

**CONFIDENTIAL SUBMISSION ON BEHALF OF KTC**

**(Category M Core Participant)**

**Re Restriction Order for HN104**

1. This **urgent confidential submission** is made on behalf of KTC, one of the Category M Core Participants. KTC is the ex-wife of HN104, whose cover name is public, but whose real name is the subject of a Restriction Order, as set out below. KTC and HN104 have two children together during their marriage [REDACTED]  
[REDACTED]
2. This submission invites the Inquiry to take steps to pre-empt a prospective breach of the Restriction Order made on 7 August 2018 in relation to HN104 ('the RO'). Reasons for making the RO were issued in a Ruling of the same date. The Ruling sets out the procedural and substantive background to the making of the RO.

**The terms of the RO**

3. The RO is in familiar terms, and made under section 19 of the Inquiries Act 2005. It is endorsed with a penal notice. The key provisions of the RO are highlighted below. Paragraph 1 makes clear that it binds "*all persons and groups of persons*".
4. Paragraphs 2 and 3 of the RO provide:
  2. *There shall be no disclosure or publication made of any evidence or document given, produced or provided to the Inquiry which discloses HN104's real identity (including any description or image capable of identifying HN104).*
  3. *There shall be no disclosure or publication made of any evidence or document given, produced or provided to the Inquiry which has the effect of disclosing HN104's real identity, or contributing to such disclosure, and which the person responsible for the disclosure or publication knows or suspects will have that effect.*

5. Paragraph 4 sets out permitted disclosures, none of which are relevant for present purposes. Paragraph 7 makes clear that the order does not bind the Inquiry team *“which shall take its own measures to ensure that information the subject of this order is not disclosed in such a way as to undermine its intended effect”*.

### **The Ruling**

6. The Ruling makes clear (§3) that HN104’s real name is known to a number of activists, as well as “to the traditional media”. The Chairman expressly stated that he was not in a position to prevent anyone aware of HN104’s real name from publishing it, while noting that those aware of the real name, as at that point, *“have refrained from [publishing it] out of proper concern for the impact which publication will have upon HN104’s children”*.
7. The operative reasons for making the order are set out at §6 of the Ruling. Expressly, those reasons were founded on the ECHR Article 8 rights of the children of the marriage, as innocent parties, and the duty on the Inquiry not to interfere with those rights. There were found to be no countervailing considerations under Article 8(2), given that all those who needed to know the real identity of HN104 did so, and that his cover name had been published, and that he would be required to account for his conduct in public.
8. The ruling explained the limits on what the order would achieve:

*“6. No good can come of all of this. Publication of HN104’s real name, whether by the Inquiry, non-police, non-state core participants or the traditional media, must have a damaging impact on the well-being and even health of his children. No order which I can make can, by itself, protect them. ...*

...

*Finally, and most importantly, this ruling will not prevent any person from publishing his real name unless they have derived that knowledge from documents, information or evidence produced or given during the course of the Inquiry. In the final analysis, the decision whether or not to publish HN104’s real name will depend upon the judgement and humanity of those who already know it.”*

9. It is correct that the real name of HN104 may currently be found by searching the internet. However, as far as those acting for KTC are aware it has never been published by the mainstream media.<sup>1</sup>

### **The anticipated publications in issue**

10. On circulation of the written openings between core participants on Thursday 29.10.20, it was apparent that one of those opening statements included the real name of HN104: the Written Opening Statement on behalf of 18 women represented by Phillippa Kaufmann QC and Ruth Brander (on the instructions of 3 firms), at §§ 173, 181, and 299. On the current timetable, the oral opening is due to be made next **Monday 9.11.2020 at 10am.**
11. On Friday 30.10.2020, Mr Ruis, acting for KTC, contacted the solicitor (Ms Wistrich of Birnberg Peirce) for the relevant Category H core participant (Donna McLean) by email. Mr Ruis referred to the RO and associated Ruling, and requested for HN104's real name not to be published in the written opening or oral statement.
12. On Wednesday 4.11.2020 Ms Wistrich replied by email, maintaining the intention to publish the real name of HN104 in the opening statement, and asserting the right to do so:

*"I now have instructions from my client. I am afraid she does not wish to withdraw her decision to provide the real name of the man that abused her. She has spoken to Lindsay who supports her decision. Whilst there is a restriction order, as you know the name has already been in the public domain for some time and the restriction order does not prevent my client from naming him. She feels the[y] are now old enough (she*

