

Counsel to the Inquiry's Note for the Hearing

on 9 November 2020 at 9.15am

Sir,

1. You made a restriction order which restricts publication of HN104 "Carlo Neri's" real name which was published on 23 October 2020. It remains in force.
2. There are three issues to consider today. The first is whether the restriction order prohibits an advocate from using HN104's real name during the course of her opening statement when the source of knowledge of that name was not the Inquiry. In my submission the wording of s.19 Inquiries Act 2005 and the order made under it is not wide enough to cover this situation. S.19(1)(b) is limited to the restriction of: "*disclosure or publication of any evidence or documents given, produced or provided to an inquiry*". The use of HN104's real name in an opening statement by someone who has not been provided with that identity by the Inquiry is not the disclosure or publication of any evidence or documents given, produced or provided to an inquiry.
3. The second issue is what other powers you have to prevent publication by the Inquiry of HN104's real name in the course of opening statements. The procedure and conduct of the Inquiry are to be such as you direct: s.17(1) IA 2005. In making decisions as to the procedure and conduct of the Inquiry you must act with fairness: s.17(3). In my submission you have the power to do any of the following, if you conclude that you would be violating the Article 8 rights of HN104's children (or either of them) by permitting the transmission through the live stream, or posting on the Inquiry's website, HN104's real name.
 - 3.1. Order that HN104's real name must not be used during a live streamed opening statement. Such an order, made under s.17, in order to comply with your duty under s.6 Human Rights Act 1998, read with Art.8 of the Convention, or in order to be fair, would be enforceable through s.36(1) IA 2005: *Where a person fails to comply with, or acts in breach of, a notice under section 19 or 21 or an order made by an Inquiry...the chairman of the inquiry ...may certify the matter to the appropriate court*".
 - 3.2. Alternatively, require an undertaking from an advocate that HN104's real name will not be used in the live streamed opening statement.
 - 3.3. Redact any mention of HN104's real name in any written opening statement posted on the Inquiry's website using s.19 IA 2005. It is a document produced to the Inquiry and falls within the scope of s.19.
 - 3.4. Redact any mention of HN104's real name from the transcript pursuant to s.17.
 - 3.5. Redact any mention of HN104's real name in any video recording of an opening statement posted on the Inquiry's website pursuant to s.17.
4. The third issue is whether your duty to comply with s.6 Human Rights Act 1998, read with Article 8 of the Convention, or fairness, requires you to take the above steps. On that issue, unless anything has changed so as to alter the balance struck between the competing interests which you considered when you made the existing restriction order, the answer will be yes. There has been some change. First, HN104's real name is circulating to a greater extent in the public

domain. Second, there is clearly a strong desire on the part of some CPs to refer to HN104 by his real name in the opening statements. Third, you have been updated on the condition and circumstances of HN104's children. No doubt you will be addressed further by those attending the procedural hearing as to whether publication by the Inquiry of the name would violate the Art.8 rights of either child.

6 November 2020

DAVID BARR QC