

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

**OPEN APPLICATION FOR A RESTRICTION ORDER (ANONYMITY)
RE: HN8
SUBMITTED ON BEHALF OF THE MPS**

Restriction Order Sought

1. The MPS apply for a restriction order over the real and cover identities of HN8 to last indefinitely in the following terms:
 - (1) No direct or indirect disclosure of HN8's real name (including any description or image capable of identifying HN8) beyond the Chairman and the Inquiry team;
 - (2) No direct or indirect disclosure of HN8's cover identity (including any description or image capable of identifying HN8) 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:
 - a. s.17(3) of the Inquiries Act 2005: the duty to act with fairness in the procedure or conduct of an inquiry;
 - b. s.19(3)(a) of the Inquiries Act 2005 and Article 8 ECHR, namely the duty to act in a way that is not incompatible with the right to private and family life; and
 - c. 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 in respect of Cairo and HN7, the 'minded to' note dated 25 October 2016 in respect of Jaipur and Karachi; the minded to notes on various SDS/SOS 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. supplementary closed 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 HN8 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 HN8'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 HN8's real name would amount to an unjustified and/or disproportionate interference with his/her right to private and family life including a serious risk to HN8's physical integrity. The evidential basis for this is as set out in the Risk Assessment (at §§8, 13, 14, 15, 18 and 19).
8. There is a real basis to conclude that disclosure of HN8's cover identity would lead to discovery of his/her real name. Disclosure of his/her cover identity would therefore result in the interference with his/her Article 8 rights as set out above.
9. Even in the event that the Chairman is not persuaded that the link between real and cover names would definitely be made, the risk of harm in the event that the link were made is so high that it is a risk that should not be taken.

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

10. The Chairman is invited to find that a Restriction Order protecting HN8's real and cover identities 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

11. The following public interest factors are pertinent:
 - a. It is in the public interest for HN8’s real name to be restricted on the basis that it would avoid or reduce the risk of causing harm to this officer, and/or his/her family, namely physical harm and/or interference with their private and family lives. The evidential basis for this is the Risk Assessment;
 - b. The same public interest demands the restriction of HN8’s cover identity as there is a real risk that knowledge of the cover identity would lead to discovery of his/her real identity;
 - c. HN8 has respected the confidentiality of his/her work and has relied on his/her anonymity as a source of protection and security.

The public interest in disclosure of real and cover identities

12. The MPS appreciates that the public interest in openness is a factor which weighs against the making of a Restriction Order in HN8’s case, particularly as this application extends over both the real and cover identities. However, for the reasons set out in the Risk Assessment and in the supplementary closed grounds there is no lesser measure which could meet the identified harm.

Where the public interest balance lies

13. The MPS has considered the Chairman’s Principles Ruling and has had particular regard to the importance of openness in the Public Inquiry.
14. In all the circumstances, the MPS makes this application for a Restriction Order over HN8’s real and cover identities on the bases of fairness, and to avoid a risk of unjustified and/or disproportionate interference with HN8’s right to private and family life under Article 8 and that of his/her family. The MPS submits that such an application is in the public interest and conducive to the Inquiry’s terms of reference.

MPS, Department of Legal Services

23 March 2018