

IN THE MATTER OF THE UNDERCOVER POLICING INQUIRY

**APPLICATION FOR RESTRICTION ORDER (ANONYMITY)
IN RESPECT OF HN9
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 HN9 to last indefinitely in the following terms:
- a. No direct or indirect disclosure of HN9’s real identity (including any description or image capable of identifying HN9) beyond the Chairman and Inquiry team.
 - b. No direct or indirect disclosure of HN9’s cover identity (including any description or image capable of identifying HN9) beyond the Chairman and Inquiry team.
3. The DL reserve the right to make further submissions as to the effective operation of any Restriction Order during the course of the Inquiry.

Legal Basis for the Application

4. 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);
 - 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));
 - s.17(3) IA (duty to act with fairness).

5. 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

6. This application is supported by a closed Schedule together with a closed Impact Statement (I/S) dated 24 November 2017 and a confidential psychiatric medical report dated 21 August 2017. Reliance is also placed on the closed MPS Risk Assessment dated 6 October 2017. These documents are supplied for the Chairman and Inquiry team only.

Reasons

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

7. 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 rights in issue are Articles 2, 3 and 8.

8. A medical expert has concluded that, should HN9's true or cover identities be disclosed, then HN9 is at very high risk of developing a depressive illness and will

be at very high risk of completed suicide (medical report paragraph 4.13). On the balance of probabilities, completed suicide is likely if true or cover identity is disclosed (paragraph 4.15). Disclosure is therefore incompatible with HN9's rights under Articles 2 and 3. Worsening of HN9's psychiatric condition short of completed suicide is incompatible with his Article 8 rights.

9. For the reasons set out in his Impact Statement, disclosure of HN9's identity would also amount to a disproportionate interference with HN9's right to private and family life, including economic interests. See, in particular, I/S paragraphs 4, 10, 16, 23, 28-30, 32-35, 36-7.

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

10. The Chairman is invited to find that a restriction order protecting HN9'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

11. The following public interest factors are relevant:
 - a. The medical report's conclusion that completed suicide is more likely than not if disclosure of real or cover names is made. This risk of harm

could be avoided or reduced by a Restriction Order being granted. Further details are set out in the closed Schedule.

- b. HN9's subjective fear of harm, both for themselves and their family, whether or not objectively justified, is very high and is likely to have severe consequences (namely completed suicide) in the event that real or cover names are disclosed (see e.g. I/S paragraphs 4 and 35 and medical report 3.12.18, 3.12.21 and 3.13.2 5). This risk of harm could be avoided or reduced by a Restriction Order being granted.
- c. HN9's genuine concerns about being unable to continue to carry out his current work and other activities (e.g. I/S paragraphs 29-33) if identified in connection with the Inquiry/SDS. This risk of harm could be avoided or reduced by a Restriction Order being granted
- d. HN9 has respected the confidentiality of their work and has relied on their anonymity as a source of protection and security (see I/S 10b and 10f).
- e. No allegations of wrongdoing have been made against HN9 (see I/S paragraphs 8 9, 17 and RA 4.12 4.13).

The public interest in disclosure of identity

- 12. It is appreciated that the general presumption in favour of openness is a factor that weighs against the making of a Restriction Order in HN9's case, particularly as this application extends over both real and cover names.
- 13. However, the medical evidence is both supportive of HN9 not having to give evidence at all, and HN9's mental state improving if HN9 were excluded from the Inquiry (medical report paragraph 4.14). The same paragraph supports there being a benefit to HN9's mental health if a Restriction Order over real and cover

identities were granted. Faced with this evidence, any continued participation that the Inquiry seeks from HN9 ought to be given in a cipher, if at all.

14. Further submissions are made in the closed grounds.

Where the public interest balance lies

15. The Chairman's Principles Ruling and, in particular, the presumption of openness in the Public Inquiry have been considered. However, in all the circumstances, this application for a Restriction Order over HN9's identity is appropriate to avoid violation of HN9's Convention rights as detailed above.

Section 17

16. Application of the statutory and common law principles of fairness require that the identity of HN9 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).

Conclusion

17. The Restriction Order sought is necessary in the interests of fairness, the public interest and is conducive to the Inquiry fulfilling its Terms of Reference.

THE DESIGNATED LAWYERS (UCPI)

30 November 2017