

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

**OPEN APPLICATION FOR A RESTRICTION ORDER (ANONYMITY)
RE: HN90
SUBMITTED ON BEHALF OF THE MPS**

Restriction Order Sought

1. The MPS applies for a restriction order over the real identity of HN90 to last indefinitely in the following terms:

“No direct or indirect disclosure of HN90’s real name (including any description or image capable of identifying HN90) beyond the Chairman and the Inquiry team.”

The Commissioner reserves the right to make further submissions 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 under Article 8 ECHR;
 - 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 since that date.

Evidence in Support

4. This application is supplemented by a closed Risk Assessment which is 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 HN90 is not disclosed. The considerations which apply are highlighted below in relation to: s. 19(3)(a) and/or 19(3)(b) and s.19(4).

Section 19(3)(a) and Article 8

6. A restriction order protecting HN90'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 HN90's real name would amount to an unjustified and/or disproportionate interference with HN90's right to private and family life. In particular, the objective effect of disclosure is set out in the Risk Assessment at §19. It is reasonable to infer that there would be some public interest in HN90 by virtue of HN90 being a former UCO.
8. The level of risk posed by this interference with HN90's private and family life is set out in the Risk Assessment at §19.

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

9. The Chairman is invited to find that a Restriction Order protecting HN90'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

10. The following public interest factors are relevant:

- It is in the public interest for HN90’s identity to be restricted on the basis that it would avoid or reduce the risk of causing harm to HN90 and his/her family, namely interference with his/her/their private lives (as set out above). The evidential basis for this is the Risk Assessment (see e.g. § 19).
- HN90 had an expectation of confidentiality, and believes promises of anonymity were made to him and other SDS UCOs by their managers. See the Risk Assessment, e.g. at § 3.4.

The public interest in disclosure of real identity

11. The MPS appreciates that the public interest in openness is a factor which weighs against the making of a restriction order in HN90’s case. However, the MPS submits that there is no properly identifiable public interest in disclosure of HN90’s real name 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 HN90 by HN90’s real name.

Where the public interest balance lies

12. The MPS has considered the Chairman’s Principles Ruling and has had particular regard to the importance of openness in the Public Inquiry.
13. In all the circumstances, the MPS makes this application for a Restriction Order over HN90’s real identity on the bases of fairness, and to avoid a risk of unjustified and/or disproportionate interference with HN90’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**