

UNDERCOVER POLICING INQUIRY

In the matter of section 19(3) of the Inquiries Act 2005

Applications for restriction orders in respect of the real and cover names of officers of the National Public Order Intelligence Unit and its predecessor/successor units

'Minded to' Note 4

Applications

1. I am minded to make or refuse to make the restriction orders specified below.

Nominal	Position
EN59	The real name cannot be published. I refuse to make an order in respect of the name by which he was known during his police service.
EN69	The real name cannot be published.
EN107	I refuse to make an order in respect of the real name.
EN108	The real name cannot be published.
EN121	The real name cannot be published.
EN292	The real name cannot be published.
EN401	The real name cannot be published.
EN433	The real name cannot be published.
EN447	The real name cannot be published.
EN620	The real name cannot be published.

Reasons

EN59

The real name cannot be published. I refuse to make an order in respect of the name by which he was known during his police service.

2. EN59 was seconded to the National Public Order Intelligence Unit ('NPOIU') between 2003 and 2005 to perform a senior role in the management of its undercover unit. According to him, he sought to make improvements to it but came to believe that improvement was unachievable. His secondment was, accordingly, terminated early. It is likely that he has valuable evidence to give about the management of the NPOIU.
3. He is concerned that if his real name is made public, he and those associated with him will attract the unwelcome attention of activists who have, in the past, shown scant regard for the criminal law and for the welfare of others. His concerns are not unreasonable. To permit others, in particular officers serving in the NPOIU, to give evidence about his performance of his role within the unit and about the matters which

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caused his secondment to be terminated early, it is necessary that they should know the name by which they knew him. It is not necessary that they should know his real name. For the purpose of public understanding of his role and actions, all that is necessary is that he should account for them in the name by which he was publicly known. Publication of his real name would, therefore, not be justified under Article 8 (2) of the European Convention on Human Rights ('ECHR').

4. EN59 also seeks a restriction order in respect of the name by which he was publicly known. There is no risk assessment, because he has declined to provide the first statement made by him on 19 November 2018 to the National Police Chief's Council ('NPCC'). The only material upon which I can judge the risk to him which would result from the release of the name by which he was publicly known are his own statements and a psychiatric report prepared by Professor Fox, dated 21 December 2018. I deal with the substance of this report in a closed note, for reasons of medical confidentiality. For the reasons explained there, I am unable to accept Prof Fox's recommendation that "his anonymity should be protected for the purpose of the inquiry to give evidence." The only other material upon which I can assess the risk to his safety and welfare is the two statements which he has made, the second of which is dated 28 February 2019, and what they reveal about events during and since his secondment to the NPOIU. They show that, to the extent that measures have been required to ensure that his safety and welfare and that of those with whom he is associated are protected, those taken by him have succeeded. I have no good reason to believe that the making of a restriction order in respect of the name by which he was publicly known is necessary to protect his and their safety and welfare.
5. In his second statement, EN59 has sought to lay down strict and detailed conditions upon which he is "prepared to engage further with the Inquiry". The Inquiry will, of course, discuss with his legal representatives the measures which are required, when he provides and gives evidence, to protect his safety and welfare and that of those with whom he is associated; but he should be aware that the provision of evidence to the Inquiry is not, in the end, voluntary or subject to conditions imposed unilaterally by an individual within the jurisdiction. I will, if necessary, make use of the powers given to me under section 21 of the Inquiries Act 2005 to obtain his evidence.

EN69

The real name cannot be published.

6. The reasons are set out in the closed note which accompanies this note. They cannot be made public.

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7. EN69 has important evidence to give about the NPOIU, a substantial part of which must be given in public, to permit those affected by it to respond by proposing topics to be raised by Counsel to the Inquiry with EN69 and by their own evidence, and to permit the public to understand the issues to which it relates. Stringent protective measures will be required to uphold and give effect to the restriction order which I am minded to make. They will be addressed in due course.

EN107

I refuse to make an order in respect of the real name.

