

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 Demonstration Squad and Special Duties Squad

Ruling 13

Nominal	Ruling
HN4	Neither the real nor cover name can be published.
HN13	The real name cannot be published.
HN25	The real name cannot be published.
HN30	The real name cannot be published.
HN33	The real name cannot be published.
HN82	The real name cannot be published.
HN96	The real name cannot be published.
HN200	The real name cannot be published.
HN304	The real name cannot be published.

Observations

Submissions made by the non-state core participants of 24 October 2018.

1. The submissions are discursive and in part address matters other than those which I have to determine on the applications made by the officers named above. For the sake of clarity, I have set them out in numbered subparagraphs, below.

(i) The analysis of Warby J in paragraphs 143 to 147 of his judgement in Yeo v Times Newspapers Ltd [2015] EWHC 3375 QB compels the conclusion that in the case of none of the officers named above are their rights under Article 8 ECHR engaged.

HN 4

(ii) I should have ensured that Prof Fox had considered the medical records and other information, before reaching his final conclusion.

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(iii) Further particulars are sought about the arrest charge and conviction of HN 4 and about disciplinary proceedings against the officer.

(iv) It is asserted that HN 4 lied to the court on oath.

(v) Because HN 4 devised a training package for new SB recruits to introduce them to attending and reporting on political meetings, the Inquiry must investigate whether or not the officer was involved in wrongdoing during deployment.

(vi) To command public confidence, the Inquiry must investigate all “political policing” “transparently”

(vii) If a restriction order is made in respect of the cover name of HN 4, it will not be possible for useful evidence to be given about the deployment.

HN 30

(viii) For reasons of accountability and to enable an informed assessment of her credibility to be made, it is necessary that her real name be published.

(ix) The risk to her safety should be managed by means other than a restriction order in respect of her real name.

(x) There is a clear benefit in releasing her cover name.

HN 200

(xi) Because he held a senior management role in the MPS after his deployment after his deployment, his real name must be published.

HN4

2. (i). Warby J was considering the interaction of Articles 8 and 10 ECHR in a defamation claim brought by a Member of Parliament against a newspaper which had published articles critical of his conduct as an MP and as chairman of a Parliamentary committee. In paragraph 143, he stated that article 8 affords politicians carrying out their public or official functions limited protection against media coverage. In paragraphs 144 – 155, he analysed the distinction between personal integrity and reputation. He concluded that an attack on reputation must attain a certain level of seriousness in a manner causing prejudice to personal enjoyment of the right to respect for private and family life before Article 8 was engaged. In paragraph 147, he concluded that the newspaper articles in issue related wholly and exclusively to the conduct of the claimant in his public roles as a serving MP and committee chairman. Therefore, Article 8 was not engaged. Further, the consequences of the attack on his reputation was not of a nature or gravity such as to engage article 8.

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3. I accept that analysis of the interaction between Articles 8 and 10; but it has no bearing on the issues which I have to decide. They do not involve a defamation claim, nor the level of seriousness which must be attained before an attack on reputation engages Article 8. I am concerned with the impact of publication of the real names of former officers on them and, sometimes, on their widows. The full range of factors which can be taken into account under article 8 must, if appropriate, be considered.
4. (ii) Prof Fox did have HN 4's medical records available to him and referred to them in his report. As to the other matters, I am entitled to and do accept Prof Fox's opinion, based on the material which he considered.
5. (iii). HN 4 was convicted of an offence during his deployment. A notice of investigation for misconduct was served, which resulted in words of advice, but no further disciplinary measures.
6. (iv). HN 4 did not lie to the court. He pleaded guilty.
7. (v), (vi) and (vii). The majority of deployments which will be considered in tranches 1 and 2, including that of HN 4, were into political groups. There will be extensive public evidence about such deployments. The manner in which the evidence of HN 4 will be received is an issue which must be considered when the intelligence reports produced by HN 4 and others have been examined. The restriction order made will contain a proviso that it will not prevent HN4 from giving public evidence about the deployment under a cypher. It is a matter for my judgement, not that of the risk assessor, whether and, if so, how this can be achieved.

HN30

8. (vii). Her credibility can be assessed, like that of other state and non-state witnesses who have been granted anonymity in respect of their real name, without publishing her real name. She was not a senior officer.
9. (ix). The risk to HN 30 is analysed in the closed note which accompanied the "minded to" note of 21 June 2018. I remain of the views there expressed. It would not be appropriate or fair to HN 30 to expose her to those risks or to take steps potentially disruptive of her private and family life to counter them.
10. (x). No application has been made to restrict the cover name at this stage. Any restriction of it will be considered at the point when documentary evidence is reviewed for redactions necessary before publication. No redactions appear in section 11, page 6 of the risk assessment as suggested.

HN 200

11. (xi). The senior management role held by HN 200 in the MPS did not involve him, directly or indirectly, in the management or oversight of the SDS. My acknowledgement of the public interest in senior managers being accountable in their real name was confined to those with responsibilities of that kind.

Submission by the BBC

HN 13

12. The BBC submit that I have reversed the position set out in the Principles Ruling. I have not done so. Paragraphs A10, A 11 and A 12 encapsulate the approach which I have adopted. The starting point is that there will be no restriction order in the public interest of openness unless it is necessary in the countervailing public interest of the protection of individuals from harm and/or of effective policing. It is not possible to state at the level of principle or generality where the public interest balance will rest. I have approached each evaluation on a case-by-case basis, as required by paragraph A 12. The statement that the publication of the real name of HN 13 is “not necessary to permit the terms of reference of the Inquiry to be fulfilled” was intended to be, and is, a shorthand means of applying those principles. I have, throughout, had in mind the need to ensure that, when restriction orders in respect of names are considered overall, they will not inhibit the two principal tasks of the Inquiry in modules 1 and 2: to get at the truth and so to explain it in a manner which will allay public concern.
13. Publication of the real name of HN 13 will not assist the Inquiry to get the truth of his deployment or about undercover deployments generally. I have explained the harm which would be caused by publication to his widow and children in the “minded to” note of 15 January 2018. I do not resile from the conclusions there expressed. The decision is made under both section 19(3)(a) and (b) and takes into account the factors specified in section 19 (4)(a) and (b).

HN 82

14. The same considerations apply in relation to HN 82.

HN 33

15. The cover name of HN 33, the dates of her deployment and the groups into which she was deployed have all been published by the Inquiry. She will be required to give public evidence about her deployment. This may result in the disclosure of her real name. At this stage, that is a risk, not a certainty. Taking that risk is a price worth paying to permit the Inquiry to conduct a full investigation into her deployment. Public concern about it, which is likely to arise, will not be allayed by converting the risk into a certainty, however much the traditional media may wish that it should be. For the reasons expressed in the

“minded to” note dated 7 March 2018 and in the accompanying closed note, converting the risk into a certainty would interfere with her right to respect for private and family life under Article 8 ECHR and would not be justified.

Reasons

16. The reasons for the rulings which I now make are those set out in the “minded to” notes listed below and, where appropriate, accompanying closed notes, relating to each officer, as supplemented in the observations made above.

HN4 – Note 11 (21/6/18) and Note 12 (30/7/18)

HN13 – Note 3 (15/1/18)

HN25 – Note 5 (7/3/18)

HN30 – Note 11 (21/6/18)

HN33 – Note 6 (22/3/18)

HN82 – Note 5 (7/3/18)

HN96 – Note 5 (7/3/18)

HN200 – Note 6 (22/3/18)

HN304 – Note 3 (15/1/18)

8 November 2018

Sir John Mitting
Chairman, Undercover Policing Inquiry