

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 National Public Order Intelligence Unit and its predecessor/successor units

'Minded to' Note 3

Applications

1. I am minded to make or refuse to make the restriction orders specified below.

Nominal	Position
EN26	I refuse to make a restriction order in respect of the real name.
EN28	I refuse to make a restriction order in respect of the real name.
EN29	The real name cannot be published.
EN30	The real name cannot be published.
EN31	I refuse to make a restriction order in respect of the real name.
EN32	The real name cannot be published.
EN49	The real name cannot be published.
EN50	I refuse to make a restriction order in respect of the real name.
EN51	The real name cannot be published.
EN52	I refuse to make a restriction order in respect of the real name.
EN53	The real name cannot be published.
EN54	I refuse to make a restriction order in respect of the real name.
EN291	The real name cannot be published.
EN407	I refuse to make a restriction order in respect of the real name.
EN506	The real name cannot be published.
EN508	The real name cannot be published. I refuse to make a restriction order in respect of the cover name.

Reasons

EN26

The application for a restriction over the real name is refused.

2. The reasons why I am minded to refuse to make a restriction order in respect of the real name are set out in a closed note to EN26 and the National Police Chiefs' Council.

EN28

The application for a restriction over the real name is refused.

3. EN28 was a cover officer for deployed undercover officers with the Animal Rights National Index, then the National Public Order Intelligence Unit, for a substantial period of its existence. EN28's evidence is of significant interest to the Inquiry because s/he was the cover officer for a number of undercover officers whose names (cover or real or both) and activities are in the public domain and are of significant interest. The risk of physical harm to them from members of the targeted groups is, at worst, low. It must be lower for anyone, such as EN28, who had no direct interaction with them. EN28 will be of interest to the traditional and non-traditional media, because of his/her having been the cover officer for those officers; but I have seen nothing to confirm the existence of a real risk of harassment of EN28 by those targeted. My judgement is that the worst consequence of publication of EN28's real name that s/he faces is that of unwelcome, but passing, attention by both traditional and non-traditional media. The public interest in EN28 accounting for his/her dealings with the undercover officers mentioned above outweighs and justifies the interference in EN28's right to respect for private and family life which may result under Article 8(2) of the European Convention.
4. A closed note accompanies these reasons.

EN29

The real name cannot be published.

5. EN29 was deployed, intermittently and part time, as a cover officer for operations conducted by the National Public Order Intelligence Unit throughout its existence and played a minor role as an undercover officer once. It is inconceivable that any member of any of the groups targeted by the National Public Order Intelligence Unit would remember the cover or real name of EN29. On the basis of what I know so far, no good purpose would be served by publication of either. In particular, fulfilment of the terms of reference of the Inquiry would not be facilitated.
6. Throughout much of a lengthy police career, EN29 was deployed as an undercover or cover officer into serious and organised criminal groups. Some members of them and some other individuals have demonstrated a willingness or propensity to use serious, even lethal, violence. The risk of serious violence to EN29 and others encountered during the deployments from such people has been assessed by the risk assessor in an assessment submitted on 25 September 2018, as high, if the real identity of EN29 is discovered by them. It is not necessary for me to accept that the

risk is high. I accept, without hesitation, that there is a real risk of such violence. The risk is contingent, not immediate, so that it engages Article 8 of the European Convention, rather than Articles 2 or 3. Given that the publication of the name, real or cover, of EN29 is not necessary to facilitate fulfilment of the terms of reference of the Inquiry, it would not be justified to run that risk.

7. The deployments which give rise to that risk are those identified in paragraphs 25 to 28 inclusive of the closed risk assessment. Those paragraphs are founded on information provided by EN29. I have no reason to disbelieve or doubt that information and have not required it to be further substantiated.

EN30

The real name cannot be published.

