

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

Applications

1. I am minded to make restriction orders under section 19(3) of the Inquiries Act 2005 in the cases specified in the table below.

Nominal	Position
EN1	The cover name "Marco Jacobs" has been published. The real name cannot be published.
EN33	Neither the cover nor real name can be published.
EN34	The real name cannot be published. I refuse to make a restriction order in respect of the cover name.
EN35	There will need to be a closed hearing before a decision can be made.
EN36	Neither the cover nor real name can be published.
EN38	Neither the cover nor real name can be published.
EN39	Neither the cover nor real name can be published.
EN40	Neither the cover nor real name can be published.
EN41	Neither the cover nor real name can be published.
EN42	Neither the cover nor real name can be published.
EN43	Neither the cover nor real name can be published.
EN47	Neither the cover nor real name can be published.
EN48	Neither the cover nor real name can be published.
EN74	Neither the cover nor real name can be published.
EN287	The application for a restriction order in respect of EN287's real name is refused.
EN288	Neither the cover nor real name can be published.
EN289	The real name cannot be published. The application for a restriction order in respect of the cover name will be determined later.

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Nominal	Position
EN327	The real name cannot be published. The application for a restriction order in respect of the cover name is refused to the extent that it would prohibit disclosure of the names by which EN327 was known by members of the groups targeted.
EN507	Neither the cover nor real name can be published.
EN808	Neither the cover nor real name can be published.
EN1001	Neither the cover nor real name can be published.

Reasons

EN1

Application for restriction over the real name only. The real name cannot be published.

- EN1 was deployed against a number of groups between 2004 and 2009 in the cover name "Marco Jacobs". The risk to his safety, then and now, posed by members of the groups and their associates was and is small. Two women claim that he conducted a deceitful sexual relationship with them during his deployment and have brought civil proceedings against the Metropolitan Police Commissioner for damages. He disputes their claim. Until the facts are determined, it is not necessary to publish or to disclose to them his true identity. All relevant issues concerning his deployment can and will be publicly explored in his cover name.
- If the real name of EN1 were to be published, he and his wife would face some risk of harassment and would undoubtedly be the subject of intense media interest. I have been told that in February 2018 he suffered a heart attack which required surgical intervention and has been advised that further stress would increase the risk of a second cardiac event. There is, as yet, no medical evidence to that effect; but I accept the truth and accuracy of what I have been told. Publication of his real name and its possible consequences would be stressful events for him and might put his health seriously at risk. On that basis, the interference in his right to respect for his private and family life which publication of his real name would cause would be neither proportionate nor justified under Article 8(2) of the European Convention on Human Rights ('the European Convention'). If, for good reason, the truth and accuracy of what I have been told is put in question, I will require that a medical report is produced before maintaining the restriction order which I am minded to make.
- A closed note accompanies these reasons.

EN33

Application for restriction over the cover and real names. Neither the cover nor real name can be published.

5. EN33 was deployed against a number of groups in the early years of the existence of the National Public Order Intelligence Unit. Members and associates of them posed a real risk to the safety and well-being of EN33 which, to an extent which cannot be precisely quantified, persists. EN33 has retired. Although it would be desirable for members of the targeted groups to know the cover name of EN33, so as to be in a position to provide and give evidence about the deployments, that is not possible without a disproportionate and unjustified interference with the right to respect for the private and family life of EN33. It is desirable that EN33 should give evidence in public about the deployments, in which event precautionary measures will be required to preserve anonymity and it is unlikely that the whole of the evidence which can be provided by EN33 can be given in public, even with precautionary measures in place.
6. A closed note accompanies these reasons.

EN34

Application for restriction over the cover and real names. The real name cannot be published. The application for a restriction over the cover name is refused.

7. EN34 was deployed by the National Public Order Intelligence Unit into several groups between 2003 and 2008. None of the members of the groups or their associates posed or pose a real risk to safety. The cover name of EN34 is in the public domain: it has been published by both the traditional and non-traditional media. No good purpose would be served by attempting to restrict it.
8. The real name of EN34 is not in the public domain. Publication of it would give rise to very significant interference in the right of EN34 to respect for private and family life. It would not be necessary to permit the Inquiry to fulfil its terms of reference, which require only that the cover name is published, as it will be. Publication of the real name would therefore be neither proportionate nor justified under Article 8(2) of the European Convention.
9. These reasons are supplemented by closed reasons.

