

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

OPEN APPLICATION FOR A RESTRICTION ORDER (ANONYMITY)

RE: HN88

SUBMITTED ON BEHALF OF THE MPS

Restriction Order Sought

1. The MPS apply for a restriction order over the real identity of HN88 to last indefinitely in the following terms:
 - (1) No direct or indirect disclosure of HN88's real name (including any description or image capable of identifying HN88) beyond the Chairman and the Inquiry team;
 - (2) 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 basis:

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 and the duty to act in a way that is not incompatible with the right to private and family life under Article 8 ECHR.

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 in respect of Cairo and HN7; the 'minded to' note dated 25 October 2016 in respect of Jaipur and Karachi; and the 'minded to' notes dated 3 August 2017 in respect of former SDS officers.

Evidence in Support

4. This application is supplemented by a closed Risk Assessment and supplementary closed grounds which are not to be disseminated further than the Chairman and the Inquiry team.

Reasons

Section 17

5. Application of the statutory and common law principles of fairness require that the real identity of HN88 is not disclosed. The considerations which apply are highlighted below in relation to s. 19(3)(a) and 19(3)(b).

Section 19(3)(a) and Article 8

6. A restriction order protecting HN88's identity 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. The Convention right in issue is Article 8.
7. Disclosure of HN88's real name would amount to a disproportionate interference with his right to private and family life. In particular, the objective effect of disclosure is set out at §17 of the Risk Assessment.
8. It is reasonable to conclude that HN88 would generate interest, rising to possible harassment arising from the fact of his deployment as a UCO and the nature and sensitivity of that deployment.
9. Detail concerning the risk of disproportionate interference with HN88's private and family life is set out at §17 of the Risk Assessment. The nature of the interference includes potential harassment of HN88's immediate family and friends, and damage to HN88's reputation. See further in the supplementary closed grounds.
10. The level of risk posed by this disproportionate interference with HN88's private and family life is set out in the Risk Assessment at §19.2.

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

11. The Chairman is invited to find that a Restriction Order protecting HN88'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 of real identity

12. The following public interest factors are pertinent:

- (a) HN88 was attached to the SDS in the 1980s and infiltrated groups that no longer exist in their original format. Even if the risks of harm identified above do not demand restriction to avoid a breach of article 8 of the ECHR, they are nevertheless relevant in the public interest balance, and weigh against disclosure of HN88's real name.
- (b) The likely sources and the level of risk of harm to HN88 are set out at §§ 17 and 19 of the Risk Assessment.
- (c) HN88 was given an assurance about his anonymity before commencing his role. HN88 has respected the confidentiality of his work and has relied on his anonymity as a source of protection and security: §3.4 of the Risk Assessment.
- (d) There have been no allegations of misconduct relating to HN88: §§1.4 and 7 of the Risk Assessment.

The public interest in disclosure of real identity

13. The MPS appreciates that the general presumption in favour of openness is a factor which weighs against the making of a Restriction Order in HN88's case. However, the MPS submits that there is no identifiable public interest in disclosure of HN88's real name in circumstances where the real name alone is of no assistance to the Inquiry in fulfilling its Terms of Reference or to Core Participants or witnesses who would not have known HN88 by his real name.

Where the public interest balance lies

14. The MPS has considered the Chairman's Principles Ruling and has had particular regard to the presumption of openness in the Public Inquiry.
15. In all the circumstances, the MPS makes this application for a Restriction Order over HN88's real name on the basis of fairness, and to avoid a risk of disproportionate interference with HN88's right to private and family life. The MPS submits such an application is in the public interest and conducive to the Inquiry's terms of reference.

MPS, Department of Legal Services

18 October 2017