

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 National Public Order Intelligence Unit and its predecessor/successor units

Ruling 1 and 'Minded to' 2

1. I make or refuse to make the following restriction orders under section 19(3) of the Inquiries Act 2005 in the cases of the individuals identified below for the reasons set out below and, where appropriate, in closed notes. In the cases of EN35 and EN37 I am minded to make a restriction order in respect of the real name, but, by way of ruling, refuse to make a restriction order in respect of the cover name.

General observations

2. I have reconsidered each case, by reference to the open and closed material submitted by or on behalf of each individual, in the light of the submissions made on behalf of the non-police, non-state core participants dated 28 September 2018. I have dealt with each relevant general submission in the context of each restriction order. This involves a measure of repetition. I am conscious of the need to ensure that a thorough investigation of the National Public Order Intelligence Unit can be and is undertaken, if possible, in public. The following issues must be addressed to permit that to be done: why, and for what purpose, the undercover unit of the National Public Order Intelligence Unit was set up; what instructions or guidance were given to its deployed officers; what the officers did during their deployment, including their interaction, appropriate or inappropriate, with members of target groups and others encountered during it; what their managers knew about their actions and did about them; what interactions there were between the National Public Order Intelligence Unit and private sector operators in the fields into which undercover officers were deployed and between both of them and non-state core participants; and what was done with intelligence gathered by undercover officers.
3. To that end, the Inquiry must investigate, in detail, each of the principal deployments undertaken by the National Public Order Intelligence Unit undercover unit. To permit it to get at the truth, it must examine publicly deployments into animal rights and environmentalist groups. The orders which I make will permit this to occur, notwithstanding that significant parts of the evidence concerning such deployments will either have to be given in closed session or by officers whose real and cover identity will not be disclosed by the Inquiry. I have not yet made rulings on applications which have been, or may be, made by managers. I acknowledge that the handling of evidence about such deployments and about what managers knew and did about

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them will pose considerable difficulties for the Inquiry. Those difficulties will be addressed before the evidence is given. They apply in the case of three officers – EN33, EN36 and EN42.

4. The submissions dated 28 September 2018 make a number of broad assertions. I will deal with each of them in turn.
5. The first is that the existence of risks to an officer, or to others, or to the public interest, must be reliably established. I agree. I do not, however, accept the further suggestion that, in every case, a risk assessment is required. In some cases, I have accepted the truthfulness and general accuracy of an officer's statement about what he or she has done during their career. In others, sometimes at my request, that statement has been confirmed by a source or sources independent of the officer. In others, again sometimes at my suggestion, a risk assessment has been provided. The assertion that "the assessments are again based entirely on the officers' self-report" is wrong.
6. The second is that the non-state core participants should be able to make representations against anonymity on as informed basis as possible. Again, I agree. I do not, however, accept that more can be disclosed than has been. A time-consuming and careful attempt to provide a gist of the closed material supplied to the Inquiry in support of each application has been undertaken by an experienced and conscientious member of the Inquiry's legal team. I am satisfied that, in consequence, as much as can safely be disclosed has been disclosed. It is understandable that non-state core participants and their legal advisers feel free to assert that, for reasons which may seem to them self-evident, more information can be provided. They are, necessarily, unaware of the information available to the Inquiry which means that it cannot be. In the end, this is a matter of judgement for me, on the information which I have.
7. The third is that, when an undercover officer is currently deployed undercover in the criminal field, his or her deployment should be terminated forthwith, for two reasons: to permit the cover name to be disclosed; and to ensure that any bad practice acquired during National Public Order Intelligence Unit deployment is not replicated elsewhere. I reject this suggestion, for a number of reasons. First, as the witness statements of Alan Pughsley dated 14 February 2018 and Louise Meade dated 20 October 2017 explain, undercover officers are a scarce and finite resource. The withdrawal of all ex-National Public Order Intelligence Unit officers from current deployments would diminish that resource significantly. Secondly, given the nature of an undercover deployment, it would inevitably disrupt current police operations. None of this would be in the public interest. Thirdly, extraction from an undercover deployment can sometimes be a prolonged exercise and may give rise to risks to others. Fourthly,

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withdrawal would not deal with a problem which arises in many cases – those in which there exists a real risk to the safety of the officer. In that event, withdrawal would not permit disclosure of the cover name, which would have to be withheld in the interests of safety. The first of the two reasons advanced would therefore be frustrated. Fifthly, it is sometimes possible to reach a clear provisional view about the likelihood that the National Public Order Intelligence Unit deployment did not give rise to the occurrence of malpractice on the part of the officer. Where that view can be formed, it is unfair to the officer and it would not be in the public interest for the current deployment to be terminated. The majority of undercover officers were seconded to the National Public Order Intelligence Unit by their own force and served before and after as undercover officers with that force. This gives rise to problems specific to those officers, which must be individually addressed.

