

UNDERCOVER POLICING INQUIRY

In the matter of section 19 (3) of the Inquiries Act 2005

Applications for restriction orders in respect of the real and cover names of officers of the Special Operations Squad and the Special Demonstration Squad

Ruling 11

1. I make the following rulings in respect of the officers identified below.

Nominal	Position
HN1	The real name cannot be published.
HN3	The real name cannot be published. (I have already refused to make a restriction order in respect of the cover name.)
HN6	Neither the real nor cover name can be published.
HN8	Neither the real nor cover name can be published.
HN9	Neither the real nor cover name can be published.
HN12	The real name cannot be published.
HN19	The real name cannot be published.
HN20	The real name cannot be published.
HN21	Neither the real nor cover name can be published.
HN27	Neither the real nor cover name can be published.
HN28	Neither the real nor cover name can be published.
HN44	The real name cannot be published.
HN53	Neither the real nor cover name can be published.
HN60	The real name cannot be published. (I have already refused to make a restriction order in respect of the cover name.)
HN65	The real name cannot be published. I refuse to make a restriction order in respect of the cover name.
HN67	The real name cannot be published.
HN72	Neither the real nor cover name can be published.
HN76	Neither the real nor cover name can be published.
HN80	The real name cannot be published. I refuse to make a restriction order in respect of the cover name.
HN86/HN1361	Neither the real nor cover name can be published.
HN87	Neither the real nor cover name can be published.
HN88	The real name cannot be published. I refuse to make a restriction order in respect of the cover name.
HN90	The real name cannot be published. I refuse to make a restriction order in respect of the cover name.

UNDERCOVER POLICING INQUIRY

Nominal	Position
HN91	Neither the real nor cover name can be published.
HN97	Neither the real nor cover name can be published.
HN101	Neither the real nor cover name can be published.
HN102	Neither the real nor cover name can be published.
HN106	The real name cannot be published.
HN112	Neither the real nor cover name can be published.
HN155	The real name cannot be published.
HN303	The real name cannot be published.
HN340	The real name cannot be published.
HN351	The real name cannot be published.
HN353	The real name cannot be published.
HN354	The real name cannot be published.
HN355	Neither the real nor cover name can be published.

Reasons

2. In the case of the following officers, no submissions (HN12, HN20, HN44, HN65, HN90, HN155, HN340, HN351, HN353) or no substantive submissions (HN19, HN28, HN60, HN67, HN72, HN80, HN106, HN303, HN354, HN355) relevant to the decisions which I was minded to make in their cases are advanced in the non-police non-state core participants' note of 20 July 2018. There were submissions seeking further disclosure of information about the applications but in accordance with the procedure adopted to date, it would defeat the purpose of the application and breach of Rule 12 Inquiry Rules 2006 to publish any further identifying information.
3. In each case, I have learnt nothing since publication of the relevant 'Minded to' note which might affect the decision that I was minded to make. The reason for the decisions which I now make in their cases are those set out in the open 'Minded to' notes published in their cases and, where appropriate, in the closed notes which accompanied them.

HN1

4. When I made the statements in paragraph 7 of my opening remarks of 20 November 2017, I had not envisaged the circumstances which apply in this officer's case. The compelling reason for disclosure to Denise Fuller of the real name of HN1 is outweighed by an even more compelling reason of public interest which cannot be stated openly. It is indicated in the closed note which accompanies these reasons. I

UNDERCOVER POLICING INQUIRY

had hoped that this issue could have been dealt with in a way which was more respectful of, and sensitive to, the feelings of Ms Fuller at a later stage of the Inquiry. The submissions made, however, require me to deal with it unequivocally, now.

