

## **IN THE UNDERCOVER POLICING INQUIRY**

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### **OPEN APPLICATION FOR RESTRICTION ORDERS (ANONYMITY) IN RESPECT OF OFFICERS EN39 AND EN74 SERVED ON BEHALF OF THE NATIONAL CRIME AGENCY**

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#### **Restriction Orders sought**

1. The National Crime Agency ('NCA') applies for restriction orders over the real and cover identities of EN39 and EN74 to last indefinitely. In the case of each officer, an order is sought in the following terms:
  - 1.1.No direct or indirect disclosure of the real names of [EN39/EN74] (including any description or image capable of identifying the officer) beyond the Chairman and the Inquiry team;
  - 1.2.No direct or indirect disclosure of the cover names of [EN39/EN74] (including any description or image capable of identifying the officer) beyond the Chairman and the Inquiry team;
  - 1.3.The NCA may make further submissions as to the effective operation of this Restriction Order during the course of the Inquiry.

#### **Statutory basis for the applications and legal principles to be applied**

2. The applications are made on the basis of:
  - 2.1.Section 17(3) of the Inquiries Act 2005 ('the Act') - the duty to act with fairness in the procedure or conduct of an inquiry;
  - 2.2.Section 19(3)(1) of the Act – the duty to act in a way that is not incompatible with a Convention right, including Articles 2, 3 and 8; and
  - 2.3.Section 19(3)(b) of the Act, read with section 19(4)(b)-(d) of the Act – the orders sought are conducive to the Inquiry fulfilling its terms of reference and/or necessary in the public interest, having regard in particular to the considerations set out in subsection (4).

3. The applicable legal principles are fully set out in the Chairman's *Restriction Order: Legal Principles and Approach Ruling* dated 3 May 2016.

### **Evidence in support**

4. In the application made on behalf of EN39:
  - 4.1. The Inquiry has been provided with detailed personal statements made by EN39 both dated 22 May 2017.
  - 4.2. The Inquiry indicated that it would proceed to determine the application without a risk assessment.
5. In the application made on behalf of EN74:
  - 5.1. The Inquiry has been provided with detailed personal statements made by EN74 both dated 2 June 2017.
  - 5.2. A risk assessment has been served dated 11 April 2018.

### **Submissions: EN39**

6. The following core submissions are made in support of the anonymity application.
  - 6.1. Disclosing EN39's NPOIU cover name would create a real risk that non-NPOIU cover names would also be exposed. This would place EN39 at a risk of physical harm, including from an individual suspected of murder.
  - 6.2. Articles 2, 3 and 8 ECHR are engaged.
  - 6.3. Disclosure of EN39's NPOIU cover name (and, *a fortiori*, EN39's non-NPOIU cover names) would reveal sensitive police tactics contrary to the public interest.
  - 6.4. EN39 has always been assured of confidentiality in connection with undercover work. EN39 has honoured that confidentiality.
  - 6.5. In all the circumstances, and in particular in light of the risk of physical harm to EN39, it is submitted that the balance of the public interest lies in favour of making an anonymity order in the terms sought.
7. The NCA will expand upon these submissions, in OPEN or CLOSED, if that becomes necessary in due course.

**Submissions: EN74**

8. The following core submissions are made in support of the anonymity application.

8.1. *Gist: The cover names used by EN74 during NPOIU and non-NPOIU deployments could be linked.*

8.2. The risk assessment that has been prepared in EN74's case assesses the overall

risk of disclosure of either the true identity of EN74 or the cover name leading to a threat of harm or harm as "High":

*"It is my conclusion as the risk assessor, that the revelation of the real name or cover name of EN74, would result in a high level of threat of harm. There would also be a high threat of psychological stress being felt by EN74 for fear of being traced and harmed."*

8.3. Articles 2, 3 and 8 ECHR are engaged.

8.4. EN74 has always been assured of confidentiality in connection with undercover work. EN74 has honoured that confidentiality.

8.5. In all the circumstances, and in particular in light of the risk of physical harm to EN74, it is submitted that the balance of the public interest lies in favour of making an anonymity order in the terms sought.

9. The NCA will expand upon these submissions, in OPEN or CLOSED, if that becomes necessary in due course.

Dated this 21<sup>th</sup> day of May 2018

ANDREW O'CONNOR QC

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