

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

**OPEN APPLICATION FOR A RESTRICTION ORDER (ANONYMITY)
RE: HN60
SUBMITTED ON BEHALF OF THE MPS**

Restriction Order Sought

1. The MPS apply for a restriction order over the real and cover identities of HN60 to last indefinitely in the following terms:
 - (1) No direct or indirect disclosure of HN60's real name (including any description or image capable of identifying HN60) beyond the Chairman and the Inquiry team;
 - (2) No direct or indirect disclosure of HN60's cover identity (including any description or image capable of identifying HN60) beyond the Chairman and Inquiry team;
 - (3) 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 and the 'Minded To' notes issued to date in respect of various 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. closed supplementary 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 HN60 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 HN60's real 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 HN60's real name would amount to a disproportionate interference with his/her right to private and family life. The nature of that interference is set out in the Risk Assessment at §14, §16 and in the Impact Statement. Further, it is reasonable to infer that there would be some public interest in HN60 by virtue of HN60's status as a former UCO.
8. The level of risk posed by this interference with HN60's private and family life is set out in the Risk Assessment at §14, §16 and in HN60's Impact Statement.

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

9. The Chairman is invited to find that a Restriction Order protecting HN60'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 and cover identity

- 10. The following public interest factors are pertinent:
 - (a) Disclosure of HN60’s real identity would amount to a disproportionate interference with his/her right to private and family life. The evidential basis for this is the Risk Assessment and the Impact Statement.
 - (b) HN60 was promised lifelong anonymity and has respected the confidentiality of his/her deployment since its conclusion.
 - (c) Restriction of HN60’s cover identity is also in the public interest of avoiding harm to HN60 and to others: see Risk Assessment at §16 and supplementary closed grounds.

The public interest in disclosure of real identity

- 11. The MPS appreciates that the general presumption in favour of openness is a factor which weighs against the making of a Restriction Order in HN60’s case. It is accepted that withholding the cover name of HN60 will limit the extent to which the Inquiry is able to scrutinise HN60’s deployment in the public domain.

Where the public interest balance lies

- 12. The MPS has considered the Chairman’s Principles Ruling and has had particular regard to the presumption of openness in the Public Inquiry.
- 13. In all the circumstances, the MPS makes this application for a Restriction Order over HN60’s real and cover name on the bases of fairness, and to avoid a risk of disproportionate interference with HN60’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

20 December 2017