8. The fourth is that risks to the safety of officers should be “mitigated” by “other measures”. The submissions do not identify what those other measures should be. In any case where the risk is real, they are likely to involve the relocation of the officer and his or her family, the creation of a new identity for them, the putting in place of protective measures in their new home and, when the officer is still serving, the transfer of the officer to another force. Such measures may, in a handful of cases, have to be taken, but only when justified by the facts. To take a step, routinely, which would cause very great disruption to the lives of a significant number of people, save where justified, would not be appropriate.

9. The fifth is that the Curricula Vitae of the two risk assessors should have been disclosed to the non-state core participants. They were, by email on 7 March 2017. Non-state core participants were given the opportunity to advance any reasoned objection to their appointment by 14 March 2017. No objections were made.

Nominal	Status	Position
EN1	Ruling	The real name cannot be published.
EN33	Ruling	Neither the cover nor real name can be published.
EN34	Ruling	The real name cannot be published.
EN35	'Minded to'	The real name cannot be published.
	Ruling	I refuse to make a restriction order in respect of the cover name.
EN36	Ruling	Neither the cover nor real name can be published.
EN37	'Minded to'	The real name cannot be published.
	Ruling	I refuse to make a restriction order in respect of the cover name.

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Nominal	Status	Position
EN38	Ruling	Neither the cover nor real name can be published.
EN39	Ruling	Neither the cover nor real name can be published.
EN40	Ruling	Neither the cover nor real name can be published.
EN41	Ruling	Neither the cover nor real name can be published.
EN42	Ruling	Neither the cover nor real name can be published.
EN43	Ruling	Neither the cover nor real name can be published.
EN47	Ruling	Neither the cover nor real name can be published.
EN48	Ruling	Neither the cover nor real name can be published.
EN74	Ruling	The real name cannot be published. I will defer consideration of the application for a restriction order in respect of the cover name.
EN287	Ruling	The application for a restriction order in respect of EN287's real name is refused.
EN288	Ruling	Neither the cover nor real name can be published.
EN289	Ruling	The real name cannot be published. I will defer consideration of the application for a restriction order in respect of the cover name.
EN327 (HN66)	Ruling	The real name cannot be published. The application for a restriction order in respect of the cover name is refused to the extent that it would prohibit disclosure of the names by which EN327 was known by members of the groups targeted.
EN507	Ruling	Neither the cover nor real name can be published.
EN808	Ruling	Neither the cover nor real name can be published.
EN1001	Ruling	Neither the cover nor real name can be published.

Reasons

References to the 'Minded to' note below are to the first note dated 2 May 2018.

EN1

Application for restriction over the real name only. The real name cannot be published.

- The reasons are those set out in the 'Minded to' note and in the accompanying closed note.

11. Because the state of EN1's health has been put in issue, I will seek confirmation from his general practitioner and, if necessary, his treating cardiovascular surgeon, of the facts about his condition, its treatment and its consequences. In the event that I have been seriously misled, I will reconsider the decision to make a restriction order in respect of his real name under section 20(4) of the Inquiries Act 2005.

EN33

Application for restriction over the cover and real names. Neither the cover nor real name can be published.

