

IN THE MATTER OF THE PUBLIC INQUIRY INTO UNDERCOVER POLICING

**OPEN APPLICATION FOR A RESTRICTION ORDER (ANONYMITY)
IN RESPECT OF EN108's REAL NAME
SUBMITTED BY THE DESIGNATED LAWYERS**

Restriction Order Sought

1. The Designated Lawyers apply for a restriction order over the real identity of EN108 to last indefinitely in the following terms:
 - a. No direct or indirect disclosure of EN108's real name (including any description capable of identifying EN108) 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

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 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.
 - c. S. 19(3)(b) of the Inquiries Act read together with s. 19(4)(b)-(d): 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 of 3rd May

2016. Regard has also been had to subsequent restriction order rulings and “minded to notes” in respect of former SDS officers.

Evidence in support

4. This application is supplemented by further grounds and evidence which is not to be disseminated further than the Chairman and the Inquiry team:
 - a. Supplementary Closed Schedule.
 - b. Closed Risk Assessment (“R/A”) with exhibits.
 - c. Closed Impact Statement (“I/S”).
 - d. Confidential Medical Report on impact of disclosure of real name on EN108 (“M/R”).

Reasons

Section 17

5. With respect to s.17(3), the application of the statutory and common law principles of fairness require that the real identity of EN108 is not disclosed. The considerations which apply are highlighted below.

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

6. A Restriction Order protecting EN108’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.
7. The release of EN108’s real name would give rise to an extremely high risk that the symptoms of his/her health conditions would be exacerbated (M/R paragraph 4.15). Furthermore, it would have a very high negative impact on

his/her recovery from these health conditions and may prevent a full recovery being made, even with further treatment (M/R paragraph 4.24).

8. Any deterioration in EN108's health would have a detrimental impact upon his/her private and family life. In this case, the impact may be permanent.
9. EN108 could be traced in his/her real name (I/S paragraph 26).
10. It is reasonable to infer that there would be considerable public interest in EN108. The release of EN108's real name would have a disproportionate and unjustified impact on his/her private and family life. The objective effect and risks of disclosure is set out at R/A §16.5.

Sections 19(3)(b) and 19(4)

11. The Chairman is invited to find that a Restriction Order protecting EN108's real identity is conducive to the Inquiry fulfilling its Terms of Reference or is necessary in the public interest having regard to the factors set out in s.19(4) of the Act read together with the Chairman's approach at paragraph 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:

- i. Identify the public interest in non-disclosure*
- ii. Assess the risk and level of harm to the public interest that would follow disclosure of that information*
- iii. Identify the public interest in disclosure*

- iv. *Assess the risk and level of harm to that public interest that would follow non-disclosure of that information*
- v. *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

12. The following public interest factors are pertinent:

- a. During his/her time in the NPIOU EN108 was never deployed as an undercover officer (I/S paragraph 7) and consequently never interacted with target groups or target individuals (R/A §4.2). EN108's management role at a time when officers of interest to the Inquiry were deployed can be fully explored without the release of his/her real name. The cogency of EN108's evidence would not be diminished by the use of a cipher.
- b. EN108 accepted his/her position within the NPIOU under express assurances of confidentiality (I/S paragraph 11). Disclosure of his/her real name now would undermine EN108's faith in the maintenance of confidentiality and the faith of others involved in this area of policing.
- c. It is in the public interest for EN108's real identity to be restricted on the basis that it would avoid or reduce the risk of causing harm to this officer, or their family, namely interference with their private and family lives. The evidential basis for this is the Risk Assessment, Impact Statement, and Confidential Medical Report

The public interest in disclosure

13. Whilst the general presumption in favour of openness weighs against the making of a Restriction Order, the Inquiry will be able to fulfil its Terms of Reference without the publication of EN108's real name. The effectiveness of

witnesses' and Core Participants' participation in the Inquiry will not be impeded by withholding his/her real name.

Where does the public interest balance lie?

14. In all the circumstances, EN108 makes this application for a Restriction Order over his/her real name on the bases of fairness, and to avoid a risk of disproportionate interference with EN108 and their family's Convention rights. It is submitted that the granting of the application would be in the public interest and conducive to the Inquiry's terms of reference.

THE DESIGNATED LAWYERS (UCPI)

19th March 2019