

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

‘Minded to’ note 9 and Ruling 8

1. I am minded to make or refuse to make, and in the case of HN122 do refuse to make, restriction orders under section 19 (3) of the Inquiries Act 2005 in the cases specified in the table below.

Nominal	Position
HN6	Neither the real nor cover name can be published.
HN21	Neither the real nor cover name can be published.
HN28	Neither the real nor cover name can be published.
HN32	No application made.
HN53	Neither the real nor cover name can be published.
HN59	The application for a restriction order in respect of the real name is refused.
HN76	Neither the real nor cover name can be published.
HN86	Neither the real nor cover name can be published.
HN87	Neither the real nor cover name can be published.
HN91	Further information awaited.
HN101	Neither the real or cover name can be published.
HN102	Neither the real or cover name can be published.
HN113	Application for restriction order withdrawn.
HN122	The real name cannot be published. I make a final ruling that the application to restrict the cover name is refused.
HN344	I defer deciding whether to restrict real name but the cover names provided by HN344 will be published.

Reasons

HN6 – Application for restriction over real and cover name. Neither the real nor cover name can be published.

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2. HN6 was deployed against 3 groups in the 1990s. The nature of the deployment gave rise to real risks to the safety of HN6. If the true identity were to be disclosed, HN6 would face a real risk of violence, principally from associates or sympathisers of the groups. There is a real risk that, if the cover name of HN6 were to be published, it would lead to disclosure of the real name. Further, the deployment caused long term mental health problems for HN6, which are susceptible to treatment. In the opinion of Dr Busuttil, who examined HN6 in 2017, disclosure of the real or cover name would be likely to exacerbate his problems and to interfere with treatment for them. Nothing that I know of the circumstances of the deployment or of HN6's conduct of it suggests that it is necessary to run any of these risks. Although Article 3 ('prohibition of torture') of the European Convention on Human Rights ("ECHR") is not engaged, because the risk of violence is contingent not immediate, Article 8 ('right to respect for private and family life') is. Publication of the real or cover name is not necessary to permit the Inquiry to fulfil its terms of reference. It would interfere with the right of HN6 to respect for private and family life – at least, physical integrity and well-being – and would not be justified under Article 8(2).
3. A closed note accompanies these reasons.

HN21 - Application for restriction over real and cover name. Neither the real nor cover name can be published.

4. Since the publication of 'minded to' note 5 on 7 March 2018, HN21 has been examined again by Dr Busuttil, who has produced a further report dated 24 April 2018. In his opinion, which I accept, HN21's health has deteriorated since he was last seen by him in March 2017. He is suffering a mild to moderately severe depressive episode and another long term condition. He is receiving treatment, in the form of mild antidepressant medication which does improve his condition. In the opinion of Dr Busuttil, which again I accept, prolonged uncertainty about the outcome of his application for restriction orders has contributed to and maintained his depression. If his cover name were to be disclosed, Dr Busuttil's opinion is that his psychiatric symptoms are likely to worsen and render the treatment recommended, including an increased dose of antidepressant medication, less likely to succeed. Conversely, if his real and cover names are not disclosed, Dr Busuttil would expect his depression to respond to intervention.
5. The evidence of HN21 about his deployment and service in the SDS and police service after it ended, are of significant interest to the Inquiry. Mr Sanders QC, for HN21, accepts that it will have to be given publicly even if it is given in writing. He

also submits that if it is given in a cypher, so as to alleviate his concerns about disclosure of his identity, it is likely to be of better quality. This submission is founded on the opinion of Dr Busuttil. I accept that it has some force. There is, however, a significant and unavoidable risk that if worthwhile public evidence is to be given by HN21, it will lead to his identification in his cover name by those who knew him when deployed. This is a risk, which will almost certainly have to be run, to permit the Inquiry to get the truth. According to the risk assessor, there is a strong sterile corridor between the real and cover name. Objectively, therefore, the risk of interference in private and family life which might be caused by the intrusive attentions of others is small. The only reason for not publishing the cover name is that stated above. I am minded to make a restriction order in respect of it, but only on the basis that detailed public evidence is provided by HN21 under his cypher, notwithstanding the risk that this may lead to the identification of his cover name.

6. There are no further closed reasons.

HN28 - Application for restriction over real and cover name. Neither the real nor cover name can be published.