8. EN107 was a Detective Inspector, then temporary Detective Chief Inspector in the NPOIU in the mid-2000's. EN107 had management responsibility for two deployments of significant interest to the Inquiry, about which public evidence will be given, and can give evidence about the management and conduct of the NPOIU generally, which should be given in public. The evidence of EN107 is likely to attract unwelcome interest from both traditional and non-traditional media and so cause some interference with the right of EN107 to respect for private life. There is a small risk of other interference, but no real risk to safety. In those circumstances, such interference would be justified by giving effect to the public interest in EN107 accounting in the real name of EN107 for management of the undercover unit and the two deployments referred to.
9. This note is supplemented by closed reasons.

EN108

The real name cannot be published.

10. EN108 was seconded to the NPOIU as the operational head of the covert functions unit in 2006. From 2007 to 2008 he was head of the NPOIU. He has evidence to give about his state of knowledge of the deployment of Mark Kennedy and important evidence to give about the management of the unit and about a significant disagreement between him and the senior officer with overall responsibility for it. But for the matters referred to below, I would have required him to account for his actions and to give evidence in his own name. Other considerations would have been outweighed by the public interest in him doing so.
11. After leaving the NPOIU EN108 sustained injuries of at least moderate severity in the course of his police duties. They included head injuries which have had both an immediate and lasting impact on him. For reasons of medical confidentiality, and to avoid identification, they are more fully described in the closed note which accompanies this note. He was examined by Dr Busuttill in January 2019. A full set of

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relevant medical and occupational health records were provided to him, apart from one missing page and the general practice records. In the opinion of Dr Busuttil, he has residual symptoms of post concussional syndrome and chronic post traumatic stress disorder and depression which have been, and may continue to be, susceptible to treatment. If administered, all three conditions will reduce, if properly treated. However, the disclosure of his real identity “will have a very high negative impact on his mental health recovery, and may prevent him from recovering fully even if the treatment recommendations... are implemented.” I am satisfied that this opinion is securely founded on documentary records and on Dr Busuttil’s careful and thorough examination of EN108 and his history. I accept it.

12. Provided that the true identity of EN108 is made known to relevant officers who served within the NPOIU or had responsibility for it, which it will be, and that his evidence is given in public, nothing material will be lost if it is given under his cypher. In those circumstances, the interference which would be caused to his right to respect for an aspect of his private life – his health and wellbeing – would not be justified under Article 8(2) ECHR. Measures will be required, which must not impair public understanding of his evidence, to minimise the adverse impact on his health of giving it.

EN121

The real name cannot be published.

13. EN121 was not seconded to the NPOIU, but was operational head of the operation in which EN35 was deployed. EN121 also managed another short deployment of NPOIU undercover officers outside England and Wales, the investigation of which is, in principle, outside the terms of reference of the Inquiry. It is very likely that all relevant decision-making by EN121 was recorded in contemporaneous documents which will be available to the Inquiry.
14. The operation in which EN35 was deployed gave rise to a real risk to safety, which remains to an extent which cannot be quantified. The assessment of the risk assessor, which I accept, is that the risk to the safety of EN121 arising out the role played by EN121 in that deployment is low, but of interference in the right to respect for the private and family life of EN121 is high. The risk is not just of passing or even intense interest by traditional and non-traditional media, but of harassment sufficient to cause real interference in the conduct of ordinary life. On the information which I have at present, there is no need to run that risk: it should be possible to investigate the conduct, decisions and knowledge of EN121, in public, without publishing the real name. On that premise, the interference with the right to respect for private and family life of EN121 which publication of the real name would cause would not be justified

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under Article 8 (2) ECHR. The normal requirement for a senior manager to account for actions and decisions in the real name is displaced.

15. A closed note supplements this note.

EN292

The real name cannot be published.

