

IN THE MATTER OF THE UNDERCOVER POLICING INQUIRY

APPLICATION FOR RESTRICTION ORDER (ANONYMITY) IN RESPECT OF HN112'S COVER NAME (SUPPLEMENTING AN APPLICATION IN RESPECT OF REAL NAME MADE BY THE COMMISSIONER'S LAWYERS)

1. The following abbreviations are used herein:

"A/N" Application notice;

"DL" The Designated Lawyers i.e. Mark Spanton and Anna Peacock within the MPS Directorate of Legal Services acting in their capacities as such;

"I/S" Impact statement;

"RA" Risk Assessment;

"SDS" Special Operations Squad / Special Demonstration Squad.

2. This A/N is submitted further to and should be read together with the following:

- a. A/N restriction over real name made by the Commissioner's Lawyers dated 26.2.18.
- b. Report of Dr McLaren, Consultant Psychiatrist, dated 20.3.17.
- c. I/S dated 26.2.18.
- d. RA dated 5.2.18.

3. This application is for a restriction order granting anonymity to witness HN112 to last indefinitely. The terms sought at this stage are:
 - No direct or indirect disclosure of HN112's cover identity (including any description or image capable of identifying HN112) beyond the Chairman or the Inquiry team;
 - The Designated Lawyer reserves the right to make further submissions as to operation of this Restriction Order during the Course of the Inquiry.


4. This application is made on the following grounds:
 - a. Inquiries Act 2005, s17 (3) (fairness);
 - b. Inquiries Act 2005, s 19 (3) (a) read with the Human Rights Act 1998, s 6 and the ECHR;
 - c. Inquiries Act 2005, s 19 (3) (b) read with s 19 (4)(b) –(c) (fulfilment of the terms of reference and necessary in the public interest)

5. The MPS Commissioner's Lawyer team has made an application in relation to HN112's real name. HN112 supports that application and supplements it with this application.

Section 17

6. With respect to s.17 (3), the application of the statutory and common law principles of fairness require that both the real identity and cover identity of HN112 is not disclosed. The considerations which apply are highlighted below.

Section 19 (3) and the Human Rights Act 1998

7. A Restriction Order protecting both HN112's real and cover identities 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.
8. HN112 relies on the conclusions of the report of Dr McLaren. In relation to restriction of cover name he/she relies on the general conclusion at paragraph 4.10.1 rather than the specific conclusion at paragraph 4.9.1.
 - a. HN112's article 2 and / or article 3 and / or article 8 rights are engaged with reference to the risk outlined at paragraph 4.10.1 and more generally within the report.
 - b. On the basis of the general conclusion at paragraph 4.10.1 the disclosure of HN112's cover identity is likely to increase his/her distress in relation to participation with the Inquiry as explained in the I/S at paragraph 5-6.
9. The release of HN112's cover name would have a disproportionate and unjustified impact on his/her private and family life for the reasons set out below.
10. A deterioration in HN112's mental health will have an impact on his enjoyment of his/her private and family life. ***Sets out issue relating to family member.***


Any deterioration in his/her mental health will have an impact on his/her capacity to do this [I/S paragraph 8].

Sections 19 (3) (b) and 19 (4)

11. The Chairman is invited to find that a Restriction Order protecting HN112's real and cover identity is conducive to the Inquiry fulfilling its Terms of Reference or is necessary in the public interest having regard to the factors set out in 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 cover name

12. The following points are pertinent to the assessment of the public interest:

- a. HN112 was not deployed undercover and therefore publication of his/her cover name will serve no purpose in relation to the terms of reference of the Inquiry or be of any instrumental value.
- b. Disclosure that risks causing psychiatric harm and / or increases an identified risk of suicide is not in the public interest.
- c. Non-disclosure will enable him/her to engage as fully as is reasonably possible in assisting the Inquiry in relation to its terms of reference [I/S paragraph 7].

The public interest in disclosure:

13. The general presumption in favour of openness weighs against the making of a restriction order and the rationale for that presumption needs to be borne in mind. However, as HN112 was never deployed publication of his/her cover name will not serve any identified purpose in furtherance of the public interest.

Where does the public interest balance lie?

14. The release of HN112's cover name will not assist the Inquiry in fulfilling its Terms of Reference but will undermine the public interest in maintaining his/her anonymity.

THE DESIGNATED LAWYERS (UCPI)

27th February 2018