EN36

Application for restriction over the cover and real names. Neither the cover nor real name can be published.

10. EN36 belonged to the National Public Order Intelligence Unit for a short period in the mid-2000s. EN36 was engaged in legend building and established links with a group whose members almost certainly posed and pose no threat to the safety of EN36. EN36 has potentially significant evidence to give about the management of the National Public Order Intelligence Unit, if at all possible in public. If so, protective measures will be required.
11. EN36 is a serving police officer and has been deployed, undercover, in circumstances which give rise to a real threat to life and limb. It is at least arguable that Articles 2 and 3 of the European Convention are engaged. Even if they are not, Article 8 is and the risk of interference with an aspect of the right to private life – physical integrity – prohibits the taking of any step which might put it at risk.
12. A closed note accompanies these reasons.

EN38

Application for restriction over the cover and real names. Neither the cover nor real name can be published.

13. EN38 is a serving police officer. EN38 was deployed into one group over several years by the National Public Order Intelligence Unit and reported on others. Members and associates of the group posed and still pose a real risk to safety. Publication of the cover name of EN38 might lead to the identification of the real name, in which case the risks would materialise. I am not prepared to run those risks. Even if publication would not infringe the rights of EN38 under Articles 2 and 3 of the European Convention, because the risk is contingent not immediate, it would infringe the right to respect for an element of private life – physical integrity – under Article 8. Although publication might prompt information or evidence from members of the target group and their associates about the deployment, the interference which it would cause with that right would be neither proportionate nor justified under Article 8(2).
14. Further, the ability of EN38 to fulfil valuable current police duties might be impaired by publication. It is not in the public interest to run that risk.
15. These reasons are supplemented by a closed note.

EN39

Application for restriction over the cover and real names. Neither the cover nor real name can be published.

16. Full reasons for the decision which I am minded to make are set out in a closed note. They cannot be made public. They include the fact that EN39 is a serving officer who has been and can be deployed as an undercover officer since the closure of the National Public Order Intelligence Unit. It would not be in the public interest to publish anything which might reveal EN39's real or cover identity.

EN40

Application for restriction over the cover and real names. Neither the cover nor real name can be published.

17. EN40 is a serving police officer who performs undercover duties. Disclosure of the real or cover name would undermine the ability of EN40 to discharge those duties. It would not be in the public interest for that to occur. Disclosure of the real or cover name would, for reasons which are explained in the closed note which accompanies these reasons, put the safety of EN40 at risk. The risk is such as to engage Articles 2 and 3 of the European Convention as well as the right to respect for private and family life under Article 8. Although publication of the cover name of EN40 would be likely to prompt evidence from others who encountered EN40, because it would give rise to a real and immediate risk to life and limb, publication would be impermissible under Articles 2 and 3 and/or unjustified under Article 8(2).

EN41

Application for restriction over the cover and real names. Neither the cover nor real name can be published.

18. EN41 is a serving police officer who performs undercover duties. Disclosure of the real or cover name would undermine the ability of EN41 to discharge those duties. It would not be in the public interest for that to occur. Disclosure of the real or cover name would, for reasons which are explained in the closed note which accompanies these reasons, also put the safety of EN41 at risk. Even if the rights of EN41 under Articles 2 and 3 would not be infringed by publication, because the risk is contingent not immediate, it would interfere with an element of the right to respect for private life – physical integrity – and so would engage Article 8. Although disclosure of the cover name would be likely to prompt evidence from others who may have encountered

EN41, it would amount to a disproportionate interference with that right and would not be justified under Article 8(2) of the European Convention.

EN42

Application for restriction over the cover and real names. Neither the cover nor real name can be published.

