

**OFFICIAL – SENSITIVE**

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

**OPEN APPLICATION FOR A FURTHER RESTRICTION ORDER (ANONYMITY)  
RE: HN303**

**Restriction Order Sought**

1. The Designated Lawyer (DL) applies for a restriction order over the real identity of HN303's Inquiry friend, the appointment of whom has been agreed by the Chairman, on 21 July 2021, for reasons set out in the gisted medical evidence (attached as Annex A).
2. The application for a restriction order over the real identity of HN303's Inquiry friend is to last indefinitely in the following terms:
  - a. No direct or indirect disclosure of HN303's Inquiry friend's real name (including any description or image capable of identifying HN303 or HN303's Inquiry friend) beyond the Chairman and the Inquiry Team.
  - b. The DL 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**

3. The Application is made on the following statutory bases:
  - a. s.17(3) of the Inquiries Act 2005: the duty to act with fairness in the procedure or conduct of an inquiry; and
  - b. 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.
4. 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, and the Civil Procedure Rule (Part 21) governing the participation of protected parties who lack capacity (within the meaning of the Mental Capacity Act 2005) in litigation.
5. In particular, regard has been had to the application for a Restriction Order dated 27 March 2018 in respect of HN303, the 'Minded To' note dated 26 April 2018 in respect of HN303, the Chairman's Ruling dated 30 July 2018 in respect of HN303, the Restriction Order in relation to HN303's real identity dated 9 October 2018 and the

draft Order dated July 2021 in relation to the appointment of an Inquiry Friend to act on behalf of the former undercover police officer known as HN303.

### **Evidence in Support**

6. This application is supplemented by gisted medical evidence in relation to HN303, and the Chairman has had sight of documentation confirming the Inquiry friend's willingness to act in this capacity.

### **Submissions**

#### **Section 17**

7. Application of the statutory and common law principles of fairness require that the identity of HN303's Inquiry friend is not disclosed. The considerations which apply are highlighted below in relation to s.19(3)(a).

#### **Section 19(3)(a) and Article 8**

8. A Restriction Order protecting HN303's real identity is already in place. This was put in place to ensure that the Inquiry met its duty not to act in a way which is incompatible with a Convention right. In particular, the Restriction Order noted that the Chairman was satisfied "that fairness and the weight of public interest including the interest in protecting rights under Article 8 of the European Convention on Human Rights fall in favour" of restricting HN303's real identity.
9. Given the relationship between HN303 and HN303's Inquiry friend, integral to the Inquiry friend's ability to act in this capacity, making public their identity would have the effect of undermining the existing Restriction Order.
10. Although s.19(3)(b) and s.19(4) are perhaps less relevant, given the basis upon which the Restriction Order is sought, it is submitted that the application, and reasons for the application are consistent with paragraph 152 of the Principles Ruling for the following reasons:
  - a. The Inquiry has already determined that a Restriction Order is necessary in relation to HN303. The Restriction Order sought by this application is consistent with maintaining the existing Restriction Order.
  - b. The public interest in the non-disclosure of HN303's Inquiry friend's real name is to protect the real identity of HN303 for the reasons set out above (and in relation to HN303's original Restriction Order).
  - c. It is in the public interest for HN303's Inquiry friend's real identity to be restricted on the basis that it would avoid or reduce the risk of causing harm to this person and interference with their private and family life.

- d. HN303's Inquiry friend is not able, in their own right, to provide evidence which is relevant to the Inquiry's Terms of Reference.
  - e. The role HN303's Inquiry friend has agreed to perform is to assist the Inquiry, and to facilitate the provision of instructions. The DLS appreciates that the public interest in openness is a factor which weighs against restricting information in general terms. However, the Restriction Order sought will not interfere with the Inquiry fulfilling its Terms of Reference.
  - f. The fact of HN303's illness, and inability to give evidence, was stated in public and has been published on the Inquiry website (Transcript 04 May 2021, p.14, line 18-21).
  - g. The relevant evidential phase for this officer's deployment was heard in May 2021. The evidential hearings for those in senior or administrative positions within the Special Demonstration Squad during the time of HN303's deployment are to take place in May 2022. Witnesses who know HN303 by their real name will be able to give evidence about them under cipher in those hearings.
11. In the circumstances, disclosure of HN303's Inquiry friend's real name would amount to an unjustified and/or disproportionate interference with their right to private and family life. The Inquiry is able to meet its Terms of Reference with the measures already in place concerning HN303.
12. Following their appointment, HN303's Inquiry friend should therefore only be referred to as "HN303's Inquiry Friend".

### **Conclusion**

13. In all the circumstances, the DL applies for a Restriction Order over HN303's Inquiry friend's name for the following three reasons:
- a. Preserving the integrity of the existing Restriction Order in relation to HN303's real name;
  - b. Fairness to HN303 and HN303's Inquiry friend; and
  - c. To avoid a risk of unjustified and/or disproportionate interference with HN303's Inquiry friend's right to private and family life.
14. It is submitted that this application is in the public interest and consistent with the proper operation of the Inquiry's Terms of Reference.

7 January 2022

## ANNEX A

HN303 has a medical condition which prevents them from retaining information and from communicating with their legal team.

Confirmation of this medical condition has been set out in writing by a qualified medical profession who is involved in treating HN303.