

IN THE MATTER OF THE UNDERCOVER POLICING INQUIRY

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OPEN APPLICATION FOR RESTRICTION ORDER (ANONYMITY) IN RESPECT  
OF HN18

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1. The following abbreviations are used herein:

"A/N"	Application notice;
"DL"	The Designated Lawyers
"CL"	The Commissioner's Lawyers
"I/S"	Impact statement;
"RA"	Risk Assessment

2. This A/N is submitted further to and should be read together with the following:

- a. Report of Professor Fox dated 12.3.18
- b. RA dated 31.10.17 (provided by CL)
- c. Addendum RA dated 22.5.18 (provided by CL)
- d. Closed schedule to this application dated 31.5.18
- e. DL Submissions on Articles 2-3 and "The Real and Immediate Risk" Test dated 31.1.18 (previously submitted)

3. An application for a Restriction Order granting anonymity (real name) has been made by the CL and is dated 29.5.18. The contents of that application is noted.

4. This application is for a Restriction Order granting anonymity (over both real and cover names) to HN18 to last indefinitely. The terms sought at this stage are:

- No direct or indirect disclosure of HN18's identity (including any description or image capable of identifying HN18) beyond the Chairman or the Inquiry team;
- The Designated Lawyer reserves the right to make further submissions as to operation of this Restriction Order during the Course of the Inquiry.

### Legal Basis for Application

5. This application is made on the following grounds:
  - a. Inquiries Act 2005, s17 (3) (fairness);
  - b. Inquiries Act 2005, s 19 (3) (a) and the following articles of the ECHR: Article 2 (right to life); Article 3 (the freedom from torture or cruel, inhuman or degrading treatment or punishment) and Article 8 (respect for private and family life);
  - c. Inquiries Act 2005, s 19 (3) (b) read with s 19 (4)(b) –(c) (fulfilment of the terms of reference and necessary in the public interest).
6. The applicable legal principles are as set out in the Chairman's Restriction Order: Legal Principles and Approach Ruling ("the principles ruling") of 3<sup>rd</sup> May 2016 read with later rulings and Minded to notes.

### **Section 17**

7. With respect to s.17 (3), the application of the statutory and common law principles of fairness require that the identity of HN18 is not disclosed. The considerations which apply are highlighted below.

***Section 19 (3) and the Human Rights Act 1998***

8. A Restriction Order protecting HN18'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 rights in issue are Articles 2, 3 and 8.
9. HN18 relies on the conclusions of Professor Fox set out his report dated 12.3.18, in particular paragraphs 4.2-4.8. It is submitted that Articles 2 and 3 are engaged.
10. The disclosure of HN18's identity is likely to increase his/her distress in relation to and affect HN18's ability to participate with the Inquiry generally, please see paragraph 4.9 of Professor Fox's report dated 12.3.18.
11. The disclosure of HN18's identity would have a disproportionate and unjustified impact on his/her private and family life for the reasons set out below.
  - a. Particular symptomology of HN18's medical condition is already having an impact and disclosure of real or cover names will lead to deterioration in that symptomology (see paragraph 4.6 of the report of Professor Fox).
  - b. Further examples of direct impact on / interference with HN18's enjoyment of private and family life are set out in the RA dated 31.10.17, at paragraphs 19.6 and 19.8.

***Sections 19 (3) (b) and 19 (4)***

12. The Chairman is invited to find that a Restriction Order protecting HN18's identity is conducive to the Inquiry fulfilling its Terms of Reference or is necessary in the public interest having regard to the factors set out in 19 (4) of the Act read together with the Chairman's approach at paragraph 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

13. The following points are pertinent to the assessment of the public interest:

- a. The publication of HN18's real or cover name is likely to cause harm to HN18 for the reasons set out above. There is clear public interest in avoiding harm to HN18 even if the Chairman does not accept that the level of harm meets the threshold of Articles 2 and 3 ECHR.
- b. Further, it is in the public interest for HN18's identity to be restricted on the basis that this would avoid disproportionate interference with HN18's right to private and family life. That public interest is particularly acute given the evidence of Professor Fox.
- c. It is in the public interest for HN18 to be enabled to participate as fully as is possible in providing evidence to the Inquiry and restriction would assist in achieving this end by mitigating personal harm to HN18 that

might otherwise prevent engagement, as per paragraphs 4.8 and 4.9 of Professor Fox's report.

- d. There is a third party risk detailed at paragraph 18 of the Risk Assessment, it is in the public interest that the Article 8 rights of this individual are protected. See further the CLOSED Schedule.

The public interest in disclosure:

14. Whilst the general presumption in favour of openness weighs against the making of a Restriction Order. However, the rationale for the presumption needs to be borne in mind.
15. The evidence that HN18 is likely to be asked to give to this Inquiry is likely to be of relevance to the Inquiry's terms of reference. The Chairman will have to weigh carefully the public interest in disclosure of HN18's identity against the risks identified above and the impact that they may have with HN18's capacity to engage with the Inquiry process, as per paragraphs 4.8 and 4.9 of the report of Professor Fox. Absent a Restriction Order, there is a real risk that HN18 will be unable to effectively assist the Inquiry.

Where does the public interest balance lie?

16. Consideration has been given to the Chairman's Principles Ruling and in particular the regard that must be had to the presumption of openness in the Inquiry.

17. The Chairman is invited to conclude that the public interest favours non-disclosure for the following reasons:

- a. There is a public interest in avoiding harm to HN18 and his / her family which demands that restrictions over HN18's identity are put in place.
- b. There is a public interest in mitigating the risk of harm to HN18 in furtherance of the terms of reference of the Inquiry in light of the evidence that HN18 may be asked to provide.

18. This application for Restriction Orders over HN18's identity represents a necessary step in avoiding real and immediate risk of interference with HN18's rights under Articles 2 and 3 ECHR and disproportionate interference with HN18's and the third party's rights under Article 8 of the ECHR.

19. It is further submitted that the application of common law and statutory (section 17 (3) Inquiries Act 2005) principles of fairness require that the identity of HN18 is restricted. The same factors highlighted above support that conclusion.

**THE DESIGNATED LAWYERS (UCPI)**

31st May 2018