

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

**OPEN APPLICATION FOR A RESTRICTION ORDER (ANONYMITY)
RE: HN72
SUBMITTED ON BEHALF OF THE MPS**

Restriction Order Sought

1. The MPS apply for a restriction order over the real identity of HN72 to last indefinitely in the following terms:
 - (1) No direct or indirect disclosure of HN72's real name (including any description or image capable of identifying HN72) 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 respect for 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 minded to notes issued since that date.

Evidence in Support

4. This application is supplemented by a closed Risk Assessment and closed supplementary grounds. These are not to be disseminated further than the Chairman and the Inquiry team.

Reasons

Section 17

5. Application of the statutory and common law principles of fairness require that the real identity of HN72 is not disclosed. The considerations which apply are highlighted below in relation to s. 19(3)(a) and 19(3)(b) and s.19(4).

Section 19(3)(a) and Article 8

6. A restriction order protecting HN72'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 Article 8.
7. Disclosure of HN72's real name would amount to an unjustified and/or disproportionate interference with his and his wife's right to private and family life. The nature of that risk is set out at paragraphs 15 and 19 of the closed Risk Assessment. It is reasonable to infer that there would be some public interest in HN72 by virtue of his status as a former UCO.

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

8. The Chairman is also invited to find that a Restriction Order protecting HN72'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

9. It is in the public interest for HN72's real identity to be restricted on the basis that it would avoid or reduce the risk of causing harm to him and/or his wife, namely:
 - (i) Interference with their right to respect for private and family life (see above);

- (ii) Feelings of distress connected with disclosure of HN72's real name (closed Risk Assessment, paragraphs 8 and 19), and
- (iii) Physical harm from an identified individual (closed Risk Assessment, paragraphs 4, 14, 15 and 19).

10. Further, as noted at paragraph 3 of the closed Risk Assessment, HN72 had an expectation of confidentiality in relation to his deployment. As stated in the Legal Principles Ruling, this "*is both a material and weighty consideration.*"

11. It is notable also that HN72 was deployed for a short period in the 1980s (closed Risk Assessment, paragraph 19).

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 HN72's case.
- 13. However, MPS submits that the real name will not assist the Inquiry in fulfilling its Terms of Reference or assist any Core Participants or witnesses previously unaware of his undercover status who would not have known HN72 by his real name.

Where the public interest balance lies

- 14. The MPS has considered the Chairman's Principles Ruling and has had particular regard to the importance of openness in the Inquiry.
- 15. In all the circumstances, the MPS makes this application for a Restriction Order over HN72's real name on the grounds of fairness, and to avoid a risk or serious harm/of unjustified and/or disproportionate interference with HN72'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

26 February 2018