12. The reasons are those set out in the 'Minded to' note and in the accompanying closed note.
13. The risk to EN33 is not founded upon the test purchasing of drugs or upon the arrest and conviction of a "major drug dealer". Nor, in my judgement, is it founded on undercover work in serious and organised crime.
14. The fact that the application for a restriction order – not the risk assessment – is "officer led", so that the starting premise for assessment is reliant upon the officer's recollection of events and understanding of risk to themselves and third parties, does not mean that either the risk assessment or my own assessment of risk is solely, or even mainly, dependent upon the officer's recollection and understanding.
15. On a fair reading of the risk assessor's assessment of the risk of the revelation of the real name of EN33 should the pseudonym be revealed, it is that the developments which he anticipates as highly likely to occur raise the risk of disclosure to "medium". The apparent contradiction is not real.
16. I accept that it will be difficult to devise means by which evidence about the deployment of EN33 can be made public without compromising the restriction order which I make. It is obvious that a full and detailed account of the deployment of EN33 would do so. Something less than that will be required. Precisely what can be made public must await detailed consideration later.
17. The risk assessor assesses that the risk of harm to EN33 in the event that the real name is disclosed is "high". I remain satisfied that it is real, but do not feel able to make a more precise assessment than that. Nevertheless, I remain convinced that it would be neither proportionate nor justified to run that risk. The submissions made are, understandably, coy about the "alternative means" by which that risk may be mitigated. They would involve the wholesale disruption of the private and family life of EN33. Nothing about the deployment of EN33 which I know now, or which would be likely to emerge should the cover name be disclosed, could justify that disruption.

EN34

Application for restriction over the real name. The real name cannot be published.

18. The reasons are those set out in the 'Minded to' note and accompanying closed note.

EN35

Application for restriction over the cover and real names. The real name cannot be published. The application for a restriction over the cover name is refused.

19. I am minded to make a restriction order in respect of the real name, for the following reasons. EN35 was deployed in circumstances which gave rise to a real risk to safety, which remains to an extent which cannot be quantified. Publication of the real name of EN35 would interfere with private and family life. The interference is not necessary to permit the Inquiry to fulfil its terms of reference and so would not be justified under Article 8(2) of the European Convention on Human Rights ('the European Convention').

20. These reasons are supplemented in the closed reasons given for refusal to make a restriction order in respect of the cover name.

EN36

Application for restriction over the cover and real names. Neither the cover nor real name can be published.

21. The reasons are those set out in the 'Minded to' note and accompanying closed note.

22. It is not possible to say more about the non-National Public Order Intelligence Unit deployment referred to in the application in this open ruling.

EN37

Application for restriction over the cover and real names. The real name cannot be published. The application for a restriction over the cover name is refused.

23. I am minded to make a restriction order in respect of the real name, for the following reasons. EN37 was deployed in circumstances which gave rise to a real risk to safety, which remains to an extent which cannot be quantified. Publication of the real name of EN37 would interfere with private and family life. The interference is not necessary to permit the Inquiry to fulfil its terms of reference and so would not be justified under Article 8(2) of the European Convention.

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24. These reasons are supplemented in the closed reasons given for refusal to make a restriction order in respect of the cover name.

EN38

Application for restriction over the cover and real names. Neither the cover nor real name can be published.

25. The reasons are those set out in the 'Minded to' note and accompanying closed note.
26. If it is suggested that, because EN38 is still engaged in police work, so the undercover work performed for the National Public Order Intelligence Unit must be the subject of public scrutiny, I reject the suggestion. The reasons referred to above explain why.

EN39

Application for restriction over the cover and real names. Neither the cover nor real name can be published.

27. The reasons are those set out in the 'Minded to' note and accompanying closed note.
28. I have not given weight to a generic argument about legend building.
29. Nothing further can be said in an open document about EN39's post-National Public Order Intelligence Unit deployments, without compromising the restriction order made. If it is suggested that the public interest requires that EN39 is withdrawn from undercover work, so that work for the National Public Order Intelligence Unit can be publicly examined, that would still not obviate the risks to safety or the great disruption to private and family life which would result. Nor could it prevent other harm to the public interest. Whether or not the suggestion is, in theory, sound, it would have no bearing on the outcome of this application.

EN40

Application for restriction over the cover and real names. Neither the cover nor real name can be published.

30. The reasons are those set out in the 'Minded to' note and in the accompanying closed note.
31. The fact that the application - not the risk assessment - was "officer led", so that the starting premise for the assessment is the officer's recollection of events and understanding of risk to themselves and third parties, does not mean that the risk

assessment and my own assessment of risk is solely, or even mainly, dependent upon the officer's assessment and understanding.

