 dated 14 November 2017:

HN345 worked as an undercover officer for six months in 1971. He was not deployed against any specific group, but reported on a number of them, including those opposed to apartheid in South Africa. His deployment ceased, when his probationary period in Special Branch was terminated. There is a difference between his recollection of the reason for termination and that recorded in his personnel file. He left the Metropolitan Police Service soon after. There is no known allegation of misconduct against him. In the unlikely event that anyone with whom he came into contact whilst deployed can give evidence about him, they will be prompted to do so by publication of his cover name.

Since leaving the Metropolitan Police Service, he has worked in a variety of jobs and is still working. Publication of his real name would risk impairing his current source of income. It would also serve no useful purpose. It would involve some interference with his right to respect for private life under Article 8 of the European Convention the right to disclose his true identity for purposes of his choosing and to withhold disclosure for other purposes. Although the interference would not be great, it would be disproportionate to any end which it would serve, principally to permit the Inquiry to fulfil its terms of reference. Accordingly, it would not be justified under Article 8(2).

Ruling

9. Neither of the two reasons for termination of his deployment have any bearing on the decision.

HN300

Application for restriction over real name. The real name cannot be published.

From 'Minded to' Note 5 dated 7 March 2018:

HN300 is deceased. He is survived by his second wife and their two adult children. He was deployed into the Socialist Workers Party (branch unknown) between late 1974 and January 1977. His cover name is unknown, but may have included "Jim" or "Jimmy". During his deployment, he told another undercover officer that he had fallen in love with a female member of his target group. He was divorced from his second wife in 1979. She and his two children have provided a joint statement about their experiences during his deployment and about the impact which disclosure of his real name would have on them.

I accept that what they say is true and believe it to be unexaggerated. Both adult children pursue worthwhile careers and express their concern about the impact of media attention upon them and upon their mother. Their concern is not irrational. Publication of the real name of HN300 would interfere with their right to respect for private and family life. It would not further the interest of the Inquiry in getting at the truth about his deployment. Accordingly, to do so would be neither proportionate nor justified under Article 8 (2) of the Convention. It is possible that further information about his cover name will become known to the Inquiry. If and when it does, it will be published.

Ruling

10. The submissions do not concern the making of a restriction order.

HN331 and HN338

HN331: *Application for restriction over real name. The real name cannot be published.*

From 'Minded to' Note 2 dated 14 November 2017:

HN331 was killed in a road traffic accident in the 1970s, leaving a widow and young son. He was deployed against one group which is now defunct in 1968 and 1969. His cover name is not known. HN331's death caused his widow to suffer an acute mental illness, for which she received in-patient treatment. She did not remarry. She is now in her 70s and suffers from the early stages of dementia. According to her son, she has been deeply affected by the possibility that HN331's identity might be revealed in the course of the Inquiry. No useful purpose would be served by publication of HN331's real name. Given the nature of his deployment and the elapse of time since it occurred, it is inconceivable that it would prompt evidence from others about his deployment. His widow and surviving family are entitled to be left in peace.

HN338: *Application for restriction over real name. The real name cannot be published.*

From 'Minded to' Note 2 dated 14 November 2017:

This officer is deceased. He belonged to the Special Demonstration Squad for an unknown period in 1970 and/or 1971. If he was deployed as an undercover officer, the identity of the group or groups against which he was deployed is unknown, as is any cover name which he may have used. He is survived by his widow. The recent loss of an immediate family member has caused her great distress. I accept the Metropolitan Police Service submission that nothing should be done which risks causing her further distress. Publication of the real name of her late husband would interfere with her right to respect for private and family life under Article 8 of the European Convention. Nothing of benefit

UNDERCOVER POLICING INQUIRY

to the Inquiry could be gained by it. Publication would, accordingly, be unjustified under Article 8(2).

Ruling – HN331 and HN338

11. The reasons for the restriction orders made in these cases are set out in the 'Minded to' notes. Disclosure of the groups infiltrated and of "*sufficient information..... to enable those they may have spied on to make meaningful submissions*" at this stage would not assist them to address those reasons.

15 May 2018

Sir John Mitting
Chairman, Undercover Policing Inquiry