8. EN30 was a cover officer for a little over six years. EN30 was the cover officer for two undercover officers whose deployments are of significant interest to the Inquiry. The risk of physical harm to EN30 from members of the groups targeted by them has been assessed by the risk assessor as low. I accept that assessment. But for the factors set out in the closed note which accompanies these reasons, I would have been minded not to make a restriction order in respect of EN30's real name. They cannot be disclosed openly, but require the making of such an order.
9. Evidence will be given publicly by EN30, albeit with protective measures taken.

EN31

The application for a restriction over the real name is refused.

10. EN31 served as a cover officer for approximately six years. EN31 was cover officer for Kennedy and for EN42. Events during and after the deployment of Kennedy have given rise to legitimate public concern. They must be publicly explored, in detail, to permit the Inquiry to fulfil its terms of reference. EN31 has important evidence to give about these events. Like all others who played a significant part in them, EN31 should, in principle, give evidence in public in his/her own name unless countervailing considerations preclude it. They do not. For the reasons explained in the closed note which accompanies these reasons, I am satisfied that the risk to the safety of EN31, about which s/he has expressed concerns, are, at worst, low – more likely, negligible. It is inevitable that there will be unwelcome attention from traditional and non-traditional media which will interfere with the right to respect for EN31 and EN31's family's private and family life. This is likely to be at its greatest when EN31's name is published and when evidence is given by and about EN31 and Kennedy. An

unpleasant threat has also been made on an anarchist website originating in Greece (“Contrainfo”) against undercover officers and specifically Kennedy:

“We will strive to ensure that their lives are filled with misery and constant insecurity. A life where they can never be sure that they are not being watched and where they always fear that they may be recognised by someone who hates them.”

11. The risk assessor assesses that this gives rise to a threat to EN31, as Kennedy’s cover officer, in the “medium” category. I am not convinced by this assessment. No harm has come to Kennedy. There is no reason to believe that those who have made this threat are capable of carrying it out against EN31, still less against anyone else. It has the hallmarks of an idle threat.
12. EN31 also relies on the understanding that his/her identity would be kept secret from the moment s/he joined the National Public Order Intelligence Unit. This understanding was always subject to the qualification that, if the public interest required it, s/he could be required to give evidence in his/her real name. The public interest does so require. Further, the significant, but transient, interference in the right of EN31 and EN31’s family to respect for their private and family life is justified by the need for EN31 to account publicly for the events surrounding Kennedy’s deployment under Article 8(2) of the European Convention.

EN32 – ‘Rod Richardson’

The real name cannot be published.

13. EN32 is a serving police officer. He was deployed against two groups between 1998 and 2003 and reported on others. His deployments are of significant interest to the Inquiry. His cover name is already in the public domain and was published by the Inquiry (under the reference HN596) on 15 December 2016. A great deal of information has been published in the traditional media and on activist websites about his deployment. Anyone who has information or evidence to give about his deployment can readily do so. Publication of his real name is not necessary to permit the Inquiry to fulfil its terms of reference. To do so would interfere with his and his family’s right to respect for private and family life under Article 8 of the European Convention, in one or both of two ways: by prompting unwelcome attention, possibly including low-level harassment, from associates of those with whom he interacted during his deployment; and by unwelcome attention from the traditional media. Such interference would not be justified under Article 8(2).
14. For reasons identified in the closed note which accompanies these reasons, it would not be in the public interest for his real name to be published.

EN49

The real name cannot be published.

15. EN49 was a cover officer with the National Public Order Intelligence Unit for the majority of the unit's existence, principally for two undercover officers, one of whose cover names I have refused to restrict. Before then EN49 performed duties which, if disclosed, would give rise to a risk to life. The risk of that happening is not high, but it cannot be run. For that reason, a restriction order in respect of the real name of EN49 must be made.
16. A closed note accompanies these reasons.

EN50

The application for a restriction over the real name is refused.