7. HN28 was deployed against two groups and reported on others in the last 15 years of the existence of the SDS. If the true identity were to be discovered by members of them or their associates and sympathisers, HN28 would be at real risk of serious violence. Nothing in the nature of the deployment or of what is known about HN28's conduct of it could justify running that risk. Publication of the cover name alone would give rise to some risk of the discovery of the real name of HN28. Articles 2 ('right to life') and 3 ECHR are not engaged, because the risk of violence is contingent not immediate, but Article 8 is. Publication of the real or cover name is not necessary to permit the Inquiry to fulfil its terms of reference. It would interfere with the right of HN28 to respect for an aspect of private and family life – physical integrity – and would not be justified under Article 8 (2).

8. A closed note accompanies these reasons.

HN53 - Application for restriction over real and cover name. Neither the real nor cover name can be published.

9. HN53 was second in operational command of the SDS from 1998 –2005. His evidence is of significant importance to the Inquiry and must be given in public, albeit with protective measures taken, to protect his identity. He was also deployed as an undercover officer in the 1980s, in circumstances which are also of interest to the Inquiry. None of the members of the group against which he was deployed pose any threat to his safety. Nevertheless, if his identity were to be made public, there

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would be significant damage to the public interest and his safety would be put at real risk. Articles 2 and 3 ECHR may not be engaged, because the risk is contingent, not immediate, but Article 8 is. Publication of his real name would interfere with at least one aspect of his right to private life – his physical integrity – and would not be justified under Article 8 (2). The risk created by publication of his cover name, when deployed, is less, but still cannot be run, for the same reasons.

10. A closed note accompanies these reasons.

HN59 - Application for restriction over real name. The application for a restriction order in respect of the real name is refused.

11. HN59, who is a septuagenarian, performed back office duties in the SDS in the late 1980s and early 1990s. It is not contended the performance of those duties has exposed HN59 to any risk to safety; nor, sensibly, could they have done so. HN59 has chronic health problems, but there is no suggestion or evidence that the disclosure of the real name would exacerbate them. HN59 maintains that, if informed that the real name might be published when invited to join the SDS, HN59 would have refused to join. I accept that, if HN59 had realised that there would be public interest in and concern about the SDS, that might have been the case; but I do not accept that HN59 had any cause to be concerned about disclosure of the real name in connection with SDS back office duties, when recruited; and I do not therefore accept HN59's contention.

12. HN59 is understandably concerned about media interest and the possibility of intrusion into private and family life. Given the nature of the duties performed by HN59, these concerns are, I believe, misplaced. It is likely that HN59 will have some evidence to provide to the Inquiry which will assist it to fulfil its terms of reference. It is possible that the evidence which HN59 can provide can be given in the form of a witness statement only. That will depend upon its content.

13. The submissions made to me by and on behalf of HN59 do not establish that the starting point that, in the public interest of openness, no restriction order will be made is displaced by the need to protect HN59 from harm. A short closed note, dealing with a discrete question, accompanies these reasons.

HN76 - Application for restriction over real and cover name. Neither the real nor cover name can be published.

14. HN76 was deployed into one group and interacted with and/or reported on other groups in the last years of existence of the SDS. HN76 is a serving police officer engaged in sensitive duties. It is not in the public interest that anything should be

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made public which would put performance of those duties at risk. Nor is it in the public interest that any evidence should be given publicly about the deployment. In those circumstances, it is also not in the public interest that either the real or cover name of HN76 should be published. The reasons for these conclusions are expressed in a closed note. They cannot be made public.

HN86 - Application for restriction over real and cover name. Neither the real nor cover name can be published.

15. HN86 is in his 60s. He was deployed as an undercover officer in the late 1970s and early 1980s against groups whose principal activities during that time are outside the terms of reference of the Inquiry. With the permission of his managers, his deployment was ended prematurely in the interests of his health. He was the Detective Chief Inspector in operational charge of the SDS for a period during the 1990s. He introduced changes to enhance the welfare of deployed officers. He has important evidence to give about that and other matters to the Inquiry. Responsible journalists either know, or can readily discover, his true identity.
16. HN86 has, for over 20 years, suffered from a illness, which he categorises as beginning with a “nervous breakdown” in the late 1990s. Dr Jagmohan Singh, a consultant psychiatrist, diagnosis the condition as either or both “panic disorder” and “generalised anxiety disorder”. He is currently prescribed medication for this condition. In the opinion of Dr Singh, expressed in his report of 5 April 2018, he will find any direct engagement with the Inquiry “extremely stressful” and disclosure of his real or cover name will destabilise his mental health further.
17. HN86 does not live in the United Kingdom. The application for a restriction order made by the designated lawyers for HN86 is expressly founded on the premise that “it is in the public interest for HN86 to be enabled to participate as fully as possible in providing evidence to the Inquiry...by mitigating personal harm to HN86 that might otherwise prevent engagement”. I infer from this statement that he is willing to provide evidence to the Inquiry, provided that proper steps are taken to protect his health and welfare, including the making of a restriction order in respect of his real and cover name. This is a price worth paying to secure his evidence. Not imposing a restriction on publication of his real or cover name would impair the effectiveness of the Inquiry under section 19 (4)(d) of the Inquiries Act 2005.

