

IN THE UNDERCOVER POLICING INQUIRY

PRELIMINARY SUBMISSIONS ON BEHALF OF EN507 IN SUPPORT OF AN APPLICATION FOR A RESTRICTION ORDER

Introduction

1. These preliminary submissions are made on behalf of EN507. EN507 invites the Chairman to make an Order in respect of his real name and the cover name which he/she has used.
2. This document is prepared noting the letter of the Solicitor to the Inquiry, dated 23 March 2017, which invites “a summary of the application referring to the grounds on which it is expected the restriction order will be sought”.

Evidence in support

3. The application is supported by two personal witness statements; one ‘open’ and one ‘closed’. The latter gives as much detail as to the risk he/she and his/her family face as he/she is able to give at this time. It should be emphasised, however, that EN507 does not have access to up to date intelligence and documentary evidence sufficient to file a detailed risk assessment in respect of the harm he/she believes he/she would face if he/she was not granted anonymity. EN507 understands that this material is currently held by the Metropolitan Police Service, and that disclosure is yet to be made to the Inquiry. Clearly this material will need to be considered - both by the Inquiry and those providing risk assessments – before any final decision not to grant anonymity is made.
4. The closed statement is filed with these submissions on the understanding that neither it nor its contents will be made public.
5. It is recognised that, in the absence of a risk assessment and consideration of the material held by the Metropolitan Police Service the Inquiry may consider that this application should be treated as a preliminary step in the application process.

6. If the Inquiry is not satisfied on the evidence submitted that EN507 should be granted anonymity, then EN507 will rely on the evidence and risk assessment of the National Assessor who will be instructed by the National Police Chief's Council ("NPCC"). EN507 understands that this instruction is yet to be finalised.
7. If the Chairman considers the NPCC assessment to be insufficient for this application, EN507 would also like to assist the Inquiry by providing a further risk assessment by an expert of his/her choosing.
8. Without prejudice to EN507's intention to rely upon this evidence, as and when it is available, it is submitted EN507's own witness statement is sufficient for the Inquiry properly to grant this application.

Legal Framework

9. These submissions are written noting the Chairman's Ruling on the legal approach to be adopted in applications for Restriction Orders ("the Ruling"). The authorities and legislation cited therein are not repeated here.

Submissions

10. EN507 makes his/her application, relying on s19(3)(a) and (b) of the Inquiries Act 2005, as well as the Inquiry's statutory and common law duties of fairness.
11. The central thrust of EN507's submission is that exposure of his/her identity will give rise to a risk of physical harm and harassment to him/her and to his/her family. In addition, it will cause significant interference with their family and private life, due to the stress caused by the fear of harm/harassment, and the impact of any such harm/harassment. As the officer emphasises he/she undertook work that placed him/her at personal risk on the understanding that his/her details would be kept confidential, and that neither he/she nor his/her family would be placed at risk by this information being made public. He would not have undertaken the work had he/she known that his/her details would be made public. He is keen to and will provide the Inquiry with all the assistance he/she can, but would ask that the expectation of confidentiality that he/she was given is respected.

12. An additional adverse consequence of his/her details being made public is that it will provide a further piece of the jigsaw of information concerning undercover officers, tactics, and assets. Disclosure of any of EN507's cover identities would be equally damaging for these same reasons: it would provide a key piece of information which could very well be used to identify EN507, undercover officers deployed in association with EN507, and undercover tactics. [REDACTED]

[REDACTED] Furthermore, EN507's force has the ability to deploy EN507 in covert roles. Should he/ she be publicly identified, this will very clearly put current officers, operations, assets and tactics at risk.

[REDACTED]

Section 19(3)(a) Inquiries Act 2005

15. EN507 notes that the Inquiry will consider Article 2 and Article 3 applications against the threshold test of an 'objectively verified immediate risk of torture, or inhuman or degrading treatment' (Ruling, paragraph 176).

16. Even without a supporting independent risk assessment, EN507's statement contains compelling evidence that his/her career history is objectively likely to give rise to a real and immediate risk of physical harm, in the event of the ability to link his/her work under a pseudonym with his/her real identity.

