

IN THE MATTER OF THE UNDERCOVER POLICING INQUIRY
APPLICATION FOR A RESTRICTION ORDER
ON BEHALF OF 'MCD'

APPLICATION – OPEN SECTION

1. This is an application for a Restriction Order ('RO') under s.19 Inquiries Act 2005 ('the 2005 Act') covering the identity of MCD throughout the Inquiry,
2. A short closed section and a proposed order is enclosed for the Chair's consideration.

Background

3. MCD's application for Core Participant status and for costs of legal representation was made on 11 February 2019.
4. MCD's application noted that a RO application would be made in due course and asked that her name be treated as potentially restricted evidence in the meantime.
5. Core participant status was granted on 14 February 2019.
6. The Chair's ruling noted that MCD has "potentially valuable evidence to give about HN18's deployment". The Chair also noted that MCD may particularly be able to assist the Inquiry in determining why the International Solidarity Movement (ISM), a group with an overseas focus, was targeted.
7. MCD has important family history in Palestine, has visited Palestine and Israel six times from a young age, has significant personal connections with local religious organisations and important close friendships with Palestinians and Israelis. The region is also of spiritual importance to her. This is set out in greater detail in the closed section of the application.
8. Visiting Palestine requires passing through Israeli border control. Activists, volunteers and others are regularly refused entry, even where their purpose is not participation in any activist activity. MCD has previously been stopped and detained on attempting to enter Israel (detailed in the closed section). Due to the importance of her connections with the region and her close friendships, MCD is hopeful she will be able to enter in the future.

Requirement for a Restriction Order

9. If MCD's name is published by the Inquiry it will be publically associated with ISM. The internet would allow this information to be quickly and easily located.

10. MCD is concerned that her being publically associated with ISM will prevent her being able to visit Palestine and Israel again.
11. MCD's concern is genuine and well founded. She has previously had difficulties entering, likely due to her association with ISM. Recent events also show that Israel is unlikely to allow entry to a person publically associated with ISM. In 2016, the Israeli Interior Ministry announced new measures to identify and block foreign activists from entering the country¹. Israeli press has reported several instances of individuals being refused entry and detained and/or deported in the last year due to their opposition to Israeli government policy².
12. Even if MCD were able to enter Israel, she is concerned that conditions would be placed on her ability to enter the Occupied Palestinian Territories and visit close friends and institutions she is connected with.
13. She is also concerned that the public association of her name with ISM will damage the reputation of her Israeli and Palestinian friends.

Test

14. The Chair may impose a restriction on the publication of information provided to the Inquiry under s.19(1)(b) of the 2005 Act, by way of making a RO during the course of the Inquiry under s.19(2)(b).
15. ROs may be required due to an obligation under law (s.19(3)(a)) or because it is considered "*conducive to the inquiry fulfilling its terms of reference or to be necessary in the public interest, having regard in particular to the matters mentioned in subsection (4)*" (s.19(3)(b)).
16. With respect to the condition under s.13(3)(a), the following law is relevant:
 - a. Article 8 ECHR, incorporated by s.6 Human Rights Act 1998;
 - b. The Inquiry's common law duty of fairness; and

¹ Israel to crack down further on foreign pro-Palestinian activists; *The Guardian* [online] 8 August 2016 [accessed: 25 February 2019]. <https://www.theguardian.com/world/2016/aug/08/israel-to-crack-down-further-on-foreign-pro-palestinian-activists>

² For example see:

- Prominent Jewish BDS activist denied entry to Israel; *The Times of Israel* [online] 2 July 2018. [Accessed: 25 February 2019]. <https://www.timesofisrael.com/prominent-jewish-bds-activist-denied-entry-to-israel/>
- Israel refuses entry to member of UK Labour Party; *The Jerusalem Post* [online]. 14 January 2019. [Accessed: 25 February 2019]. <https://www.jpost.com/International/Israel-refuses-entry-to-member-of-UK-Labour-Party-577341>
- Dutch BDS activist denied entry into Israel; *The Jerusalem Post* [online]. 20 July 2018. [Accessed: 25 February 2019]. <https://www.jpost.com/Israel-News/Dutch-BDS-activist-denied-entry-into-Israel-at-Ben-Gurion-airport-563017>
- Israel's Supreme Court Grants Lara Alqasem's Appeal; She Will Be Allowed to Enter the Country; *Haaretz* [online]. 19 October 2018 [Accessed: 25 February 2019]. <https://www.haaretz.com/israel-news/.premium-israel-s-supreme-court-accepts-lara-alqasem-s-appeal-she-will-be-allowed-to-enter-1.6572135>

c. Section 17(3) of the 2005 Act.

17. In relation to Article 8 ECHR, the question of if an obligation has arisen, should be answered by reference to:

- a. Firstly, whether the public disclosure of the information would constitute an interference with applicant's Article 8 rights to privacy; and
- b. Secondly, whether such interference is necessary in a democratic society for a reason set out in Art. 8(2) and proportionate to that reason.

18. With respect to the condition under s.19(3)(b), following matters under s.19(4) are relevant:

(a) the extent to which any restriction on attendance, disclosure or publication might inhibit the allaying of public concern;

(b) any risk of harm or damage that could be avoided or reduced by any such restriction;

[...]

