

CONFIDENTIAL SUPPLEMENTARY SUBMISSION

ON BEHALF OF KTC (Category M Core Participant)

Re Restriction Order for HN104

For hearing on Monday 9 November 2020 at 9.15am

1. We are grateful for the submissions of Counsel to the Inquiry (CTI). This brief supplementary submission is by way of a summary response, on the same confidential basis as the original submission on behalf of KTC dated 5 November 2020
2. The following initial points are made, in particular so that those seeking to disclose HN104's real name in their opening statements may understand KTC's position, even if disagreeing with it:
 - (i) KTC recognises and respects the strong view held by Ms McLean and 'Lindsey' that the real name of HN104 should be made public.
 - (ii) Those seeking to name HN104 have been deeply harmed by the actions of HN104, as has KTC. KTC has full sympathy for both Ms McLean and 'Lindsey', and has no desire to take any action that inhibits their ability to deal with what has been done to them by HN104, [REDACTED]
[REDACTED]
 - (iii) By taking steps to prevent this disclosure her sole interest remains the protection of her children from further harm. Confidential information has been provided to the Inquiry giving further details of the harm that has occurred, and the degree to which there is a real risk of further harm (within the scope of Article 8, and constituting interference with the Article 8 rights of these innocent third parties) if HN104's real name is revealed in the context of the Inquiry together with the publicity associated with that.

- (iv) KTC is aware from the article in the Glasgow Herald on 14.1.2017 that previously Ms Mclean has made a compassionate decision not to name HN104. As 'Andrea' she is quoted as saying:

"I chose not to publish [HN104's real name] because I wanted to be respectful towards his children and his ex-wife. They have had enough trauma from having to deal with him."

Regardless of the stance that Ms McLean may now be taking, KTC is genuinely appreciative of the forbearance which she has shown previously.

3. In relation to the submissions made by CTI:

- (i) *Potential measures pursuant to section 17* We are grateful for the identification of positive steps open to the Inquiry to take, pursuant to powers derived from s.17(1) of the 2005 Act. We do not seek to comment further on those steps, beyond commending them as proper means by which the Inquiry may comply with its duties as a public authority under the ECHR. The considerations which led to the making of the RO remain applicable and are relevant to the need to take the further steps identified.
- (ii) *The RO and section 19* In relation to the scope of the Restriction Order (RO) we respectfully maintain that the opening statement falls within the scope of the RO. This is of some importance, given the penal notice attached to the RO. It would be wrong to give other Core Participants false reassurance that disclosing or publishing an opening statement that named HN104 by his real name, or enabled him to be identified would not be a breach of the RO.

4. CTI addresses the effect of the RO in his submission at paragraph 2. The reasoning does not seek to address the substance of the previous submission on behalf of KTC. In short:

- There is an assertion that the wording of s.19 "is not wide enough to cover this situation". The relevant aspect of the "situation" appears to be identified as being that "the source of knowledge of that name was not the Inquiry".
- The relevant terms of s.19(1)(b) are quoted.
- The original assertion is then repeated, but not reasoned any further.

5. Significantly, and correctly, CTI states at §3.3 of his submission that the opening statement "is a document produced to the Inquiry and falls within the scope of

s.19". On that basis, it is very hard to see how the revelation of HN104's real name in that document is not a breach of the RO if that document is disclosed or published.

6. Further, it is noted that:

- (i) There is nothing on the face of either s.19 or the RO that the source of the information (in particular as having been derived independently of the Inquiry) is relevant.
- (ii) To regard the source of the information as relevant in excluding a statement (and its publication or disclosure) from the scope of the RO would be contrary to the purpose of the RO, which is to provide the ability to protect information in documents (or evidence) that have been provided (etc.) to the Inquiry. The source of information to be protected in such documents cannot matter: the purpose is protection of the information in material (i.e. documents or evidence) that has been supplied to the Inquiry.
- (iii) 'Document' is broadly defined at s.43(1) of the 2005 Act:
"document" includes information recorded in any form ... ;
Thus an audio or video recording may be a document for these purposes. There is no restriction on what constitutes a document by reference to the source of the information within it.
- (iv) Once it is recognised – as the CTI does – that the opening statement is a 'document' within the scope of s.19 (and hence the RO made under s.19) it must follow that there is a breach of the RO if it names HN104 and is then published or disclosed.
- (v) It cannot be doubted (and does not appear to have been doubted) that reading a document aloud, live-streamed on the internet, constitutes disclosure or publication of that document. On that basis, the RO prohibits the naming of HN104 in doing that.
- (vi) Likewise, if any person outside the context of the Inquiry published or disclosed (including on the internet) an opening statement that has been provided to the Inquiry, that would be in breach of the RO if it named HN104.

7. Pursuant to the Inquiry requiring compliance with its orders, and to avoid any core participant being led into a breach of the RO, it is submitted that Chairman:
- Should make clear that CTI's submission at paragraph 2 cannot be taken as a definitive statement or reassurance that publication or disclosure of an opening statement that has been provided to the Inquiry which names HN104 does not constitute a breach of the RO.
 - Should warn that such disclosure or publication of the opening statement naming HN104 may well be viewed as a breach of the RO and hence trigger the penal consequences of that.

It may not be necessary to go further than that if the Inquiry adopts the alternative measures identified by CTI pursuant to its powers under s.17.

8 November 2020

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