17. EN50 was a cover officer for the National Public Order Intelligence Unit towards the end of its existence. The undercover officer for whom EN50 was the cover officer was deployed for a short time into a group whose members pose no threat to the safety of EN50. EN50 can give evidence about the discharge of this duty and about the discharge of his/her duties generally and the management of the undercover unit in his/her real name without putting his/her safety at risk. There is likely to be some passing interest on the part of the traditional and non-traditional media in EN50's evidence, insufficient to cause any significant interference in his/her right and that of EN50's family to respect for their private and family life under Article 8 of the European Convention. EN50's own concerns about the impact on both safety and private and family life are not objectively justified.
18. These reasons are briefly supplemented in a closed note.

EN51

The real name cannot be published.

19. EN51 was a cover officer for the National Public Order Intelligence Unit in the last years of its existence. The evidence which EN51 can give about the discharge of those duties is likely to be of significant interest to the Inquiry. But for the factor referred to below I would have required the evidence to be given in the real name of EN51, without protective measures.
20. Other duties performed by EN51 for police bodies other than the National Public Order Intelligence Unit did give rise to a real risk to life and physical safety. Those risks remain. Whether or not Articles 2 and 3 of the European Convention are

engaged, they must not be run. Even if the risks fall to be assessed under Article 8, running them would not be justified under Article 8 (2).

21. These reasons are explained and expanded upon in a closed note.

EN52

The application for a restriction over the real name is refused.

22. Between 2005 and 2006, while seconded to the National Public Order Intelligence Unit, EN52 was a cover officer for an undercover officer. The legitimacy of the deployment was questionable and it was unsuccessful. EN52 has valuable evidence to give about this deployment and its justification. After the return of EN52 to the Metropolitan Police Service EN52 played a significant part in the winding up of the Special Demonstration Squad and has valuable evidence to give about that too. There is no threat to the safety of EN52. There will undoubtedly be great interest from the traditional and non-traditional media in the evidence of EN52. It is also likely that determined efforts will be made to discover the whereabouts of EN52. This will interfere with the right to respect for private and family life under Article 8 of the European Convention. The interference should be transient and have no lasting impact. Care will have to be taken with the evidence to be given by EN52 and protective measures are likely to be required, for reasons explained in the closed note which accompanies these reasons. Subject to that, the public interest requires that EN52 should give evidence about matters of significant public interest in the real name of EN52.

EN53

The real name cannot be published.

23. While seconded to the National Public Order Intelligence Unit between 2009 and 2011, EN53 was a cover officer for two undercover officers. For reasons explained in the open and closed 'Minded to' note dated 2 May 2018, I am minded to make restriction orders in respect of both the real and cover names of both officers. The risk posed by members of the targeted groups to the safety of EN53 is negligible. However, other police duties, performed outside the National Public Order Intelligence Unit have given rise to risks to safety, which cannot be precisely quantified, but remain. Those risks are explained in the closed note which accompanies these reasons. Further, publication of the real name of EN53 would interfere with the current and future performance of work by EN53 which it is not in the public interest to interrupt. To do so would also amount to a disproportionate interference in the right of EN53 to respect for aspects of private life – physical

integrity and the ability to perform useful paid work – which would not be justified under Article 8(2) of the European Convention. Careful thought will need to be given about the manner in which the evidence of EN53 and the two undercover officers is to be provided or given.

EN54

The application for a restriction over the real name is refused.

24. EN54 was temporary head of undercover operations in the National Public Order Intelligence Unit for nine months in 2003-04. With one possible exception, no threat to EN54's physical safety arising from the performance of these duties has been identified. For reasons explained in the closed note which accompanies these reasons, I am unconvinced that even the possible exception gives rise to a real risk to EN54's physical safety. The evidence which EN54 may be able to give about the discharge of his/her duties for the National Public Order Intelligence Unit is likely to attract the attention of traditional and non-traditional media and is likely to interfere, for a short period, with EN54's right and that of his/her family to respect for their private and family life under Article 8 of the European Convention. I am not persuaded that there is any greater risk of interference by others. The risk assessor has drawn attention to the "Contrainfo" post referred to in the case of EN31 above. I do not believe that this gives rise to any greater risk to EN54 than it does EN31. I am satisfied that the need for a public official performing a significant managerial role in one of the units under specific investigation to give evidence publicly in his/her own name about the discharge of those duties justifies any interference in his/her right to respect for private and family life under Article 8(2).