HN3

5. It is submitted that my observation that the deployments of HN3 were unremarkable is “already demonstrably false”. I am prepared to, and do, qualify that observation so that it reads “apparently unremarkable”. The allegation that HN3 was “involved in the events surrounding the detention by police of coaches travelling to RAF Fairford in March 2003” is, on the information available to me, disputed. It is one of the issues which may have to be explored in the substantive phase of the Inquiry. If it were then to be established that he did play a part in the events which gave rise to two legal challenges of constitutional significance, and the part which he played was itself significant then the position may have to be reviewed. I have no present reason to believe that it will have to be.
6. The other reasons for this ruling are set out in paragraphs 1 and 2 of ‘Minded to’ note 6 and ruling 4 and in the accompanying closed note.

HN6

7. Paragraphs 22 to 26 of that note (concerning HN9) are repeated in the case of HN6. I will deal with it here. It is submitted that I must be alert to the risk of deception on the part of officers claiming to suffer from long-term psychiatric health problems. I am, but, in the absence of reason to believe the contrary, am entitled to rely on the expertise and opinion of an experienced and respected consultant psychiatrist, such as Dr Busuttill. It is suggested that I should seek a second opinion, though, correctly, accepted that I cannot compel this or any other officer to attend a medical examination. I accept that if I had reason to doubt Dr Busuttill’s opinion, I could either request him to explain his opinion further or indicate that I did not accept it. I have taken one or other of these steps in other cases (although I have never had occasion to reject Dr Busuttill’s opinion outright). Neither situation applies in the case of HN6.
8. It is submitted that the Inquiry “has not taken any steps to obtain evidence from those who were the victims of undercover police as to the impact on them of the continued denial of information about what was done to them”, nor taken into account “evidence...provided...on this issue when assessing the necessity and proportionality of a restriction order.” The first proposition contradicts the consistent position of the non-police, non-state core participants. One of the Inquiry’s most important tasks is to

UNDERCOVER POLICING INQUIRY

investigate and assess the impact on individuals affected by improper conduct by undercover officers. It will do this by attempting to obtain witness statements and other information from them when investigating the deployments and conduct of the relevant undercover officer. The Inquiry has set out how it proposes to do this: to present a package of documents to the undercover officer, to obtain a witness statement from him or her and then to present the parts of that statement and those documents to the recognised legal representatives of those affected, necessary to permit them to provide information and evidence. They have throughout indicated through their recognised legal representatives that they do not wish to provide evidence about the impact of the conduct upon them before that stage is reached.

9. I do not understand the second sentence of paragraph 26. It is unfortunate, but a fact, that the withdrawal of non-state core participants and their legal advisers from open anonymity hearings has deprived them of the opportunity to explain what they mean to me. All that I can say is that I have borne in mind, in each case in which I have made a restriction order decision, necessity, proportionality and the public interest.
10. In addition to those reasons, the reasons for this ruling are those set out in paragraph 2 of 'Minded to' note 9 and the accompanying closed note.

HN8

11. Two submissions are made: my assessment of risk did not adequately distinguish between real and cover name; because the risk assessor was of the view that HN8 would be of interest to the media, so there is a particular public interest in openness in relation to this officer.
12. The first submission is understandable, given the terms of the redacted open risk assessment. I have not fallen into the error claimed. I remain of the view that publication of the cover name would give rise to a real risk of interference in the two aspects of the private life of HN8 identified in paragraph 1 of 'Minded to' note 8. The reasons for this view are explained in the closed note which accompanied that 'Minded to' note.
13. I accept the risk assessor's assessment that this officer is likely to be of high interest to the media and interested parties. It does not follow that there is a particular public interest in openness in relation to this officer. There is not and, for reasons explained in the closed note which accompanied the 'Minded to' note, there is a strong public interest in ensuring that identity is not disclosed.

UNDERCOVER POLICING INQUIRY

14. The reasons for the ruling which I make are set out in paragraph 1 of 'Minded to' note 8 and in the closed note which accompanied it.

HN9

15. I repeat the observations made in paragraphs 6, 7 and 8 of this ruling in relation to HN6. In addition, as I noted in paragraph 4 of 'Minded to' note 8, I did question Dr Busuttill's initial conclusion and received from him the answer there summarised.
16. The reasons for the ruling which I make are set out in paragraphs 3 and 4 of 'Minded to' note 8 and in the closed note accompanying them.