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<sup>1</sup> This is subject to two exceptions. An article was published by the Scotsman on 02.08.2020, which included HN104's real name. [REDACTED] that name was removed from the online version on 6 August 2020: <https://www.scotsman.com/news/crime/loving-lie-woman-who-found-her-fiance-was-undercover-police-officer-2930639>. Notably, in another article (which does not mention HN104's real name), published on 15 January 2017 in the Glasgow Herald, Donna McLean (then under the pseudonym of Andrea) is quoted as follows: "I know his real name. I chose not to publish it because I wanted to be respectful towards his children and his ex-wife. They have had enough trauma from having to deal with him." See: <https://www.heraldscotland.com/news/15024407.my-lover-the-undercover-cop-victim-of-secret-policeman-tells-of-their-life-in-scotland/>. The name also currently appears on the Morning Star online site: <https://morningstaronline.co.uk/article/b/unite-calls-for-no-stone-to-be-left-unturned-as-spycops-true-identity-revealed>

*understands the oldest is 21) and that she does not need to put their needs over hers.”<sup>2</sup>*

13. It is understood that ‘Lindsay’ referred to in Ms Wistrich’s email is ‘Lindsey’, the Core Participant represented by Bindmans with whom HN104 also had a sexual relationship (per §181 of the opening statement of the Category H Core Participants represented by Bindmans). Further, Mr Ruis has been informed by Mr Morgan of Bindmans (by email dated 4.11.2020) that ‘Lindsey’ has now given instructions to state HN104’s real name in the course of the oral opening for her group.

### **Breach of the RO**

14. On behalf of KTC it is submitted that the proposed publication of the real name of HN104 would be clear breach of the RO – contrary to the assertion made by Ms Wistrich. Whilst, as the Ruling makes clear, the RO does not prevent the publication of the name outside the context of the Inquiry, there is a prohibition that bites on *“any evidence or document given, produced or provided to the Inquiry which discloses HN104’s real identity”* (per §2 of the RO, quoted above).

15. The opening statement is a *“document given, produced or provided to the Inquiry”* and as such revealing HN104’s real identity in that document is a breach of the RO.

16. Similarly, for a legal representative to refer to HN104’s real identity from the live-streamed opening statement must be a breach of the RO. There can be no doubt that the oral opening, live-streamed is a *“publication”*. In this context it is noted that the Contempt of Court Act 1981, s.2(1) provides:

*“publication” includes any speech, writing, programme included in a cable programme service or other communication in whatever form, which is addressed to the public at large or any section of the public.*

17. The ambit of the RO reflects the ambit of section 19 of the 2014 Act. The explanatory paragraph at §7 of the Ruling explains that ambit, but does not (and could not) restrict the effect of the RO – let alone negate its effect entirely by permitting any publication of HN104’s real name.
18. **Outside** the context of the Inquiry, as the Chairman put it at §7 of the Ruling, “*the decision whether or not to publish HN104’s real name will depend upon the judgement and humanity of those who already know it*”. Publication or disclosure **within** the context of the Inquiry (i.e. “*any evidence or documents given, produced or provided*” to it – as per s.19(1)(b) and the RO made under it) is governed by the Inquiry, within its powers under s.19.
19. Those acting for Ms McLean and ‘Lindsey’ appear to consider that because the real name of HN104 “*has already been in the public domain for some time*” (as stated in Ms Wistrich’s email of 4.11.20), this may be relevant to the requirement for compliance with the RO. That would plainly be incorrect:<sup>3</sup> the RO remains in force and its terms must be complied with. The source of the knowledge of HN104’s real name (in particular that the knowledge has not been acquired from the Inquiry) is also irrelevant to the requirement to comply with the terms of the RO in the written and oral opening statements.

### **Conclusion**

20. It is respectfully submitted that publication or disclosure of the relevant opening statement would constitute a breach of the RO, if it identifies the real name of HN104. That applies equally to the written opening statement and the oral delivery of that statement.

21. Accordingly, (and pursuant to the indication in section 7 of the RO) the Inquiry is invited to consider that it:-

- (1) Should warn the relevant representatives at Birnberg Peirce and Bindmans that publication or disclosure of the real name of HN104 in the written or oral opening statement is likely to be a breach of the RO, which order is subject to a Penal Notice;
- (2) Should not itself publish on its website the opening statement in any form which includes the real name of HN104;
- (3) Should not live-stream the relevant part of the opening on behalf of the Category H core participants unless the legal representatives undertake not to reveal the real name of HN104; and
- (4) Should not make available on the Inquiry's website that part of any oral opening statement after it has been delivered, unless it excludes reference to the real name of HN104.

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**5 November 2020**