

IN THE MATTER OF THE UNDERCOVER POLICING INQUIRY

OPEN APPLICATION FOR RESTRICTION ORDER (ANONYMITY) IN RESPECT OF HN4'S REAL AND COVER NAMES SUBMITTED BY THE DESIGNATED LAWYERS

1. The following abbreviations are used herein:

“A/N”	application notice;
“DL”	the Designated Lawyers, i.e. Mark Spanton and Anna Peacock within the MPS Directorate of Legal Services acting in their capacities as such;
“CL”	the Metropolitan Police Service's Commissioner's Lawyers;
“I/S”	impact statement;
“R/A”	risk assessment;
“SDS”	Special Operations Squad / Special Demonstration Squad.

2. This A/N is submitted further to and should be read together with the following:

- a) CLOSED R/A and addendum R/A;
- b) CLOSED I/S;
- c) CLOSED medical report of Professor Fox.

3. This real and cover name application is also intended as an application to restrict disclosure of the dates of deployment and the group(s) targeted as releasing those will have the same effect as releasing the cover name and is made 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, Article 3 (prohibition on torture or inhuman or degrading treatment or punishment) and Article 8 (right to respect for private and family life);
 - c) Inquiries Act 2005, s.19(3)(b) read with s.19(4)(b)-(c) (fulfilment of terms of reference and necessary in public interest having regard to risk of harm or damage and conditions of confidentiality).
4. 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 later rulings and Minded to notes.
5. The CL have indicated an intention to make a real name Restriction Order application only, however it should be noted that due to complications arising from a third party, the CL were not in possession of the above mentioned medical report prior to giving that indication.

Restriction Order Sought

6. The DL apply for a Restriction Order over the real and cover names of HN4 to last indefinitely in the following terms:
 - a) No direct or indirect disclosure of HN4's real name (including any description or image capable of identifying HN4) beyond the Chairman and the Inquiry team; and

- b) No direct or indirect disclosure of HN4's cover identity (including any description or image capable of identifying HN4 beyond the Chairman and the Inquiry team).
- 7. The DL reserve the right to make further submissions as to the effective operation of this Restriction Order during the course of the Inquiry.

Reasons

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

- 8. A Restriction Order protecting HN4's real and cover 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 3 and 8.
- 9. With reference to the medical report and in particular paragraph 4.3 4.15, the release of HN4's real or cover name would amount to a breach of Article 3 and be a disproportionate interference in his/her Article 8 right.
- 10. The sterile corridor between HN4's real and cover name remains intact [R/A, pp.19] and HN4 has taken no action to undermine that situation. However, there are vulnerabilities to the sterile corridor which may lead from the release of HN4's cover name or details of his/her deployment to his/her real name [R/A pp 4.5; 9.2: 19 and I/S pp.22]
- 11. Whilst HN4 accepts the lack of a risk of physical harm directly from the membership of the group(s) s/he deployed into s/he is concerned about the risk of harm from more violent organisations linked to that/those group(s). In any event his/her subjective concerns must be taken into account as should the state of his/her mental health in consideration to the breaching of his/her Article 3 and Article 8 rights.

12. Further, with reference to R/A pp.19 and I/S pp. 17-19 the risk of interference with HN4's private and family life should his/her real or cover name be disclosed is significant. The release of the same would amount to a disproportionate interference with HN4's right to respect for private and family life.

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

13. The Chairman is invited to find that a Restriction Order protecting HN4'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 paragraph 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 the non-disclosure of real or cover identity

14. With reference to the above factors concerning the harm and impact on HN4, and his/her family there is a clear public interest in avoiding harm and a disproportionate interference in HN4's, and others', right to private and a family

life, even if the Chairman doesn't consider the level of harm to meet the threshold of Article 3.

15. Furthermore, the fact that the release of HN4's cover and real name would be contrary to HN4's reasonable expectations of confidentiality and privacy [I/S, pp. 29] and HN4's subjective concerns about the possible consequences of this [I/S, pp. 8-28] 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 8(2).
16. There are no known allegation of sexual relationships whilst HN4 was deployed and his/her deployment was generally unremarkable. In circumstances where on the one hand, the release of HN4's cover name will significantly impact HN4's mental health, may lead to the uncovering of HN4's real name, and will disrupt HN4's private and family life, and on the other his/her deployment was generally unremarkable the Inquiry should err on the side of protecting HN4 and grant a restriction order in relation to his/her cover name, as well as his/her real name.

The public interest in disclosure of real and cover identity

17. It is appreciated that the general presumption in favour of openness is a factor that weighs against the making of a Restriction Order in HN4's case, particularly as this application extends over both real and cover names.
18. There is no identifiable public interest in the disclosure of HN4's real identity in circumstances where s/he would not have been known to his/her associates by his/her real identity and the Inquiry's ability to fulfil its Terms of Reference would not be furthered by disclosure of HN4's real name.
19. It is acknowledged that the Chairman's ability to explore aspects of HN4's deployment may be restricted where HN4's cover name is also restricted.

Where the public interest balance lies

20. It is plain that any details given publicly about HN4's deployment would risk his/her identity becoming known. Consequently, HN4's mental health would be detrimentally impacted. Whether the orders sought are granted on a public interest basis, a human rights basis or both, it is respectfully submitted that they are appropriate and necessary and conducive to the Inquiry's Terms of Reference.
21. The Chairman is invited to conclude the public interest favours non disclosure in particular so as to avoid harm to HN4 and his/her family.
22. In all the circumstances, HN4 makes this application for a Restriction Order over HN4's real and cover names in order to avoid a real and immediate risk of torture or inhuman or degrading treatment or punishment of HN4 and a disproportionate interference with HN4's right to respect for private and family life.
23. It is also submitted that the application for common law and statutory (section 17(3), Inquiries Act 2005) principles of fairness require the real and cover identities of HN4 to be restricted. The same factors highlighted above support that conclusions.

THE DESIGNATED LAWYERS (UCPI)

31 May 2018