

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

**OPEN APPLICATION FOR A RESTRICTION ORDER (ANONYMITY)
RE: HN91
SUBMITTED ON BEHALF OF THE MPS**

Restriction Order Sought

1. The MPS applies for a restriction order over the real and cover identities of HN91 to last indefinitely, and in the following terms:
 - (1) No direct or indirect disclosure of HN91's real name (including any description or image capable of identifying HN91) beyond the Chairman and the Inquiry team;
 - (2) No direct or indirect disclosure of HN91's cover name (including any description or image capable of identifying HN91) beyond the Chairman and the 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 bases:
 - 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 a Convention right, namely the right to respect for private and family life (Article 8).
 - 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 'minded to' notes made since that date.

Evidence in Support

4. This application is supplemented by two documents that are not to be circulated beyond than the Chairman and Inquiry team, namely (1) a closed schedule; and (2) a closed Risk Assessment.

Reasons

Section 17

5. Application of the statutory and common law principles of fairness require that neither the real nor cover identities of HN91 are disclosed. The considerations which apply are highlighted below in relation to s.19(3)(a), s.19(3)(b) and s.19(4).

Section 19(3)(a) and Article 8 ECHR

6. A restriction order protecting HN91'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 HN91's real name would amount to an unjustified and/or disproportionate interference with his/her right to private and family life. In particular, the risk of physical harm is identified in the Risk Assessment §§15 and 19. Section 15 of the Risk Assessment also shows that publication of even HN91's cover name would affect his/her personal and professional life in a manner the MPS submits would be disproportionate.
8. There is a real basis to conclude that disclosure of HN91's cover identity would lead to discovery of his/her real identity (see Risk Assessment at §19.3 and the closed schedule). Disclosure of HN91's cover identity would therefore result in an interference with his/her Article 8 rights.

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

9. The Chairman is invited to find that a Restriction Order protecting HN91's real and cover 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

10. It is in the public interest for HN91’s real identity to be restricted on the basis that it would avoid or reduce the risk of causing harm to this officer, or his/her family, namely physical harm and interference with their private and family lives.
11. The following public interest factors are pertinent:
 - (a) HN91 is a former UCO. The likely sources and the level of risk of physical harm to HN91 are set out at §§15 and 19 of the Risk Assessment.
 - (b) HN91 had an expectation of confidentiality upon becoming a UCO and understood that his/her UCO role was governed by a mutual obligation as to its confidentiality: §3.4 of the Risk Assessment.
 - (c) The points set out above in relation to Article 8 are equally applicable as public interest factors in favour of non-disclosure.
 - (d) Anonymity would avoid or reduce a risk of psychological harm to HN91: see §8.11 of the Risk Assessment.
 - (e) The same public interest demands the restriction of HN91’s cover identity given the real risk that knowledge of the cover identity would lead to his/her real identity being discovered thereby triggering the identified harms.
 - (f) There is no evidence that HN91 engaged in any wrongdoing;
 - (g) Further public interest issues are highlighted in the closed schedule.

The public interest in disclosure

12. The MPS appreciates that openness is a factor weighing against the making of a restriction order in HN91’s case, particularly as this application extends over both the real and cover identities. However, the MPS submits that no other measure is sufficient to provide the necessary protection from the identified harms.

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 HN91's real and cover names on the bases of fairness, and to avoid a risk of harm to HN91 and his/her family and unjustified and/or disproportionate interference with HN91's right to respect for his/her private and family life. 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 April 2018