16. EN292 held a very senior post in the NPOIU in the last years of its existence and had oversight responsibility for its undercover unit, amongst other duties. But for the considerations set out below I would have required this officer to provide and give evidence in the real name of EN292.
17. Towards the end of this officer's service two medical emergencies occurred which required urgent admission to two different inpatient units and to require long-term psychiatric support.
18. I have received reports from Professor Fox dated 25 January 2019 and from Dr Palmer dated 1 September 2019. Both reports were supplemented, at my request, on 1 and 7 January 2020. I accept their opinion: that the stress of giving evidence in the real name of EN292 would give rise to a much enhanced risk of a serious medical event, but that the risk of acute stress would be diminished if the evidence were to be given under a cypher.
19. I have no reason to believe that if evidence is given by or about EN292 its quality will be diminished by the making of a restriction order in the real name of EN292.
20. For reasons of medical confidentiality only, the documents referred to above, including the note in which I requested further information from Professor Fox and Doctor Palmer, will remain closed.

EN401

The real name cannot be published.

21. EN401 suffers from a long-term progressive medical condition. EN401 has been examined, remotely, by a medical consultant expert in the relevant field, who has read all relevant medical records. He accepts the diagnosis set out in those records and expresses the unequivocal opinion that EN401 must avoid stress to optimise the prognosis. I accept his opinion without hesitation. I am also satisfied that disclosure and publication of the real name of EN401 would cause significant stress.

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22. From what I know of the participation of EN401 in covert activity undertaken by or under the oversight of the NPOIU, publication of the real name is not necessary to permit me to get at the truth. Because it would interfere significantly in an aspect of the right of EN401 to private and family life under Article 8 ECHR – health and well-being – it would not be justified under Article 8 (2).
23. The manner in which the evidence of EN401 can be received will be addressed in due course.
24. A closed note accompanies these reasons.

EN433

The real name cannot be published.

25. EN433 was not employed by or seconded to the NPOIU, but has evidence to give which will assist the Inquiry to fulfil its terms of reference.
26. This evidence will be given in closed session.
27. The reasons why I am minded to make a restriction order in respect of the real name of EN433 are set out in the closed note which accompanies this note.

EN447

The real name cannot be published.

28. EN447's duties included an oversight role in relation to undercover officers in respect of whom restriction orders have been made over their real and cover names. To uphold and give effect to those orders it is necessary that a restriction order should be made over the real name of EN447 and that the evidence given about the discharge of those duties should be received or given in a closed hearing.
29. A closed note accompanies this note.

EN620

The real name cannot be published.

30. EN620 was seconded as a senior civilian analyst to the NPOIU in 2006 until it ceased to exist in 2011. EN620 was the head of the team whose tasks included the setting of intelligence requirements and the analysis of intelligence reports. EN620 had no personal interaction with the target of any deployment or with any undercover officer and had no responsibility for the management of the undercover unit which deployed them.

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31. The nature and scope of the evidence which the Inquiry will require from EN620 has not yet been determined. It is, however, clear that it need not be given in the real name for it to be of value.
32. Publication of the real name may have an adverse impact on two aspects of EN620's life: employment and private and family life, both of which engage Article 8 ECHR. EN620 currently performs duties of substantial public value in the public sector and hopes to continue to be able to do so. The risk assessor assesses that, objectively, the impact on employment prospects in the public sector of publication of the real name of EN620 is likely to be low. I would qualify that assessment, for the reasons explained in the closed note which accompanies this note. I am also satisfied that the association of EN620 with a unit in which questionable practices have occurred could have an impact on employment prospects in the private sector. Close family member(s) of EN620 have long-term medical conditions which impose a heavy emotional and practical burden on the family of EN620. Enduring concern about the possibility of disclosure of the real name of EN620 and the impact of intense interest on the part of traditional and non-traditional media is likely to have a significant impact. I agree with the risk assessor's assessment that the impact would be significant, if it were to occur.
33. For all of those reasons, I am satisfied that publication of the real name of EN620 would not be justified under Article 8 (2) ECHR.

18 January 2022

Sir John Mitting
Chairman, Undercover Policing Inquiry