

IN THE MATTER OF THE UNDERCOVER POLICING INQUIRY

APPLICATION FOR RESTRICTION ORDER (ANONYMITY) IN RESPECT OF HN30's IDENTITY SUBMITTED BY THE DESIGNATED LAWYERS

Restriction Order Sought

1. The DL apply for a restriction order over the identity of HN30 to last indefinitely in the following terms:
 - a. No direct or indirect disclosure of HN30's identity (including any description or image capable of identifying HN30) beyond the Chairman and Inquiry team.
 - b. The DL reserves the right to make further submissions as to the effective operation of any Restriction Order during the course of the Inquiry

Legal Basis for the Application

2. This Application is made on the following statutory basis
 - s.19(3)(a) IA read with Article 8 (duty to act in a way not incompatible with the right to private and family life),
 - Alternatively, s.17(3) IA (duty to act with fairness) and
 - s.19(3)(b) IA read together with s.19(4)(b)-(d) IA (conducive to the Inquiry fulfilling its terms of reference or necessary in the public interest having regard to the matters mentioned in (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 in respect of Cairo and the 'Minded to' note dated 25 October 2016 in respect of Jaipur and Karachi

Evidence in Support

4. This application is supplemented by a closed schedule, and impact statement (“I/S”) from the officer as well as a risk assessment (“R/A”) prepared by the MPS. These documents should not be disseminated further than the Chairman and the Inquiry team.

Reasons

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

5. A restriction order protecting HN30'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
6. Disclosure of HN30's identity would amount to a disproportionate interference with his/her right to private and family life. In particular, the effect of disclosure includes a specific risk including risk of physical harm and interference with private life to N30 and N30's family (I/S §6-8). HN30 also relies upon additional impacts on N30 and his/her family (I/S §14-18)

Section 19(3)(b) and s. 19(4)

7. The Chairman is invited to find that a restriction order protecting HN30's 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 of real identity

8. The following public interest factors are relevant:
 - a. As a consequence of matters unconnected with HN30's role in the SDS, there is a risk of significant physical harm to HN30 and family and interference with their private and family lives in the event of release of HN30's identity.
 - b. The evidential basis for the risk of harm is contained in the I/S and the R/A;
 - c. HN30 was not deployed as an undercover officer in the SDS, he/she was a cover officer for approximately 4 years. No allegations have been made against him/her.

The public interest in disclosure of real identity

9. The DL appreciates the general presumption in favour of openness is a factor weighing against the making of a restriction order in HN30's case. The Inquiry will be able to fulfil its terms of reference without the publication of HN30's identity. HN30 understands the importance of giving evidence to the Inquiry and will do so but requests that they are permitted to do so in a cipher

Where the public interest balance lies

10. The DL has considered the Chairman's Principles Ruling and has had particular regard to the presumption of openness in the Public Inquiry. In all the circumstances, the DL make this application for a Restriction Order over HN30's identity to avoid violation of HN30's Convention rights as detailed above. The DL submit that the Restriction Order sought is necessary in the interests of fairness, the public interest and is conducive to the Inquiry's terms of reference. Whilst the Inquiry may conclude that the risk of physical harm is low, the extent of such harm is high. This is not a risk that should be run in the circumstances of this officer. The factors that prevail in respect of undercover officers and the need to know the cover identity of the officers do not apply here. Other impacts on private and family life of HN30 and his/her family would also be disproportionate in the circumstances.

Section 17

- 11 Application of the statutory and common law principles of fairness require that the identity of HN30 is not disclosed. The considerations which apply are highlighted above in relation to s.19(3)(a), s.19(3)(b) and s.19(4).

THE DESIGNATED LAWYERS (UCPI)

30 May 2018