

**IN THE MATTER OF THE PUBLIC INQUIRY INTO UNDERCOVER
POLICING**

**OPEN APPLICATION FOR A RESTRICTION ORDER (ANONYMITY)
RE: EN291
SUBMITTED ON BEHALF OF THE MPS**

Restriction Order Sought

1. The MPS apply for a restriction order over the real identity of EN291 to last indefinitely in the following terms:
 - (1) No direct or indirect disclosure of EN291's real name (including any description or image capable of identifying EN291) beyond the Chairman and the Inquiry team;
 - (2) The Commissioner reserves the right to make further submission as to the effective operation of this Restriction Order during the course of the Inquiry.

Legal Basis for the Application

2. The Application is made on the following statutory basis:
 - s.17(3) of the Inquiries Act 2005: the duty to act with fairness in the procedure or conduct of an inquiry.
 - s.19(3)(a) of the Inquiries Act 2005 and Article 8 ECHR: the duty to act in a way that is not incompatible with the right to private and family life under Article 8 ECHR.
 - s.19(3)(b) read together with s.19(4)(b)-(d) of the Inquiries Act 2005: conducive to the Inquiry fulfilling its terms of reference or necessary in the public interest, having regard in particular to the matters mentioned in subsection (4).
3. The applicable legal principles have been comprehensively set out in the Chairman's Restriction Order: Legal Principles and Approach Ruling ("the Principles Ruling") of 3 May 2016. Regard has also been had to the restriction order rulings and minded to notes issued since that date.

Evidence in Support

4. This application is supplemented by evidence which is not to be disseminated further than the Chairman and the Inquiry team:
 - a. A closed risk assessment dated 3 November 2017.
 - b. An impact statement dated 12 April 2017.
 - c. An NPOIU questionnaire completed by EN291 dated 12 April 2017.

Reasons

Section 17

5. Application of the statutory and common law principles of fairness require that the real identity of EN291 is not disclosed. The considerations which apply are highlighted below in relation to ss.19(3)(a) and/or 19(3)(b) and s.19(4).

Section 19(3)(a) and Article 8

6. A restriction order protecting EN291's identity is required in order for the Inquiry to meet its duty under the Human Rights Act 1998 not to act in a way which is incompatible with a Convention right. The Convention right in issue is Article 8 ECHR.
7. Disclosure of EN291's real name would amount to an unjustified and/or disproportionate interference with his/her right to private and family life. In particular, the objective effect of disclosure is set out at §19 of the Risk Assessment. The level of risk posed by this interference with EN291's private and family life is also set out in the Risk Assessment at §19. It is reasonable to infer that there would be some public interest in EN291 by virtue of EN291's status as a former cover officer.

Section 19(3)(b) and s19(4)

8. The Chairman is invited to find that a Restriction Order protecting EN291's real identity is conducive to the Inquiry fulfilling its Terms of Reference or is necessary in the public interest having regard in particular to the factors set out at s.19(4) of the Act read together with the Chairman's approach at [152] of the Principles Ruling:

"...when considering whether to make an order restricting disclosure of any relevant particular piece of information on public interest grounds I will be required to:

- (1) identify the public interest in non-disclosure;*
- (2) assess the risk and level of harm to the public interest that would follow disclosure of that information;*
- (3) identify the public interest in disclosure;*
- (4) assess the risk and level of harm to the public interest that would follow non-disclosure of that information;*
- (5) make in respect of that information a fact sensitive assessment of the position at which the public interest balance should rest".*

The public interest in non-disclosure of EN291's real identity

9. The following public interest factors are pertinent:
 - (a) *EN291 acted as a cover officer for the NPOIU.*

- (b) *The likely sources and the level of risk of physical harm to EN291 in the event of disclosure of EN291's real identity are set out at §§11-16 of the Risk Assessment. It is in the public interest for EN291's real identity to be restricted on the basis that it would avoid or reduce the risk of causing harm to this officer, or his/her family, namely physical harm and/or interference with their private and family lives.*
- (c) *EN291 has respected the confidentiality of his/her work and has relied on his/her anonymity as a source of protection and security.*
- (d) *Detail concerning the risk of disproportionate interference with EN291's private and family life are set out at §19 of the Risk Assessment and in his/her impact statement.*
- (e) *It is furthermore in the public interest for EN291's real and cover identity to be restricted on the basis it would avoid or reduce the risk of damage to effective policing. See risk assessment at §19.*

The public interest in disclosure of real identity

10. The MPS appreciates that the public interest in openness is a factor which weighs against the making of a Restriction Order in EN291's case. However, MPS submits that the real name will not assist the Inquiry in fulfilling its Terms of Reference or assist Core Participants or witnesses who would not have known EN291 by their real name.

Where the public interest balance lies

11. The MPS has considered the Chairman's Principles Ruling and has had particular regard to the importance of openness in the Public Inquiry.
12. In all the circumstances, the MPS makes this application for a Restriction Order over EN291's real name on the bases of fairness, and to avoid a risk or serious harm/of unjustified and/or disproportionate interference with EN291's right to private and family life. The MPS submits such an application is in the public interest and conducive to the Inquiry's terms of reference.

MPS, Department of Legal Services

21 May 2018