HN21

17. The same submissions are made in relation to HN21 as are made in paragraphs 22 to 26 in respect of HN9. I repeat the answer given in paragraphs 6-8 above.
18. It is submitted that the making of a restriction order in respect of the cover name of HN21 will encourage him "to be economical with the truth". I am alert to this possibility. I have every reason to believe that, despite the health conditions from which he suffers, he ought to be capable of giving detailed evidence about his deployment. Further, it is likely that at least some contemporaneous intelligence reports produced by him or founded on his reports exist and can be retrieved and published without undermining HN21's anonymity. Members of the group will not know who HN21 was but they will be afforded the opportunity to come forward and give evidence as to the accuracy of the reporting and the activities of the group. In this way, I hope to obtain evidence about justification from both the officer and those in the target group.
19. There is no perfect solution to the problem of how to protect the health of HN21 and to ensure that the Inquiry has all of the evidence which it needs to permit it to get to the truth about his deployment. The course which I will adopt is, in my view, the least bad solution. If, and only if, experience shows it to be unworkable, I will have to revisit it.
20. The reasons for this ruling are set out above, in paragraph 2 of 'Minded to' note 5, in paragraphs 1 to 4 of the closed note which accompanies it and in paragraphs 4 and 5 of 'Minded to' note 9.

HN53

21. It is submitted that the risk assessor "is of the opinion that HN53 could provide evidence of their role as a UCO in their cover name", and a reference is given to page

UNDERCOVER POLICING INQUIRY

7 of the redacted risk assessment. I take this to be a reference to paragraph 21.9 of the risk assessment. If so, the submission misstates the risk assessment, which is that the likelihood of the increase in risk of physical harm to HN53 by the disclosure of the cover name is low and considered unlikely, but the impact would be critical, resulting in a life-threatening injury and require total changes, such as relocation, to ensure safety. The overall score is said to be at the higher end of the “low” range – (10). I have not rejected this assessment, but accepted it. For the reasons explained in paragraph 9 of ‘Minded to’ note 9 and in the closed note which accompanied it, I remain of the view that neither real nor cover name can be published, in the interest of his safety and because it would cause significant damage to the public interest.

HN76

22. It is submitted that HN76 is a potentially significant officer in respect of whom it is important for the Inquiry to get at the truth. I agree. If it is submitted that the review of SDS operations in the last years of its existence, which was highly critical of undercover officers and specifically criticised HN76 for lacking communication skills and being unwilling to answer the author’s questions requires that the real or cover name of HN76 is published, I disagree. The reasons for the decision which I make are set out in paragraph 14 of ‘Minded to’ 9 and in the accompanying closed note.

HN86

23. It is submitted that his work as a manager can be considered on the basis of documentary records and of the evidence of those he managed. This will not be an adequate means of getting to the truth about his management. During his time as a manager, he was one of two senior officers who directed the deployment of undercover officers against justice groups, including those identified as black justice groups. One of the issues which the Inquiry must examine is the possibility that these deployments were influenced by conscious or unconscious racism on the part of either or both of the two officers. One of them is dead. There is an allegation likely to be supported by evidence, that both officers expressed the reasons for the deployments in racist terms. It is of critical importance to the Inquiry that this issue is thoroughly investigated. Hence the need to obtain evidence from HN86 about his management of the SDS. What occurred during his deployment is of lesser importance. The reasons for the decision which I make in his case are set out in paragraphs 15 to 17 of ‘Minded to’ note 9 and those set out above.