19. EN42 is a serving police officer who has performed and continues to perform undercover duties. Some of the deployments have created a real risk to the safety of EN42. Further, disclosure of the real or cover name might imperil the safety of others and would be likely to impair the ability of EN42 to discharge undercover duties in the future. It is not in the public interest that either should occur. It would also be neither proportionate nor justified for the interference which publication of the real or cover name would cause in the right to respect for an element of private life – physical integrity – under Article 8(2) of the European Convention.
20. Although no risk assessment has been prepared, from what I know it is unlikely that any member of the target groups against which EN42 was deployed by the National Public Order Intelligence Unit in the 2000s poses a real risk to the safety of EN42. It is desirable that the evidence of EN42 about their deployment is provided or given in public, if that can be done without compromising anonymity. Careful thought, and a risk assessment, is required before any final decision can be made about the manner in which the evidence of EN42 is to be received.
21. These reasons are supplemented by a closed note.

EN43

Application for restriction over the cover and real names. Neither the cover nor real name can be published.

22. EN43 was seconded to the National Public Order Intelligence Unit in the last years of its existence. Before and after that time EN43 was deployed by different police bodies in both criminal and non-criminal fields and is still employed by a provincial police force in a covert role. Some of the deployments have exposed EN43 to danger. Publication of the real name would create some risk to the safety of EN43. Publication of the cover name adopted by EN43 during EN43's secondment to the National Public Order Intelligence Unit would impair performance of current and future duties in the undercover field and may also put safety at risk. It would not be in the public interest to publish either. Further, publication would interfere with an element of the right to respect for private and family life of EN43 – physical integrity –

and would not be proportionate or justified under article 8(2) of the European Convention.

23. A closed note accompanies these reasons.

EN47

Application for restriction over the cover and real names. Neither the cover nor real name can be published.

24. EN47 is a serving police officer undertaking valuable undercover duties. For reasons explained in the closed note which accompanies this note, publication of the real or cover name of EN47 would put at risk the ability of EN47 to perform those duties. It is not in the public interest that that risk should be run.

EN48

Application for restriction over the cover and real names. Neither the cover nor real name can be published.

25. EN48 was deployed by the National Public Order Intelligence Unit in the 2000s. Members and associates of the target groups posed and pose a real risk to the safety of EN48. Article 3 of the European Convention is not engaged, because the risk is contingent not immediate, but the right to respect for the private and family life of EN48 under Article 8 would be infringed in that and other respects. Although publication of the cover name might prompt evidence from others who encountered EN48, it would amount to a disproportionate interference with that right and would not be justified under Article 8(2). Full reasons for the decision which I am minded to make are set out in the closed note which accompanies these reasons.

EN74

Application for restriction over the cover and real names. Neither the cover nor real name can be published.

26. EN74 was an undercover police officer and was deployed by the National Public Order Intelligence Unit in the 2000s. Other duties gave rise to a real risk to life and limb which, to an extent which cannot be precisely quantified, remains. Publication of the real or cover name would increase those risks. The risks are contingent, not immediate, and so engage Article 8 of the European Convention, not Articles 2 and 3. Publication of the cover name of EN74 might lead to identification of the real name, in which case the risks would materialise. It is not necessary to fulfil the terms of

reference of the Inquiry to run those risks. It would be neither proportionate nor justified to do so under Article 8(2).

27. A closed note accompanies these reasons.

EN287

There is no cover name. The application for a restriction order in respect of the real name is refused.

28. In the course of a 30-year police career, which ended in 2013, EN287 was a Detective Chief Inspector seconded to the National Domestic Extremism Unit, the successor unit to the National Public Order Intelligence Unit. He had a managerial role. He played a part in the investigation by Her Majesty's Inspectorate of Constabulary into the activities of Mark Kennedy. In this context, he was identified in a Guardian article on 8 November 2012. None of these activities put him or his family at risk of harm or of anything more than passing media interest. This may be unwelcome to him and them, but is outweighed by the legitimate interest which the public has in his performance of his duty in a senior and responsible public office. In respect of this office, the starting presumption that evidence given by such a person about such duties should be given in his own name is not displaced.

EN288

Application for restriction over the cover and real names. Neither the cover nor real name can be published.

