

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

APPLICATION FOR A RESTRICTION ORDER

1. This is an application for a Restriction Order ('RO') under s.19 Inquiries Act 2005 ('the 2005 Act') covering the identity of 'Maya' throughout the Inquiry.
2. The Chair is already aware of Maya's true identity and the background facts which were set out in her application for core participant status which was granted on 7 May 2019.
3. A proposed order is enclosed for the Chair's consideration.

Requirement for a Restriction Order

4. Maya has suffered very significant distress as a result of discovering that Rob Harrison was an undercover officer.
5. Should Maya's real name be made public this distress will very likely be further exacerbated.
6. Additionally, should Maya's real name be published, it is likely that journalists and others may seek to contact her, causing further intrusion into her private life and distress.
7. Maya is keen to participate in the Inquiry for reasons set out her core participant application, however is also concerned to protect her wellbeing. As such she may not be able to continue her participation in the Inquiry without the protection of a RO.

Test

8. 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).
9. 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)).
10. 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
 - c. Section 17(3) of the 2005 Act.
11. 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.
12. 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

13. In relation to all the above grounds, the context of how this question arises is important to consider. Maya is a core participant in the Inquiry because a man she was in a relationship for a number of years had deceived her while working as an undercover police officer. As such, there has already been a very substantial violation our client's private life.

Article 8 ECHR

14. The publication of Maya's true identity would represent an inference with her private life. Maya enjoys a reasonable expectation of privacy over the fact that she was engaged in a relation with HN18.
15. The release of Maya'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 Maya is not of relevance to Inquiry's terms of reference.
16. We recognise that Maya rights should 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 important facts which are of public interest. The detail of our client's identity is not a matter of public interest.

Fairness

17. 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.
18. Maya wishes to be able to assist the Inquiry with its investigation. It would be unfair for Maya's assistance in the Inquiry to cause further interference to our client's privacy or distress.
19. Given that our client would suffer significant identifiable detriment from release of her name we consider that not granting the proposed order would cause particular detriment and unfairness.
20. 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 Maya'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

21. Maya 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.
22. Not making a RO should be understood as presenting a significant barrier for Maya's involvement in the Inquiry. It is therefore conducive to the inquiry fulfilling its terms of reference to assist her in making that contribution.
23. Additionally, the granting of the application may encourage others in similar situations to Maya to come forward who may be able to offer further assistance to the Inquiry.
24. 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

25. Restriction of Maya'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 Maya's name.
26. Additionally, there is no reason to consider that the granting of the proposed order would undermine confidence in the Inquiry's investigation.
27. 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 significant violation and who has potentially valuable evidence to give.

Risk of harm or damage that could be avoided or reduced

28. There is risk of causing or exacerbating psychiatric injury, should Maya's name be published.

Effectiveness and efficiency of the Inquiry or additional cost

29. The proposed RO will not impinge on the Inquiry's effectiveness. Where necessary, core participants and witnesses will be able to know Maya's identity and be able to give full evidence accordingly. Conversely, given that the proposed order will allow Maya to participate in the Inquiry, the granting of such would improve the Inquiry's effectiveness.
30. Additionally, the refusal to grant the proposed order is likely to diminish the effectiveness of the Inquiry as it may prevent Maya's further involvement and public naming will act as a deterrent to potential witnesses in the same or similar position to Maya.
31. 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 Maya's name and the value of Maya's participation, the very minor cost to the Inquiry is justified.

Concluding remarks

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

5 June 2019