UNDERCOVER POLICING INQUIRY

HN87

24. I have nothing to add to the closed note of the reasons for the decision I was minded to make and now confirm.

HN91

25. It is submitted that I should not accept HN91's "untested" assertion that during the deployment HN91 entered into one relationship in the cover identity (only) "albeit not, he says, with a protestor". It is submitted that I "should not unquestioningly accept HN91's account". I do not intend to do so. If appropriate, I can and will ask for the account of the officer's relationship to be confirmed by the person identified – the officer's long-term partner. It is also submitted that I have attached undue importance to the countervailing factor of the officer's current deployment. That is a matter of judgement for me. I stand by the judgement expressed in paragraph 13 of 'Minded to' note 11 and in the accompanying closed note.

HN97

26. It is submitted that the risk assessment is internally contradictory. It is not. The risk assessor's assessment, which I accept, is that disclosure of the real or cover name of HN97 creates a risk, which cannot be precisely quantified, of extreme, life-threatening, violence. The issue is more fully considered in the closed risk assessment and in the closed note which accompanied 'Minded to' note 11. I have already acknowledged the difficulty in reconciling the public interest in the receipt of evidence about his deployment and the need to protect his safety. Meanwhile, I have decided that there should be a restriction order in respect of both his real and cover name.
27. The reasons for the ruling which I make are those set out above and those set out in paragraphs 16 and 17 of 'Minded to' note 11 and in the accompanying closed reasons.

HN101

28. It is submitted that I should "not be held to ransom...to secure this officer's evidence". I have no other means of obtaining worthwhile evidence from him other than to make the restriction order which he seeks. The suggestion that I should disclose his cover name "so that those who were spied upon can give direct evidence of his undercover activities" suggests that there is a strong likelihood that this would occur. Experience, thus far, suggests that the publication of cover names has not produced a flow of information from those against whom officers were deployed. I am, therefore, being

UNDERCOVER POLICING INQUIRY

asked to substitute the speculative chance that information might be forthcoming against the strong likelihood, given HN101's declared intention to provide a witness statement, that I will be provided with evidence of some value by him. That course is more likely to permit me to get to the truth about his deployment.

29. The reasons for my decision are set out above and in paragraph 19 of 'Minded to' note 9.

HN102

30. The same submission is made about the impact on the mental health and Article 8 rights of "those spied upon" as was made in the case of HN9. I repeat the answer given in relation to HN6.
31. The reasons for the decision which I make are those set out above and in paragraphs 20 and 21 of 'Minded to' note 9.

HN112

32. It is submitted that the medical evidence "does not support any mental health detriment as a result of disclosure of the cover name". As paragraph 4 of 'Minded to' note 10 makes clear, I accept that there is no objective justification for HN112's stated fears. I am, however, bound to have regard to subjective fears. In this case, I will give effect to them if it does not impede fulfilment of the Terms of Reference. For the reasons set out in paragraphs 28 of 'Minded to' note 6 and in the accompanying closed note and in paragraph 4 of 'Minded to' note 10, I am satisfied that it does not.

HN355

33. It is submitted that I could "at the very least, appoint an independent advocate to address (me) in respect of X's interests". This is not a sensible suggestion. Unless the independent advocate informs X about the purpose of his intervention and seeks, and obtains, consent from X to the examination of relevant medical and social work records, all that he will be able to do is to express an opinion about the issue. If he does take any of those steps he will inevitably risk causing the harm which I wish to prevent.
34. The submissions make the assumption that the risk assessor's assessment of the risk of interference in family life "takes into account the impact on HN355's relationship with X". It does so, but only in relation to its indirect impact on HN355, and not on X. My principal concern is for the welfare and personal integrity of X, as paragraph 22 of

UNDERCOVER POLICING INQUIRY

'Minded to' note 8 made clear. The closed note identifies the material upon which I have concluded that the welfare and physical integrity of X would be put at risk by the disclosure of the cover name of HN355.

35. For those reasons, and for those set out in paragraphs 21 and 22 of 'Minded to' note 8 and in the accompanying closed note, I rule that neither real nor cover name can be published.

30 July 2018

Sir John Mitting
Chairman, Undercover Policing Inquiry