

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

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**OPEN APPLICATION FOR A RESTRICTION ORDER (ANONYMITY)  
RE: HN340  
SUBMITTED ON BEHALF OF THE MPS**

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**Restriction Order Sought**

1. The MPS apply for a restriction order over the identity of HN340 to last indefinitely in the following terms:  
  
No direct or indirect disclosure of HN340's real name (including any description or image capable of identifying H N 340) 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**

3. The Application is made pursuant to:
  - a. Section 17(3) of the Inquiries Act 2005: the duty to act with fairness in the procedure or conduct of an inquiry; and
  - b. Section 19(3)(b) read together with section 19(4)(b)-(d) of the Inquiries Act 2005: A Restriction Order is 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).
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 restriction order rulings in respect of Cairo and H N 7; the 'minded to' note dated 25 October 2016 in respect of Jaipur and Karachi; and the 'minded to' notes dated 3 August 2017, 23 October 2017 and 14 November 2017 in respect of former SDS officers.

**Evidence in Support**

5. This application is supported by a closed risk assessment and a closed addendum risk assessment. Those documents are not to be disseminated beyond the Chairman and the Inquiry team.

6. The Chairman's attention is drawn, in particular, to sections 4, 14 and 16 of the risk assessment and to the addendum.

## **Reasons**

### *Section 17*

7. Application of the statutory and common law principles of fairness require that the real identity of HN340 is not disclosed. The considerations which apply are highlighted below in relation to s.19(3)(b) and s.19(4).

### *Section 19(3)(b) and section 19(4)*

8. The Chairman is invited to find that a Restriction Order protecting HN340'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.*

### Public interest in non-disclosure of real identity

9. The following public interest factors are pertinent:
- a. The risk of harm: there is a public interest in avoiding harm to HN340. The nature and risk of harm is set out at sections 14 to 16 of the risk assessment;
  - b. The risk of interference with HN340's private and family life, even if this would not constitute an interference within the meaning of Article 8 ECHR;
  - c. HN340 is of advanced age. His fears in relation to disclosure of his real name are set out in the risk assessment at sections 14 and 15 and include anxiety from being named in connection with the Inquiry. It is

reasonable to infer that there would be some interest in HN340 by virtue of his role as a former UCO; and the effect of that interest would be more keenly felt by a person in HN340's circumstances.

The public interest in disclosure of real identity

10. The MPS appreciates that that the public interest in openness is a factor that weighs against the making of a Restriction Order in HN340's case. However, MPS submits that the public interest in disclosure of HN340's real name attracts low weight 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 HN340 by his real name.

Where the public interest balance lies

11. The MPS has considered the Chairman's Principles Ruling and has had particular regard to the presumption of openness in the Inquiry.
12. In all the circumstances, the MPS makes this application for a Restriction Order over HN340's real name on the basis that:
  - a. Disclosure of HN340's real name is not necessary in the fair pursuit or fulfilment of the Inquiry's terms of reference; and
  - b. The Restriction Order sought could avoid or reduce the risk of harm to HN340 in the forms of physical attack, stress and interference with HN340's private and family life.
13. No application is made in respect of HN340's cover name.

**MPS, Department of Legal Services**

**29 November 2017**