HN87 - Application for restriction over real and cover name. Neither the real nor cover name can be published.

18. The reasons for the decision which I am minded to make are set out in a closed note. They cannot be made public.

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HN101 - Application for restriction over real and cover name. Neither the real nor cover name can be published.

19. HN101 was deployed against the Socialist Workers Party in the 1990s. None of the people encountered during the deployment pose any threat to safety. The evidence which HN101 can give about the deployment is of some interest to the Inquiry. HN101 does not live in the United Kingdom, but has declared a willingness to provide evidence in the form of a witness statement. HN101 has, for some years, received counselling for what has been stated by an experienced counsellor and Eye Movement Desensitisation and Reprocessing therapist to be Post Traumatic Stress Disorder. She does not have medical qualifications, but I accept that her opinion deserves respect. Further, because HN101 lives permanently abroad, the Inquiry has no means of compelling him to provide or give evidence. The only means of obtaining worthwhile evidence from HN101 is to make the restriction orders sought and to permit HN101 to provide evidence, by way of a witness statement. Members of the group into which HN101 was deployed will be able to provide evidence about its activities, even if not about HN101 personally.

HN102 - Application for restriction over real and cover name. Neither the real nor cover name can be published.

20. HN102 is in his 50s. He was deployed against anarchist groups in the 1980s. The risk, if any, which they might pose to his safety cannot be assessed, because no risk assessment has been undertaken. After his retirement from the police, on health grounds (unrelated to his deployment), two craniotomies were performed in the late 1990s. The second led to a stroke which has caused permanent right-sided physical disabilities and some mental impairment, including difficulties of recall and concentration. He also suffers from moderate depression. In the opinion of Professor Fox, a consultant psychiatrist, the stress of being required to provide or give evidence would cause his anxiety to increase which would cause a deterioration in his cognition. He questions his reliability as a witness.
21. Participation in the Inquiry, in any form, would interfere with the right of HN102 to respect for his private life. I have considered whether publication of his cover name might prompt others who knew him during his deployment to provide or give evidence about it. In the opinion of Prof Fox, disclosure of his cover identity would cause a deterioration in his cognition and potentially his depression. In Professor Fox's non-expert opinion on this issue, the stress which would result might put him at risk of future strokes. It is not necessary to obtain the opinion of a physician on this issue. It is clear that publication of his cover name would also interfere with the right of HN102 to respect for his private life. It is likely, although not yet certain, that

contemporaneous reporting of intelligence on the groups against which he was deployed exists which might prompt members of them to give evidence about their activities, as reported. The outcome is likely to be imperfect, but that likelihood does not justify the interference in HN102 is right to respect for his private life which would be occasioned by publication of his real or cover name, under Article 8(2) ECHR.

HN122 - Application for restriction over real and cover name. The real name cannot be published. The final ruling is that the application to restrict the cover name is refused.

22. For the reasons set out in the 'minded to' note 5 published on 7 March 2018, I refuse to make a restriction order in respect of the cover name, but remain minded to make one in respect of the real name. A closed note expands upon these reasons and sets out the grounds upon which I do not accept the closed submissions of Mr Sanders that a restriction order should be made in respect of the cover name.

HN344 - Application for restriction over real name. I defer deciding whether to restrict real name but the cover names provided by HN344 will be published.

23. HN344 is in his 70s. He does not live in the United Kingdom. He claims to have been deployed undercover by Special Branch in the late 1960s under the supervision of HN332 and HN294. He has given a detailed account of his deployment and subsequent police activities in a response to a request for information made by the MPS dated 25 May 2017 which, for a reason unknown to me, was not made available to the Inquiry until May 2018. It contains detailed assertions of fact which I know to be wrong. I have identified one in the closed note which accompanies these reasons. Consequently, I doubt the accuracy of his claims about his deployment, including his identification of the cover names under which he says he was deployed. No trace of them has yet been found in contemporaneous documents. For what it is worth, they will be published. I doubt the utility of publishing his real name, but will keep the position under review, should it transpire that there is some purpose in doing so.

23 May 2018

Sir John Mitting
Chairman, Undercover Policing Inquiry