

UNDERCOVER POLICING INQUIRY

IN THE MATTER OF AN INQUIRY UNDER THE INQUIRIES ACT 2005 INTO UNDERCOVER POLICING

Before:

Sir John Mitting
Chairman)

On the application of KTC
(Category M Core Participant)

Re: HN104

David Barr QC
(Counsel to the Inquiry)

In attendance

Angus McCullough QC instructed by Hickman & Rose Solicitors on behalf of
KTC

Fiona Murphy instructed by:
Bindmans LLP on behalf of “Lindsey”;
Birnberg Peirce on behalf of Donna McLean; and
Imran Khan and Partners on behalf of the Blacklist Support Group

Helen Steel – Category H Core Participant

Interested Parties

Phillippa Kauffmann QC
Heather Williams QC
Dave Smith

Hearing date: 9 November 2020

RULING

UNDERCOVER POLICING INQUIRY

Ruling by Sir John Mitting
(9.27 am)

Monday, 9 November 2020

1. On 7 August 2018, on the application of KTC, a Category M Core Participant and the ex-wife of the undercover officer HN104, with the cover name "Carlo Neri", I made a restriction order in respect of his real name. The reasons for the order, and the only reasons for the order, were that it was necessary to safeguard the wellbeing of his two, then teenage, children. One of them is now an adult; the other is 15.
2. Ms Kaufmann QC, Ms Williams QC, Dave Smith and Helen Steel wish to refer to the real name of "Carlo Neri" in their oral opening statements. KTC, by Mr McCullough QC, contends that that would infringe the restriction order made on 7 August 2018 and imperil the wellbeing of the 15-year old child. I do not accept his first submission. The restriction order applies only to -- and I quote:
"... disclosure or publication of evidence or documents given, produced or provided to an inquiry."
3. An oral opening statement is not evidence or a document. Live transmission does not make it either.
4. I am, however, satisfied that if the real name of "Carlo Neri" were to be transmitted by the Undercover Policing Inquiry by the live link currently used for opening statements, it would have an adverse impact on the welfare of the 15-year old. I described the impact which would have occurred over two years ago in the ruling of 7 August 2018.
5. I have been provided with some information by KTC, including a statement which has not been made known to others, which satisfies me that, objectively, there would be an adverse impact on the welfare of the 15-year old if the father's name were to be broadcast in the manner described. The information I have been provided with is scant but nevertheless real; and it is supported, in my view critically, by the concern of the person best able to judge the welfare of her child, the mother. I am satisfied that she would not have advanced her concern if it was not genuinely founded on objective reasons.
6. As a public authority, I am bound by Section 6 of the Human Rights Act 1998 to do nothing which infringes the rights of the child to respect for private and family life under Article 8 of the European Convention on Human Rights. Even though the existing order under Section 19 does not protect those rights, Section 17 of the

UNDERCOVER POLICING INQUIRY

Inquiries Act 2005 does give me the power to fulfil my statutory duty. I can prohibit reference in any oral statement to the real name of the 15-year old's father. If the order were breached, I could certify the breach to the High Court to permit contempt proceedings to be undertaken.

7. A less restrictive course, which I would much prefer to adopt, is open. I can and will seek an undertaking from Ms Kaufmann, Ms Williams, Mr Smith, and from Ms Steel when she has had time to reflect, not to refer to the real name in their opening oral statements. If given, the oral statements will be transmitted live and a written record of the oral statement posted on the Undercover Policing Inquiry's website. The real name would be redacted from the documents containing the proposed opening statements which have been provided to the Inquiry.
8. If such an undertaking is not given, then the oral opening statement will be recorded on video and audio and posted, with reference to the real name of "Carlo Neri" redacted, on the website at the end of the day. But it will not be transmitted by live link. This course will permit the minimum interference with the rights of free expression under Article 10 of the European Convention on Human Rights, while upholding the Article 8 rights of the 15-year old.
9. Apart from the inability to cite the real name of "Carlo Neri" in the opening statement, the only interference with the right of free expression will be in the timing of the release of the opening oral statement.
10. There is an imprecise but, to my mind, compelling analogy with the problem confronting the Supreme Court in *PJS v News Group* [2016] UK SC 26 and its solution as explained by Lord Mance at paragraphs 35 to 37 and by Lady Hale at paragraphs 72 to 74.
11. I should deal, finally, with Ms Murphy's two submissions that public confidence in the Inquiry would be damaged by my adopting this course -- I do not believe it would be -- and by her insistence on the need for objective evidence that the Article 8 rights of the 15-year old would be infringed, if I were not to adopt the course that I propose.
12. I am satisfied, as I have indicated, that there is some objective evidence. But I place greater reliance on the concern of the mother of the child, KTC.
13. I will give everybody a quarter of an hour to reflect upon this ruling, and in particular for those whom I have asked to give undertakings to reflect upon whether or not

UNDERCOVER POLICING INQUIRY

they are willing to do so. I will ask, on the open live link, those from whom I have asked to give undertakings to do so.

14. That concludes this ruling. Thank you all.

9 November 2020

Sir John Mitting
Chairman, Undercover Policing Inquiry