

IN THE MATTER OF THE UNDERCOVER POLICING INQUIRY

**APPLICATION FOR RESTRICTION ORDER (ANONYMITY)
IN RESPECT OF HN53
SUBMITTED BY THE DESIGNATED LAWYERS**

1. The following abbreviations are used herein:

- “DL” the Designated Lawyers Team i.e. Mark Spanton and Anna Peacock within the MPS Directorate of Legal Services acting in their capacities as such;
- “IA” Inquiries Act 2005;
- “SDS” Special Operations Squad / Special Demonstration Squad.

Restriction Order Sought

2. The DL apply for a restriction order over identity of HN53 to last indefinitely in the following terms:
- a. No direct or indirect disclosure of HN53’s identity (including any description or image capable of identifying HN53) beyond the Chairman and Inquiry team.

Legal Basis for the Application

3. This Application is made on the following statutory basis:
- s.19(3)(a) IA read with Article 2 (right to life), Article 3 (prohibition against torture and inhuman or degrading treatment) and Article 8 (duty to act in a way not incompatible with the right to private and family life);
 - Alternatively, s.17(3) IA (duty to act with fairness) and

- s.19(3)(b) IA read together with s.19(4)(b)-(d) IA (conducive to the Inquiry fulfilling its terms of reference or necessary in the public interest having regard to the matters mentioned in (4)).
4. 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 later restriction order rulings and Minded to notes.

Evidence in Support

5. This application is supported by an Impact Statement.
6. At this stage no Risk Assessment has been prepared and the application is based, in the first instance, upon the impact on HN53 as set out in the Closed Schedule and HN53's impact statement as the risks arise principally from HN53's non-SDS career history and present role.
7. The DL reserve the right to serve further evidence, by way of risk based assessment, if the Chairman is minded to grant a Restriction Order narrower in scope than that sought. The DL reserve the right to make further submissions as to the effective operation of any Restriction Order during the course of the Inquiry.

Reasons

Section 19(3)(a) and Articles 2, 3 and 8

8. A restriction order protecting HN53'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 rights in issue are Articles 2, 3 and Article 8.

9. Even absent a conventional Risk Assessment, there is an obvious immediate risk of serious harm to HN53 to engage Articles 2 and 3 if HN53's identity were disclosed in the circumstances set out in the Closed Schedule and Impact Statement.
10. Disclosure of HN53's identity would also amount to a disproportionate interference with their right to private and family life, including economic interests.

Section 19(3)(b) and s.19(4)

11. The Chairman is invited to find that a restriction order protecting HN53's 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 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 identity

12. The following public interest factors are relevant:
 - a. There is a substantial risk of serious, physical harm to HN53 in terms of HN53 being targeted by particular individuals in the event of release of HN53's identity.

- b. The evidential basis for the risk of harm is referred to in the closed schedule;
- c. No allegations of wrongdoing have been made against HN53.

The public interest in disclosure of identity

- 13. The DL appreciates the general presumption in favour of openness is a factor weighing against the making of a restriction order in HN53's case. The Inquiry will, however, be able to fulfil its terms of reference without the publication of HN53's identity.

Where the public interest balance lies

- 14. The DL has considered the Chairman's Principles Ruling and has had particular regard to the presumption of openness in the Public Inquiry. In all the circumstances, the DL make this application for a Restriction Order over HN53's identity to avoid violation of HN53's Convention rights as detailed above. The DL submit that the Restriction Order sought is necessary in the interests of fairness, the public interest and is conducive to the Inquiry's terms of reference.

Section 17

- 15. Application of the statutory and common law principles of fairness require that the identity of HN53 is not disclosed. The considerations which apply are highlighted above in relation to s.19(3)(a), s.19(3)(b) and s.19(4).

THE DESIGNATED LAWYERS (UCPI)

17 November 2017