EN291

The real name cannot be published.

25. EN291 was not seconded to the National Public Order Intelligence Unit, but did write authorisations under the Regulation of Investigatory Powers Act 2000 for the deployment of EN327 (HN66) and performed cover officer duties for EN32 and EN508 in 2002-03. EN291 was not deployed as an undercover officer. There is no risk to EN291's safety from those encountered by the three undercover officers. There is some risk of unwelcome attention from traditional and non-traditional media. But for the factor referred to below, I would not have made a restriction order in respect of EN291's real name.
26. EN291 was diagnosed by Dr Busuttil in April 2017 as having suffered from significant diagnosable chronic mental illness for a number of years, which required intervention

and treatment. His opinion was based upon an examination of EN291's medical records and a personal consultation. In his opinion disclosure of EN291's true identity would exacerbate his/her chronic mental illness and may increase the risk of suicidal ideation. I have asked for confirmation that, as of September 2018, the position remains unchanged.

27. It is not necessary to permit the Inquiry to fulfil its terms of reference that the evidence which EN291 can provide is given under his/her real name. EN291 will give evidence in public, albeit under his/her cypher. EN291's duties for the National Public Order Intelligence Unit did not require him/her to interact with any member of the public. Publication of EN291's real name would not, therefore, prompt any evidence from them. In those circumstances, the interference in EN291's right to respect for his/her private and family life under Article 8 of the European Convention would not be justified under Article 8(2).

EN407

The application for a restriction over the real name is refused.

28. EN407 acted as a cover officer for EN34 ("Lynn Watson") in 2002 and 2003. Publication of EN407's real name would not give rise to any risk to his or her safety arising from those duties. Nor would it give rise to risks to EN407's safety arising from other police duties performed by EN407 during his/her police career. Publication of EN407's real name will undoubtedly give rise to transient interest from traditional and non-traditional media, which will be unwelcome to EN407. The limited interference with EN407's right and that of his/her family to respect for their private and family life is a price which must be paid to permit EN34's deployment and its management to be publicly scrutinised. It is justified under Article 8(2) of the European Convention. I am satisfied that the risk of any other form of intrusion is negligible.

29. These reasons are supplemented by a closed note.

EN506

The real name cannot be published.

30. EN506 performed a necessary and important administrative duty in relation to the deployment of EN40, which gives rise to no risk to the safety of EN506. EN506 is a serving police officer who has performed duties which, if the real name were to be disclosed, would give rise to real risks to life and limb. Further, EN506 continues to perform valuable police duties which would be compromised if the real name were to be disclosed. It is not in the public interest that should happen. Further, even if Articles 2 and 3 of the European Convention are not engaged (an issue upon which it

is not necessary to rule), Article 8 is. Interference with the right of EN506 to respect for an aspect of private and family life – physical integrity – would not be justified under Article 8(2).

EN508

The real name cannot be published. The application for a restriction order in respect of the cover name is refused.

31. Between 2002 and 2004 EN508 was deployed by the National Public Order Intelligence Unit into a number of groups on an intermittent basis. None of their members pose a real risk to the safety of EN508. There is a strong sterile corridor between cover and real name. Even if it were to be breached, the worst likely consequence is unwelcome, but transient, attention from traditional and non-traditional media. It is possible that publication of the cover name might prompt worthwhile evidence from those encountered by EN508. The limited interference with the right to respect for private and family life, if any, which publication of the cover name might cause is justified by the need to take the opportunity to try to obtain such evidence.
32. There is no need to expose EN508 to media attention or to risk more serious intrusions into private life by publishing the real name. Such interference would not be justified under Article 8(2) of the European Convention.
33. A closed note accompanies these reasons.

15 November 2018

Sir John Mitting
Chairman, Undercover Policing Inquiry