

IN THE MATTER OF THE INQUIRIES ACT 2005
AND IN THE MATTER OF THE INQUIRY RULES 2006

THE UNDERCOVER POLICING INQUIRY

REVISED OPEN APPLICATION ON BEHALF OF EN1
FOR RESTRICTION ORDERS

Background

1. The history of EN1's deployment is set out at ¶ 13 to ¶ 21 of most recent risk assessment. EN1 infiltrated a number of extreme left wing groups and investigated the activities of ██████████ an animal rights extremist with a history of violence including the use of explosives.
 2. An initial application for restriction orders over both cover and real name was filed with the Inquiry on 11 March 2016. This application was revised on 25 July 2016 following the publication of the Principles Ruling, so that a restriction order was sought for EN1's real name. *
 3. This application has now been revised again to take into account the most recent risk assessment, which was produced on 5 March 2018.
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Application

4. EN1 applies for restriction orders to prevent disclosure of his real name, which is not in the public domain. This application is made on the basis that disclosure of EN1's real name would create a real risk of harm to him and to his wife and have a serious and

detrimental impact on EN1's physical and mental health. This harm outweighs the public interest in disclosing his real name.

Intimate relationships

5. An allegation has been made on the Powerbase website that EN1 engaged in sexual relationships with two women during his deployment. It is understood that neither of the women has ever made a complaint against EN1 or provided a statement in support of the allegation made against him, despite the matter being the subject of civil proceedings.
6. EN1 denies having an intimate relationship with either "Sarah" or "Deborah" during his deployment. EN1 has been interviewed twice under criminal caution by Operation Herne about the allegations, *in* [REDACTED] 2014 and [REDACTED] 2015. In those interviews, where he was legally represented, questions were put to him on the basis of allegations made in a statement of claim filed in civil proceedings to which he was not a party. He denied the allegations, and thereafter declined to answer further questions on advice, as was his right.
7. It is not known whether "Sarah" and "Deborah" maintain the allegations. The nature and truth of their claims are matters which will be explored in evidence before the Inquiry and which cannot be pre-determined by the Chair at this stage of the proceedings.

The public interest in disclosure

8. The public interest in disclosure of EN1's real name is minimal. The cover name and a photograph of the officer have been in the public domain since 2011 and any potential witnesses who knew EN1 during *his* deployment have had ample opportunity to come forward. Releasing the officer's real name will not assist the Inquiry to fulfil its terms of reference; nor is it in the public interest so to do.
9. In his closed reasons determining N26's application for restriction orders, the Chairman acknowledged the principle that it should not engage in unnecessary disclosure and that

real names should only be released where doing so serves a purpose in the public interest. The Chairman declined to release N26's real name on the basis that *"as a State institution, the Inquiry should not take any step unnecessary to the fulfilment of its terms of reference which removes the possibility that the interference which will result from its publication can be avoided, however small that possibility may be"* (at ¶ 7). It is submitted that this principle applies equally to EN1's application and that the Inquiry should not reveal his real name in the absence of a compelling public interest.

The sterile corridor

10. EN1 applies for restriction orders to prevent disclosure of his real name, which is not in the public domain. It is apparent from the risk assessment (at ¶ 59) that EN1's cover name and some information as to the fact and circumstances of EN1's deployment is in the public domain, but EN1 has neither self-disclosed, nor been officially confirmed as being an undercover police officer.

11. At present, the sterile corridor between EN1's real name and cover name remains intact.

[REDACTED]

12. [REDACTED]

13. [REDACTED]

[REDACTED]

14. [REDACTED]

[REDACTED] This is confirmed by the fact that his cover name has been in the public domain since 2011, but his real identity has not been discovered or disclosed. The Inquiry should protect this status quo in the absence of a compelling public interest in disclosure.

Harm to EN1's spouse

15. The risk of harm to EN1's Article 3 and Article 8 rights arising from disclosure of his real name was set out in the initial application. Those submissions are maintained, but are not repeated here. They are supported by the most recent risk assessment, which states (at page 5), *"It is the opinion of the NPCC Assessor that [EN1] is at risk of physical harm should his true identity be revealed. The nature of the protest movement is such that [EN1] is also assessed as being at risk of harm to his private life."* The risk of violent retribution is assessed as "MEDIUM" and the threat to the officer's private life as "HIGH" (at ¶ 33).

16. It is not only EN1 who would suffer harm if his real name were disclosed, but also his wife. [REDACTED]

17. [REDACTED]

18. If EN1's real name were confirmed by the Inquiry, there would likely be media scrutiny of his location and current situation. As there are allegations that EN1 engaged in intimate relationships during his deployment, the media interest is very likely to extend to his wife. The two may be filmed or photographed together or separately and his wife may be approached by the media.

19. [REDACTED]

[REDACTED]

20. [REDACTED]

21. [REDACTED]

Harm to EN1's health

22. [REDACTED], disclosure of EN1's real name would have a very serious impact upon EN1's health.
23. The initial application on behalf of EN1 referred to the likely impact upon his mental health. The Inquiry has been provided with a copy of the psychiatric report written by Dr McLaren, who found that EN1 suffers from an adjustment disorder. The doctor concluded (at ¶ 4.11.1):

"On balance of probabilities, if EN1's real identity is disclosed, then the Adjustment disorder will probably significantly deteriorate. This will put him at increased risk of developing a depressive episode or clinical anxiety disorder. While psychological treatment at that point may ameliorate the deterioration and reduce the risk of him developing Harmful alcohol use and a depressive episode, if EN1 is left with chronic feelings of threat and insecurity as a result of his real identity being disclosed, then the Adjustment disorder will probably persist."

24. In contrast, the doctor stated, *"if EN1's real identity is not disclosed, then the Adjustment disorder would probably respond to treatment"* (at ¶ 4.10). Disclosure of EN1's real identity could therefore mean the difference between recovery and deterioration.
25. Since the submission of the revised application in July 2016, EN1 has suffered serious ill-health. In [REDACTED] 2018 EN1 suffered a heart attack which required surgical intervention. EN1 is now required to comply with a strict treatment regime and has been instructed to avoid stress, which significantly increases the risk of a second cardiac event.
26. There are few scenarios more stressful than the public revelation of an undercover officer's real identity to those they infiltrated and to the media. Disclosure would cause

EN1 to fear for his safety and that of his spouse due to the risk of reprisals and Article 8 interference set out above.

27. This is a situation where the officer's subjective fears, referred to in the initial application, become critically relevant. The more EN1 fears discovery, fears reprisals and fears harassment, the more likely it is that publication of his real name would cause medical problems, up to and including a second heart attack.

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21 March 2018

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*foot note to paragraph 2 - The application dated 31 October 2016 was a further updated version of the application referred to as having been revised on 25 July 2016