

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

---

**OPEN APPLICATION FOR A RESTRICTION ORDER (ANONYMITY)  
RE: HN20  
SUBMITTED BY THE DESIGNATED LAWYERS**

---

**Restriction Order Sought**

1. HN20 applies for a restriction order over his real identity to last indefinitely in the following terms:
  - (1) No direct or indirect disclosure of HN20's real name (including any description or image capable of identifying HN20) beyond the Chairman and the Inquiry team;Reserving 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. 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 rulings and minded-to notes issued by the Chairman thus far.

**Evidence in Support**

4. This application is supplemented by a closed Risk Assessment and a closed Impact Statement. These documents 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 HN20 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 Articles 2, 3 and 8*

6. A restriction order protecting HN20'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 rights in issue are Articles 2, 3 and 8.
7. It is reasonable to infer that there would be some public interest in HN20. Disclosure of HN20's real name would amount to an unjustified and/or disproportionate interference with his/her right to private and family life. In particular, the objective effect of disclosure is set out at §2 and 19.6 of the Risk Assessment, and further supported by HN20's Impact Statement. The level of risk posed by this interference with HN20's private and family life is set out in the Risk Assessment at §19.6. The interference would not be justified or proportionate.

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

8. The Chairman is invited to find that a Restriction Order protecting HN20'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. The following public interest factors are pertinent:

- (a) It is in the public interest for HN20's real identity to be restricted on the basis that it would avoid or reduce the risk of causing harm to this officer, or their family, namely interference with their private and family lives and (as set out in the Impact Statement) circumstances where Articles 2 and/or 3 would be engaged. The evidential basis for this is the Risk Assessment and Impact Statement.

The public interest in disclosure

10. It is appreciated that the strong public interest in favour of openness is a factor weighing against the making of a restriction order in HN20's case. However, release of HN20's cover name is sufficient to allow for participation by the public whereas release of the real identity of HN20 would be a disproportionate interference with HN20's Convention rights.

Where the public interest balance lies

11. In all the circumstances, HN20 makes this application for a Restriction Order over his real name on the bases of fairness, and to avoid a risk of a disproportionate interference with HN20's convention rights. It is submitted that such an application is in the public interest and conducive to the Inquiry's terms of reference.

**DESIGNATED LAWYERS**

**8 April 2018**