

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

OPEN APPLICATION FOR A RESTRICTION ORDER (ANONYMITY)

RE: HN273

SUBMITTED ON BEHALF OF THE MPS

Restriction Order Sought

1. The MPS applies for a Restriction Order over the real identity of HN273 to last indefinitely in the following terms:
 - (1) No direct or indirect disclosure of HN273's real name (including any description or image capable of identifying HN273) 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:
 - a. s.17(3) of the Inquiries Act 2005: the duty to act with fairness in the procedure or conduct of an inquiry.
 - b. s.19(3)(a) of the Inquiries Act 2005 and the duty to act in a way that is not incompatible with the right to life (Article 2), the prohibition of torture, inhuman or degrading treatment (Article 3), and private and family life (Article 8).
 - c. 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:
 - a. a closed Risk Assessment and Addendum Risk Assessment;

- b. supplementary closed grounds;
- c. closed expert report on HN273;
- d. closed statement of HN273;

which are not to be disseminated further than the Chairman and the Inquiry team.

Reasons

Section 17

- 5. Application of the statutory and common law principles of fairness require that the real name of HN273 is not disclosed. The considerations which apply are highlighted below in relation to s.19(3)(a), s.19(3)(b) and s.19(4).

Section 19(3)(a) and Article 8 ECHR

- 6. A Restriction Order protecting HN273'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 rights in issue is Article 2, 3 and 8.
- 7. It is reasonable to infer that there would be public interest in HN273. Disclosure of HN273's real name would amount to an unjustified and/or disproportionate interference with his / her rights under Articles 2, 3 and 8. The evidential basis for this is as set out in (i) the Risk Assessment (particularly at §16) and extends to a risk of serious physical harm (see §16.2 and 3); and (ii) in the closed expert report, and extends to a risk of serious psychological harm. See further in the supplementary closed grounds.

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

- 8. The Chairman is invited to find that a Restriction Order protecting HN273's real name 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

- 9. It is in the public interest for HN273’s real identity to be restricted on the basis that it would avoid or reduce the risk of causing harm to HN273, and therefore his/her family, namely significant interference with HN273’s Article 2, 3 and 8 rights and his / her family’s Article 8 rights. The evidential basis for this is the risk assessment and witness statement of HN273 and in the report of Professor Fox.

The public interest in disclosure

- 10. The MPS appreciates that the public interest in openness is a factor which weighs against the making of a Restriction Order in HN273’s case.
- 11. However, MPS submits that there are no lesser alternative lesser measures to a restriction order over HN273’s real name that would avoid or reduce sufficiently the risks to HN273.
- 12. HN273 was not an SDS officer or otherwise an undercover officer. No evidence can be expected about him / her from members of the public. Those who are able to comment on HN273’s involvement in matters within the Inquiry’s Terms of Reference will not be impeded in doing so by his / her anonymity, because they will know his / her identity. The public interest in disclosure of HN273’s real name is accordingly lower than with respect to an SDS officer.

Where the public interest balance lies

- 13. The MPS has considered the Chairman’s Principles Ruling and has had particular regard to the presumption of openness in the Public Inquiry and the public interest in investigating these matters as openly as possible.
- 14. In the particular circumstances of this case, we invite the Chairman to conclude that the public interest favours non-disclosure for the following reasons:
 - a. The public interest in avoiding harm to HN273 and his / her family is sufficient to demand restriction of his / her real name;
 - b. The interests of fairness fall in favour of non-disclosure of HN273’s real name.
- 15. If the Chairman is not ‘minded to’ grant this application, the MPS would seek an oral hearing of the application.

MPS, Department of Legal Services

14 March 2022