32. I remain satisfied that the publication of EN40's cover name in the context of an National Public Order Intelligence Unit deployment would put safety at risk from individuals associated with other deployments. I do not accept the suggestion that EN40 is in a position no different from that of an undercover police officer assisting in the investigation and ultimate arrest and prosecution of those charged with serious offences. In the event that the participation of such an officer in the investigation was required to be revealed to the trial judge and/or to the defence, carefully tailored steps would be taken to ensure that the officer's true identity was protected. Disclosure of EN40's cover name would be likely to stimulate a determined effort by activist researchers to publish information about EN 40 and/or to discover the true identity of EN40. The risks to EN40 would be uncontrolled.

EN41

Application for restriction over the cover and real names. Neither the cover nor real name can be published.

33. The reasons are those set out in the 'Minded to' note and in the accompanying closed note.
34. The fact that the application – not the risk assessment – was “officer led”, so that the starting premise for the assessment is that the officer's recollection of events and understanding of risk to themselves and third parties, does not mean that the risk assessment and my own assessment of risk is solely, or even mainly, dependent upon the officers assessment and understanding.
35. I remain satisfied that the publication of EN41's cover name in the context of an National Public Order Intelligence Unit deployment would put safety at risk from individuals associated with other deployments and would also undermine the ability of EN41 to perform current undercover duties. I do not accept the suggestion that EN41 is in a position no different from that of an undercover police officer assisting in the investigation and ultimate arrest and prosecution of those charged with serious offences. In the event that the participation of such an officer in the investigation was required to be revealed to the trial judge and/or to the defence, carefully tailored steps would be taken to ensure that the officer's true identity was protected. Disclosure of EN41's cover name would be likely to stimulate a determined effort by activist researchers to publish information about EN41 and/or to discover the true identity of EN41. The risks to EN41 would be uncontrolled.

EN42

Application for restriction over the cover and real names. Neither the cover nor real name can be published.

36. The reasons are those set out in the 'Minded to' note and in the accompanying closed note.
37. I have no reason to doubt the truthfulness of EN42's account of the deployments which give rise to a risk to safety. I do not accept the suggestion that EN42 should not be deployed undercover until the truth about the National Public Order Intelligence Unit deployment is determined. Experienced undercover officers are a scarce resource (though views about difficulties of recruitment differ). I do not understand there to be any serious disagreement amongst informed and reasonable people that they should be available for deployment in appropriate circumstances. The forced withdrawal of a significant number of experienced undercover officers, including EN42, would be likely to have an impact on policing which would not be in the public interest. Therefore, even if the risk to the safety of EN42 could be run, it should not be.
38. The assertion that the evidence which EN42 can give or provide about his National Public Order Intelligence Unit deployment will inevitably disclose the cover identity is not necessarily correct. Careful thought and a risk assessment will be required to determine how it can be done without risk to EN42.

EN43

Application for restriction over the cover and real names. Neither the cover nor real name can be published.

39. The reasons are those set out in the 'Minded to' note and in the accompanying closed note.
40. In the closed note which accompanied the open 'Minded to' note, I stated that the decision which I was minded to make was subject to satisfactory resolution of two queries. They were satisfactorily resolved in a letter from the deploying police force dated 26 June 2018.

EN47

Application for restriction over the cover and real names. Neither the cover nor real name can be published.

41. The reasons are those set out in the 'Minded to' note and in the accompanying closed note.

42. I am satisfied that EN47 has been and is engaged on undercover deployments and that disclosure of the cover name while deployed in the National Public Order Intelligence Unit would put the ability of EN47 to undertake those duties at risk. The forced withdrawal of EN47 from those duties would have an immediate impact on policing which would not be in the public interest. The public interest in their performance by EN47 outweighs any likely benefit to the public interest which might result from the publication of the National Public Order Intelligence Unit cover name.

EN48

Application for restriction over the cover and real names. Neither the cover nor real name can be published.

