

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

**OPEN APPLICATION FOR A RESTRICTION ORDER (ANONYMITY)
RE: HN122
SUBMITTED ON BEHALF OF THE MPS**

Restriction Order Sought

1. The MPS apply for a restriction order over the real identity of HN122 to last indefinitely in the following terms:
 - (1) No direct or indirect disclosure of HN122's real name (including any description or image capable of identifying HN122) beyond the Chairman and the Inquiry team;
 - (2) No direct or indirect disclosure of HN122's cover identity (including any description or image capable of identifying HN122) beyond the Chairman and 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 basis:
 - 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 the right to private and family life under Article 8 ECHR
 - 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 the 'minded to' notes issued to date in respect of various SDS officers.

Evidence in Support

4. This application is supplemented by evidence which is not to be disseminated further than the Chairman and the Inquiry team:
 - a. a closed risk assessment;
 - b. supplementary closed grounds.
5. The Designated Lawyer has provided a personal impact statement on behalf of HN122, on which the Commissioner also relies.

Reasons

Section 17

6. Application of the statutory and common law principles of fairness require that the real identity of HN122 is not disclosed. The considerations which apply are highlighted below in relation s.19(3)(a) and ss19(3)(b) and 19(4).

Section 19(3)(a) and Article 8

7. A restriction order protecting HN122'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.
8. Disclosure of HN122's real name would amount to an unjustified and/or disproportionate interference with his/her right to private and family life. The nature and source of the interference is set out in the risk assessment and in the impact statement, in particular at §§12-15. It is reasonable to infer that there would be some public interest in HN122 by virtue of HN122's status as a former UCO.
9. The level of risk posed by this interference with HN122's private and family life is set out in the Risk Assessment at §§6, 8, 15, 16, 19.

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

10. The Chairman is invited to find that a Restriction Order protecting HN122'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 of real and cover identity

- 11. The following public interest factors are pertinent:
 - (a) There is a public interest in avoiding or reducing the risk of harm to HN122 and others in the event that his/her real or cover identity were disclosed. The sources of harm and the level of risk are set out at §§13, 14, 15, 16, 18, 19 in the risk assessment and §§6-11 of the impact statement. See also closed supplementary grounds.
 - (b) HN122 received assurances of confidentiality and undertook the work on that understanding. S/he has respected that confidentiality since the conclusion of his/her deployment: impact statement §§16-17.
 - (c) It is furthermore in the public interest for HN122’s real and cover identity to be restricted on the basis that it would avoid or reduce the risk of damage to effective policing. See supplementary closed grounds.

The public interest in disclosure of real identity

- 12. The MPS appreciates that the general presumption in favour of openness is a factor weighing against the making of a restriction order in HN122’s case, particularly as this application extends over both the real and cover identities.

Where the public interest balance lies

- 13. The MPS has considered the Chairman’s Principles Ruling and has had particular regard to the presumption of openness in the Public Inquiry.
- 14. In all the circumstances, the MPS makes this application for a Restriction Order over HN122’s real and cover name on the bases of fairness, and to avoid a risk of an unjustified and/or disproportionate interference with HN122’s right to private and family life. The MPS submits such an application is in the public interest and conducive to the Inquiry’s terms of reference.

MPS, Department of Legal Services

7 February 2018

