



Programme Legal Advice

Our ref : PLA/HM/04/2024

Your ref : OS 1183

Katherine Ross
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Undercover Policing Inquiry

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BY E-MAIL ONLY: Katherine.Ross2@ucpinquiry.org.uk

Dear Ms Ross,

Response by the BBC to the applications for restricted reporting of Inquiry hearings

We write in response to the note by counsel dated 13th March 2024 and set out the BBC's response to the various issues raised therein.

The applicable legal framework and tests to be applied when derogating from open justice are largely set out in the inquiry's *'Restriction Orders: Legal Principles and Approach Ruling'* dated 3 May 2016' and we will not be restating those. We are also in agreement with counsel to the inquiry that the applications for the redaction of private information and/or reporting restriction orders from NSCPs who already benefit from anonymity orders are otiose.

We will briefly address you on two issues; access to material and the various applications by NSCPs with no anonymity which seek to prevent the disclosure of certain categories of information relating to them (hereinafter **'proposed RROs'**).

I. Access to material

The open justice principle applies to quasi-judicial inquiries.¹ Open justice entails both access to proceedings and material which has been placed before the inquiry.² The inquiry intends to prepare only one bundle for use during the ‘Tranche 2’ open hearings. It is suggested that publication of material within the bundle will be delayed until ‘*sometime after the ‘Tranche 2’ evidential hearings have concluded*’ even where that material has been placed before the inquiry.

The inquiry has not indicated the length of the intended delay or a clear date for the release of this material. Assuming that the timetable currently available on the inquiry website is adhered to, the media would obtain access to the material sometime between the end of the hearings, which commence on July 2024, and the beginning of ‘Tranche 3’ hearings in February 2025. This delay in providing access to the material, and the absence of a clear timeline to do so is a derogation from open justice. The lack of contemporaneous access to material will make it difficult for reporters to follow and understand hearings in real time, and produce an accurate and balanced report of the proceedings.

We suggest that accredited journalists should be provided with access to the hearing bundle on the first day of the ‘Tranche 2’ hearings on the understanding that no material can be published unless it is referred to in an open hearing.³ Such access is not novel and is now increasingly provided in high-profile criminal cases. Various inquests have also provided accredited journalists with material before it was produced. This includes the *Guildford Pub Bombing inquest*,⁴ and a substantial part of the evidence in the *Molly Russell inquest* was provided to the media before it was referred to in court.

¹ *Kennedy v The Charity Commission* [2014] UKSC 20 [2015] 1 AC 455.

² *Attorney General v Leveller Magazine Ltd* [1979] AC 440; *Cape Intermediate Holdings Ltd v Dring* [2020] AC 629.

³ This can be enforced through a reporting restriction.

⁴ See https://www.surreycc.gov.uk/__data/assets/pdf_file/0006/295827/GPB-May-2022-PIR-CTI-Submissions.pdf §5.5

2. Proposed RROs

We understand that the inquiry has received applications for RROs in respect of various categories of information about the NSCPs with no anonymity. We oppose these applications on various grounds.

Firstly, the proposed RROs seek to prevent the reporting of conduct which the inquiry has already identified as being matters of public concern, and which indeed gave rise to the need for the inquiry in the first place. These include:

- a. undercover officers entering into deceitful intimate relationships;
- b. undercover officers committing criminal offences (or being accused of committing criminal offences) and its impact on the maintenance on the rule of law; and
- c. racial attitudes and attitudes towards women in the police force.

Restricting the reporting of matters which are at the heart of the inquiry's work would not instil confidence in the process. It would prevent public scrutiny of the inquiry and will not allay public concern.

Secondly, the proposed RROs would in effect prevent the reporting of any negative information about the NSCPs. It would mean that any report of the NSCPs conduct would be one-sided and highly misleading. This could also lead to absurdities, particularly in cases where the actions in question have been admitted or proven in other forums, and compensation paid to victims.

Thirdly, the NSCPs will have the opportunity to challenge any allegations and provide their version of events. Media outlets are under enforceable editorial obligations to achieve fairness in their coverage and would therefore be required to reflect the allegation that an NSCPs has engaged in certain conduct, any denials and/or explanations they have provided and evidence refuting particular claims. Media outlets are also under a legal obligation to be fair and accurate in order for their reports to benefit from defences to a defamation claim.

Finally, the proposed RROs would effectively amount to granting anonymity orders through the backdoor. The inquiry has already heard, and determined various applications for

anonymity. In determining whether to grant or decline these applications it has *already considered* whether an applicant's Article 8 rights are engaged, the weight to be afforded to them, the proportionality of the interference and the appropriate balance between these rights and other rival rights and interests including Article 10 and in particular, the importance of open justice, the public's right to know and the media's role as a public watchdog. The applications are in effect asking the inquiry to revisit these issues in a piecemeal fashion for these specific categories of information. We urge the inquiry to decline this invitation.

Yours sincerely,

Hashim Mude
BBC Programme Legal Advice