17. The Inquiry has indicated that it will approach Article 8 applications by reference to (Ruling, paragraph 182):

a. The objective of the interference;

- b. The rational connection between the measures and the objective;
 - c. Whether the measures go no further than necessary in pursuit of the objective; and
 - d. Whether a fair balance has been struck between the rights of the witness and the public interest.
18. It is submitted that Article 8 is clearly engaged in this case, and that the only question is to the extent of the interference. There can be no doubt that a decision to make public EN507's details would have a severe adverse impact on both his/her and his/her family's private life, and in particular would cause them anxiety, fear and potential harm. EN507 has always taken great care to ensure that knowledge of his/her professional activity is exceptionally limited.
19. EN507 further relies on the following factors, not specific to him, which it is submitted further weigh in favour of his/her application being granted:
- a. The proceedings are inquisitorial (see *R v Davis* [2008] 1 AC 1128, the Ruling at paragraph 179).
 - b. An application for anonymity does not, at this stage, confer any obligation on the Inquiry to receive a witness's evidence in the absence of the public.
 - c. The proposed Order will not, it itself, affect the nature or extent of the evidence which EN507 may give. Accordingly, this Order will not affect the ability of the Inquiry to answer questions relevant to the Terms of Reference. In fact, it is submitted as above that this Order will be conducive to the Inquiry fulfilling its Terms of Reference.
 - d. Any Article 10 rights of the media to report on a witness's identity are clearly outweighed by the extent of interference with these Article 8 rights. Specifically, a witness's real name and cover name is of no relevance to the substance of the evidence which they give and which might be reported.
20. For these reasons, it is submitted that there is no necessity for such an interference with EN507's private life, or that of his/her family. In those circumstances, a Restriction Order falls to be made, and there is no need to resolve the question of proportionality and a 'fair balance'. Should the Inquiry consider that some interference with these Article 8 rights is necessary, it is submitted that for all of these reasons the balance lies in favour of making a

Restriction Order, particularly given the evidence which the Inquiry can receive from EN507 with this Order in place.

Section 19(3)(b) Inquiries Act 2005

21. EN507 makes his/her application on the following bases, each of which is in the public interest, as set out in the Ruling at paragraph 69:
 - a. The protection of him, and his/her family, from physical and psychological harm, including intrusion into their private and family lives;
 - b. Respect for his/her reasonable and actual expectation of confidentiality, which is in the interests of fairness, and in the interests of the wider confidence among the work force and future recruits;
 - c. A grant of anonymity may encourage other witnesses to come forward for this Inquiry; and
 - d. Prevention of knowledge of covert policing techniques reaching existing or future targets.
22. As above, EN507 has not 'self-disclosed' or had his/her identity compromised. He has always had a reasonable expectation of confidentiality. Given that this Inquiry was not anticipated when EN507 was given reason to form that expectation, it is submitted that it is highly relevant to the Inquiry's balancing exercise.
23. As a result of the sensitive roles which EN507 has undertaken, and without knowing to what extent he/she will be involved in the Inquiry, it is necessary to protect his/her identity in order to mitigate a risk of harm, as set out above. This is particularly true given that the force may still wish to deploy EN507 in a covert capacity. Disclosure of EN507's identity would make this role untenable.
24. It is submitted that although measures could theoretically be taken by the Protected Persons Unit to protect EN507 in the event of disclosure of his/her identity, such measures could never guarantee his/her safety. Nor could they alleviate the stress and upheaval that implementing the steps would have on his/her and his/her family's private life. Moreover,

the public cost of such measures would be drastically disproportionate to the benefits of not making this Order.

25. EN507 further submits that this Order would be conducive to the Inquiry fulfilling its Terms of Reference because he/she will be able to give detailed evidence without fear for himself and others. It is anticipated that this will improve the quality of the evidence he/she can give to the Inquiry. Furthermore, it is hoped that EN507 will be able to give as much of this evidence as possible in open hearings, should anonymity be granted.

Fairness- Section 17(3) Inquiries Act 2005 and Common Law

26. A Restriction Order for anonymity is necessary further to the statutory and common law duties of fairness.
27. Such an Order will reduce both the objective and subjective risks which EN507 will face should the Order not be made.
28. As cited in the Ruling at paragraph 210, it was made clear in *Re Officer L* [2007] UKHL 36, [2007] 1 WLR 2135 that a witness's subjective fears are relevant to the exercise of the Inquiry's common law duty of fairness. Such fears, whether or not objectively founded, are inextricably linked to the anxiety which EN507 and his/her family will suffer should the Order not be granted, and the effect that this will have on EN507's personal life.

Conclusion

29. It is submitted that in all the circumstances the Order sought falls to be made.

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