

**IN THE MATTER OF THE PUBLIC INQUIRY INTO UNDERCOVER
POLICING**

**OPEN APPLICATION FOR A RESTRICTION ORDER (ANONYMITY)
RE: HN25
SUBMITTED ON BEHALF OF THE MPS**

Restriction Order Sought

1. The MPS applies for a restriction order over the real and cover identities of HN25 to last indefinitely in the following terms:
 - (1) No direct or indirect disclosure of HN25's real name (including any description or image capable of identifying HN25) beyond the Chairman and the Inquiry team;
 - (2) No direct or indirect disclosure of HN25's cover name (including any description or image capable of identifying HN25) beyond the Chairman and the Inquiry team;
 - (3) The Commissioner reserves the right to make further submission as to the effective operation of this Restriction Order during the course of the Inquiry.

Legal Basis for the Application

2. The Application is made on the following statutory bases:
 - s.17(3) of the Inquiries Act 2005: the duty to act with fairness in the procedure or conduct of an inquiry.
 - s.19(3)(a) of the Inquiries Act 2005 and Article 8 ECHR: the duty to act in a way that is not incompatible with a Convention right, namely the right to private and family life (Article 8).
 - s.19(3)(b) read together with s.19(4)(b)-(d) of the Inquiries Act 2005: conducive to the Inquiry fulfilling its terms of reference or necessary in the public interest, having regard in particular to the matters mentioned in subsection (4).
3. 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 restriction order rulings and 'minded to' notes made since that date.

Evidence in Support

4. This application is supplemented by a closed schedule and a closed Risk Assessment, which are not to be circulated wider than the Chairman and the Inquiry team.

Reasons

Section 17

5. Application of the statutory and common law principles of fairness require that neither the real nor cover identities of HN25 are disclosed. The considerations which apply are highlighted below in relation to s.19(3)(a), s.19(3)(b) and s.19(4).

Section 19(3)(a) and Article 8 ECHR

6. A restriction order protecting HN25's 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 right in issue is Article 8.
7. Disclosure of HN25's real name would amount to an unjustified and/or disproportionate interference with his/her right to private and family life. In particular, the risk of physical harm is identified in the Risk Assessment at §19 and the perceived effect of disclosure is set out at §§15.3-15.4.
8. The objective assessment of the level of risk posed by the interference with his/her private and family life is set out in the Risk Assessment at §19.
9. There is a real basis to conclude that disclosure of HN25's cover identity would lead to discovery of his/her real identity (see Risk Assessment at §19.3 and the closed schedule). Disclosure of HN25's cover identity would therefore result in the interference with his/her rights under the ECHR detailed above.

Section 19(3)(b) and s19(4)

10. The Chairman is invited to find that a Restriction Order protecting HN25'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 [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 non-disclosure

11. It is in the public interest for HN25’s real identity to be restricted on the basis that it would avoid or reduce the risk of causing harm to this officer, or his/her family, namely physical harm and interference with their private and family lives.
12. The following public interest factors are pertinent:
 - (a) HN25 is a former UCO. The likely sources and the level of risk of physical harm to HN25 are set out at §§13.1, 15, 19.3, 19.4 and 19.6 of the Risk Assessment.
 - (b) HN25 understood that he/she would receive lifelong anonymity before commencing his/her role: §3.4 of the Risk Assessment. There is nothing to suggest that he/she has not respected that anonymity throughout the duration of his/her career.
 - (c) There is no evidence that HN25 was engaged in misconduct or wrongdoing.
 - (d) The points set out above in relation to Article 8 are equally applicable as public interest factors in favour of non-disclosure.
 - (e) The same public interest demands the restriction of HN25’s cover identity as there is a real risk that knowledge of the cover identity would lead to his/her real identity being discovered thereby triggering the identified harms.

The public interest in disclosure

13. The MPS appreciates that openness is a factor weighing against the making of a restriction order in HN25’s case, particularly as this application extends over both the real and cover identities. However the MPS submits that no other measure is sufficient to provide the necessary protection from the identified harms.

Where the public interest balance lies

14. The MPS has considered the Chairman's Principles Ruling and has had particular regard to the importance of openness in the Public Inquiry.
15. In all the circumstances, the MPS makes this application for a Restriction Order over HN25's real and cover names on the bases of fairness, and to avoid a risk of harm to HN25 and his/her family and unjustified and/or disproportionate interference with HN25's right to private and family life. The MPS submits that such an application is in the public interest and conducive to the Inquiry's terms of reference.

MPS, Department of Legal Services

25 January 2018