

IN THE MATTER OF THE PUBLIC INQUIRY INTO UNDERCOVER POLICING

OPEN APPLICATION FOR A RESTRICTION ORDER (ANONYMITY) RE: HN9 SUBMITTED ON BEHALF OF THE MPS

Restriction Order Sought

1. The MPS apply for a restriction order over the real identity of HN9 to last indefinitely in the following terms:
 - (1) No direct or indirect disclosure of HN9's real name (including any description or image capable of identifying HN9) 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 Article 8 ECHR: the duty to act in a way that is not incompatible with the right to private and family life

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, 23 October 2017 and 14 November 2017 in respect of former SDS officers.

Evidence in Support

4. This application is supplemented by evidence which is not to be disseminated further than the Chairman and the Inquiry team:

- a. supplementary closed grounds;
- b. a closed Risk Assessment.

Reasons

Section 17

- 5. Application of the statutory and common law principles of fairness require that the real identity of HN9 is not disclosed. The considerations which apply are highlighted below in relation to s. 19(3)(a) and ss19(3)(b) and 19(4).

Section 19(3)(a) and Article 8

- 6. A restriction order protecting HN9'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 HN9's real name would amount to a disproportionate interference with his or her right to private and family life. The nature of the interference that disclosure of HN9's real name would occasion is interference with HN9's private life including his/her professional life, and interference with the private lives of HN9's family. The evidence for this is set out at §§5, 14 of the Risk Assessment. Further, it is reasonable to infer that there would be some public interest in HN9 by virtue of his/her status as a former UCO.
- 8. The level of risk posed by this interference with HN9's private and family life is set out in the Risk Assessment at §14.
- 9. The interference would not be justified. The Inquiry can fulfil its Terms of Reference and investigate HN9's deployment without the release of his/her real name, which on its own is of no assistance to CP's or witnesses who would not have known him/her by his/her real name.

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

- 10. The Chairman is invited to find that a Restriction Order protecting HN9'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

11. The following public interest factors are pertinent:

- (a) HN9 was deployed undercover in the 1980s in a group that no longer exists. The likely sources and the level of risk of physical harm to HN9 in the event of disclosure of his/her real identity is set out at §16 of the Risk Assessment. It is in the public interest for HN9's real identity to be restricted on the basis that it would avoid or reduce the risk of causing harm to this officer.
- (b) HN9 understood that s/he would be looked after as regards anonymity and has respected the confidentiality of his/her deployment since that time.

The public interest in disclosure of real identity

12. The MPS appreciates that the public interest in openness is a factor which weighs against the making of a Restriction Order in HN9's case.

Where the public interest balance lies

- 13. The MPS has considered the Chairman's Principles Ruling and has had particular regard to the importance of openness in the Public Inquiry.
- 14. In all the circumstances, the MPS makes this application for a Restriction Order over HN9's real name on the bases of fairness, and to avoid a risk or serious harm/of disproportionate interference with HN9'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

30 November 2017