(d) the extent to which not imposing any particular restriction would be likely—

(i) to cause delay or to impair the efficiency or effectiveness of the inquiry, or

(ii) otherwise to result in additional cost (whether to public funds or to witnesses or others).

Analysis

19. In relation to all the above grounds, the context of how this question arises is important to consider. MCD is a participant in the Inquiry because a political organisation she was active in was infiltrated by an undercover officer. It is very likely that her private life was extensively reported upon. As such, there has already been substantial violation of our client's privacy.

Article 8 ECHR

20. The publication of MCD's true identity, in association with ISM, would represent an interference with MCD's private life. MCD's political activity in general and involvement in ISM in particular are private matters, over which she enjoys a reasonable expectation of privacy.

21. The question of whether such interference is justified must take into account the significant risk that release of her identity will prevent MCD being able to maintain personally important relationships. The interference should therefore be understood as particularly significant.

22. Additionally, impinging MCD's ability to maintain meaningful relationships with friends and charitable and religious organisations would represent a further interference with MCD's Article 8 rights.

23. The release of MCD's name is not justified by a reason under Article 8(2). While the Inquiry's work does align with reasons under 8(2), the public release of her name will be of no assistance to the Inquiry's investigation. The identity of MCD is not of relevance to Inquiry's terms of reference.
24. We recognise that MCD's rights need to be balanced with Article 10 rights of the media. In relation to this question the proposed restriction does not impinge the ability to report the major detail of infiltration which is of public interest. The detail of our client's identity is not a matter of public interest.

Fairness

25. The obligations of fairness both in common law and as required by s.17(3) of the 2005 Act also necessitate granting of the RO.
26. MCD wishes to be able to assist the Inquiry with its investigation. As is noted in the Chairman's ruling, an issue for the Inquiry will be why ISM, a group with overseas focus, was the subject of infiltration. It would be unfair for MCD's assistance in the Inquiry to cause further interference to our client's privacy and prevents her to be able to visit the region with which ISM is concerned.
27. Given that our client would suffer significant identifiable detriment from release of her name, in association with ISM, (i.e. increase in risk she will not be able to visit the region again) we consider that not granting the proposed order would cause particular detriment and unfairness.
28. The proposed RO would not cause unfairness to any other person. We note the proposed order does not prevent any other Core Participant or witness being informed of MCD's name so long as they are bound by an appropriate confidentiality agreement.

s.19(3)(b): Conducive to the inquiry fulfilling its terms of reference or necessary in the public interest

29. MCD hopes she can assist the Inquiry in fulfilling its terms of reference. She is particularly concerned with the use of information gathered, oversight and accountability. She is determined to get to the truth of what she considers to be a significant violation of her rights. However, she is concerned that she will be unable to visit a region of significant personal importance should her name be released in association with ISM. As such, MCD intends to re-consider her involvement should the RO not be made.
30. At present there is only one other non-state core participant who has direct knowledge of HN18's infiltration of ISM London.
31. Not making a RO should be understood as presenting a significant barrier for MCD's involvement in the Inquiry. As recognised by the Chair, MCD has a potentially valuable contribution to make. It is therefore conducive to the inquiry fulfilling its terms of reference to assist her in making that contribution.
32. Additionally, the granting of the application may encourage others in similar situations to MCD to come forward who may be able to offer further assistance to the Inquiry.
33. The condition under s.19(3)(b) requires that regard is had to the factors under s.19(4). The relevant factors are considered below.

Inhibit the allaying of public concern

34. Restriction of MCD's name will not inhibit the allaying of public concern. The public concern relates to the manner and oversight of undercover policing as well as if the rights of those reported upon were given proper regard among other matters. Plainly, the public is not concerned with MCD's name.
35. Additionally, there is no reason to consider that the granting of the proposed order would undermine confidence in the Inquiry's investigation.
36. Conversely, we consider that the grant of the application will assist in allaying public concern as it will allow for the participation of a person who was subject to undercover policing and who has potentially valuable evidence to give.

Risk of harm or damage that could be avoided or reduced

37. The examples of "harm or damage" at s.19(5) are not exclusionary.
38. As is explained above there is a significant indefinable risk that, should MCD's name be published, she would be unable to enter Israel and/or Palestine, an area of great personal and spiritual significance to her. She may further be unable to maintain relationships with friends and charitable and religious organisations of great importance to her. While this risk is not eliminated by the granting of the RO, MCD is content that it will be reduced to an acceptable degree.

Effectiveness and efficiency of the Inquiry or additional cost

39. The proposed RO will not impinge on the Inquiry's effectiveness. Core participants and witnesses will be able to know MCD's identity and be able to give full evidence accordingly. Conversely, given that the proposed order will allow MCD to participate in the Inquiry, the granting of such would improve the Inquiry's effectiveness.
40. Additionally, the refusal to grant the proposed order is likely to diminish the effectiveness of the Inquiry as it may prevent MCD's further involvement and public naming will act as a deterrent to potential witnesses in the same or similar position to MCD.
41. The proposed restriction would have a very minor impact on the efficiency of the running of the Inquiry. Given the detriment that would be potentially caused by the release of MCD's name and the value of MCD's participation, the very minor cost to the Inquiry is justified.

Concluding remarks

42. We hope the above provides satisfactory basis for the granting of the proposed order. We are happy to provide further information as is required.

7 March 2019