

IN THE MATTER OF THE UNDERCOVER POLICING INQUIRY

OPEN APPLICATION FOR RESTRICTION ORDER (ANONYMITY) IN RESPECT OF HN101's REAL AND COVER NAME SUBMITTED BY THE DESIGNATED LAWYERS

1. The DL apply for a restriction order in respect of HN101's real name and cover name and this should be read with the following (which are not to be disseminated further):
 - a) CLOSED Schedule dated 26 April 2018;
 - b) CLOSED R/A dated 10 April 2018;
 - c) CLOSED I/S dated 25 April 2018;
 - d) Letter dated 29 May 2017 from HN101's treating therapist; and
 - e) Letter dated 12 November 2017 from HN101's treating therapist.

2. The CL is not making an application for cover name anonymity but do seek to restrict HN101's real name as it would be a disproportionate interference in his/her right to a private and family life and is in the public interest.

3. As well as supporting the CL application to restrict real name, HN101 further applies to restrict cover name, pursuant to:
 - a) Inquiries Act 2005, s.17(3) (fairness);

 - b) Inquiries Act 2005, s.19(3)(a) read with the Human Rights Act 1998, s.6 and the ECHR, Articles 3 (inhuman or degrading treatment), 8 (right to respect for private and family life); and

 - c) Inquiries Act 2005, s.19(3)(b) read with s.19(4) (fulfilment of terms of reference and necessary in public interest having regard to risk of harm or damage and conditions of confidentiality).

Section 17

4. Application of the statutory and common law principles of fairness require that both the real and cover identity of HN101 is not disclosed. The considerations which apply are highlighted below in relation to s.19(3)(a) and/or s.19(3)(b).

Section 19(3)(a) and Articles 3 and 8

Medical basis for restriction

5. It is submitted that there is a real risk of harm to HN101 if his/her real and cover name are released in terms of his/her own mental health. The evidence of his/her treating therapist of thirteen years, is that s/he suffers from PTSD “*resulting from her/his work in Special Branch as an undercover officer*”. [Letter 29 May 2017 p.1]. Further, that “*as long as [HN101] is kept out of the public eye ... the prognosis for his/her well-being is good. If not, I would not be surprised if s/he would have to be medicated and/or possibility hospitalised.*” [Letter 29 May 2017 p.3]. In light of that conclusion it is submitted that the potential harm to HN101 is too great to release the cover name. Further factors/submissions are set out in the accompanying Closed Schedule.

Subjective factors

6. Furthermore, the fact that the release of HN101's cover and real name would be contrary to HN101's reasonable expectations of confidentiality and privacy and HN101's subjective concerns about the possible consequences of this are both relevant to an assessment of the reasonableness and fairness of release, its capacity to serve a recognisable public interest and its proportionality for the purposes of Article 8¹. HN101 has held this expectation for a significant period of time [I/S para 14].

Section 19(3)(b) and s.19(4)

Fulfilment of Terms of Reference

7. It is submitted that HN101's deployment is unremarkable. HN101 did not have any sexual relationships whilst deployed nor did s/he commit misconduct. [I/S

¹ Please see Skeleton Arguments of Oliver Sanders QC dated 6 November 2017 and 17 July 2017 in respect of HN321, HN330, HN333 and HN343.

para 8,9]. The Inquiry is also to hear evidence on deployments into the same group by other UCOs.

Vulnerability of the so-called sterile corridor

8. Whilst the R/A considers that there is a strong sterile corridor between real and cover identities, it is submitted that there are significant factors which undermine the same in practice. See further the Closed Schedule.
9. The consequences of any such breach is set out in the Closed Schedule.

Conclusion

10. Whether considering fairness (s. 17(3) Inquiries Act 2005), HN101's human rights (s.19(3) Inquiries Act/s.6 HRA 1998) or fulfilment of the terms of Reference/Public Interest (s19(3)(b) Inquiries Act), it is submitted that the proper approach is to restrict both real and cover name to avoid the risk of harm to HN101, specifically to HN101's mental health.
11. Accordingly, the Inquiry is invited to restrict HN101's real and cover names.

THE DESIGNATED LAWYERS (UCPI)

26 April 2018