43. The reasons are those set out in the 'Minded to' note and in the accompanying closed note.
44. I am satisfied that the risk assessor's assessment of the risks posed to EN48 as a result of the National Public Order Intelligence Unit deployment is balanced and fair. He and I took into account the varying opinions expressed by other officers about similar risks. The difference between EN48's evaluation of the risks posed by the post National Public Order Intelligence Unit deployments and that of the risk assessor is primarily due to the absence of accessible internal records about the deployments. Hence, at least in part, his somewhat more cautious view. Notwithstanding that, he still assesses the threat and risk that it may materialise as medium and the degree of harm which might be inflicted, if it does materialise, as high. As the open 'Minded to' note states, the risk which I had primarily in mind was that created by the National Public Order Intelligence Unit deployment.

EN74

Application for restriction over the cover and real names. Neither the cover nor real name can be published.

45. The reasons for the making of a restriction order in respect of the real name are those set out in the 'Minded to' note and in the accompanying closed note.
46. As the open 'Minded to' note states, the risk which I had in mind was to life and limb. The suggestion, implicit in the submissions, that I had in mind lesser risks is wrong.
47. The reasons for deferring the decision in respect of the cover name are set out in a further closed note.

EN287

There is no cover name. The application for a restriction order in respect of the real name is refused.

48. The reasons are those set out in the 'Minded to' note and in the accompanying closed note.

EN288

Application for restriction over the cover and real names. Neither the cover nor real name can be published.

49. The reasons are those set out in the 'Minded to' note and in the accompanying closed note.
50. The 'Minded to' note and this ruling are not based "on the basis of the officer's say so". The threat of serious physical harm was and is reliably established.

EN289

Application for restriction over the cover and real names. The real name cannot be published. The application for a restriction order in respect of the cover name will be determined later.

51. The reasons are those set out in the 'Minded to' note.
52. The submissions address publication of the cover name, upon which I have, as yet, not indicated any decision which I might be minded to make.

EN327

Application for restriction over the cover and real names. The real name cannot be published. The application for a restriction order in respect of the cover name is refused to the extent that it would prohibit disclosure of the names by which EN327 was known by members of the groups targeted.

53. The reasons are those set out in the 'Minded to' note.
54. As explained in the 'Minded to' note, EN327 is the same person as HN66 and the reasons set out in the fifth 'Minded to' note in respect of Special Demonstration Squad anonymity applications dated 7 March 2018, at paragraph six, apply.

EN507

Application for restriction over the cover and real names. Neither the cover nor real name can be published.

55. The reasons are those set out in the 'Minded to' note and in the accompanying closed note.
56. The submissions assert that there is no reference in the 'Minded to' note to any risk of physical harm. There is: "EN507 is a serving police officer and has undertaken undercover operations which put safety at risk." It is correct that that assessment was based on EN507's account, which I have no reason to disbelieve. I do not accept that the public interest in the disclosure of the cover name of EN507 outweighs the public interest in the continued ability of the police service to deploy EN507 in undercover operations of public value, for the reasons explained in the closed note which accompanied the 'Minded to' note.

EN808

Application for restriction over the cover and real names. Neither the cover nor real name can be published.

57. The reasons are those set out in the 'Minded to' note. They are now supplemented by a short closed note.
58. Details of the activities which give rise to a risk to safety cannot be identified openly. For the avoidance of doubt, the nature and source of the risk is identified in the closed note.

EN1001

Application for restriction over the cover and real names. Neither the cover nor real name can be published.

59. The reasons are those set out in the 'Minded to' note and the accompanying closed note.
60. The first sentence of the 'Minded to' note accurately describes the role played by EN1001. The words used in paragraph 4 of the gist of the application "as he/she used when seconded to the [National Public Order Intelligence Unit]" would have been better expressed as "when performing that supporting role". The words used in paragraph 5 of the gist of the application accurately state the original text. The words "whether any" could have been better expressed as "which, if any". These semantic quibbles do not "underscore", let alone demonstrate or establish, "the

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inappropriateness of relying exclusively on the self-report of the officer". I had, and have, no reason to doubt the truthfulness and substantial accuracy of the statement made by EN1001 in support of the application for a restriction order.

61. I am satisfied that it is not in the public interest that the valuable duties performed by the unit of which EN1001 is part should be jeopardised by publication of the cover name of EN1001, as they would be. I also reject the suggestion that EN1001 should be removed from current duties until the public hearings have occurred which concern the National Public Order Intelligence Unit.

30 October 2018

Sir John Mitting
Chairman, Undercover Policing Inquiry