29. In the course of a police career of significant length, EN288 was deployed on a number of occasions as an undercover officer in circumstances which gave rise to a real risk to life and limb. The risk to life from one of them remains and may engage Article 2 of the European Convention. The risk to safety from at least one other deployment also remains. Both risks engage Article 8. Publication of a cover name might prompt evidence from members of the groups against which EN288 was deployed who do not pose a risk to life or limb; and the risk of identification of the real name of EN288 is not great. However, even running a small risk would amount to a disproportionate and unjustified interference in the right of EN288 to respect for an aspect of private life – physical integrity – and, if Article 2 is engaged, would infringe it.

30. A closed note accompanies these reasons.

EN289

Application for restriction over the cover and real names. The real name cannot be published. The application for a restriction order in respect of the cover name will be determined later.

31. EN289 is a serving police officer. EN289 undertook ad hoc deployments for the Animal National Rights Index/the National Public Order Intelligence Unit in the late 1990s, attending and reporting on approximately 6 marches. EN289 was instructed to, and did, research and obtain the identity of a deceased child. The nature of the deployments was such that EN289 did not have to use it. Save in one respect, the information and evidence which EN289 could provide is of peripheral relevance to the Inquiry. That respect is the fact that EN289 was instructed to obtain the identity of a deceased child. Given that the cover name was not used, no purpose would be served by determining EN289's application for a restriction order in respect of the cover name at this stage.
32. Publication of the real name of EN289 would not serve to permit the Inquiry to fulfil its terms of reference, might impair performance of police duties and might have some impact on the mental health of EN289. In those circumstances, publication of the real name would not be in the public interest and would risk interference with the right to respect for private and family life of EN289 which would not be justified under Article 8(2) of the European Convention.

EN327

Application for restriction over the cover and real names. The real name cannot be published. The application for a restriction order in respect of the cover name is refused to the extent that it would prohibit disclosure of the names by which EN327 was known by members of the groups targeted.

33. EN327 is the same person as HN66. The reasons set out in the [fifth 'Minded to' note in respect of Special Demonstration Squad anonymity applications](#) dated 7 March 2018, at paragraph six, are repeated.

EN507

Application for restriction over the cover and real names. Neither the cover nor real name can be published.

34. EN507 is a serving police officer and has undertaken undercover operations which put safety at risk. The continued ability of the police service to deploy EN507 in

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undercover operations is of public value. Publication of the cover name would substantially impair the undertaking of such operations. It is not in the public interest to do so.

35. Further, publication of either real or cover name would interfere with the right of EN507 to respect for private and family life and would not be justified under Article 8(2) of the European Convention.
36. A closed note supplements these reasons.

EN808

Application for restriction over the cover and real names. Neither the cover nor real name can be published.

37. From 1999 to 2011 EN808 was employed as a cover officer by a provincial police force and from 2011 to 2013 EN808 performed a similar role when seconded to the successor unit to the National Public Order Intelligence Unit. EN808's duties required him to make use of a cover name. From 2016 to date, EN808 has been employed by a provincial police force to undertake duties under a cover name which put safety at risk. It is not in the public interest that either real or cover names are published.
38. Publication of the real name of EN808 would interfere with the right of EN808 to respect for private and family life. The nature of the duties performed by EN808 does not require publication of the real name to permit their worth and propriety to be assessed. Publication of the real name would interfere with the right to respect for private and family life of EN808 and would not be justified under Article 8(2) of the European Convention.
39. I have read two closed witness statements by EN808. I have no reason to question the truthfulness of the factual assertions made in them. The decision which I am minded to make is based on them. There are no separate closed reasons.

EN1001

Application for restriction over the cover and real names. Neither the cover nor real name can be published.

40. EN1001 was not seconded to the National Public Order Intelligence Unit, but performed a peripheral supporting role in one operation for a short time in the late 2000s. It is unlikely that the Inquiry will need to receive or take into account evidence from EN1001 so as to permit it to fulfil its terms of reference. EN1001 was and is a serving police officer with a provincial force. In that capacity EN1001 has undertaken

routine criminal undercover deployments, some of which were dangerous. The work done by EN1001 and that done by other police officers would be substantially impaired if either the cover or real name of EN1001 were to be published. It is not in the public interest that either should occur. Further, publication of either would interfere with the right to respect for the private and family life of EN1001 and would not be justified under Article 8(2) of the European Convention.

41. A closed note supplements these reasons.

2 May 2018

Sir John Mitting
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