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# UNDERCOVER POLICING INQUIRY: CHAIRMAN'S RULING ON RESTRICTION ORDER

ACTIONS AGAINST THE POLICE

JUSTICE

BLOG

MAY 13, 2016

The Chairman to the Undercover Policing Inquiry, Lord Justice Pitchford, has now published his decision on the issue of restriction orders, detailing the legal framework under which applications for such orders will be considered.

The starting point for a public inquiry is that all evidence provided to the chairman and considered for the purposes of his report should be available to the public and hearings should be open to the public. However, there is a mechanism under s19 of the Inquiries Act to apply to the inquiry for a restriction order that certain information be kept secret.

During a two-day preliminary hearing at the High Court in March, the chairman heard submissions from the core participants relating to the legal principles to be applied when considering applications for restriction orders. The core issue was whether the inquiry would proceed on a presumption of secrecy or a presumption of openness, effectively determining the extent to which the inquiry will be held behind closed doors.

The [police](#) argued that the practice of 'neither confirm nor deny' (NCND) should be upheld meaning that hearings would be held almost entirely in secret, and the details of undercover operations, including the identity of officers, would remain hidden from the public, save where the identities have already been revealed.

The non-police non-state core participants (NPSCPs), of which there are around 200 so far, called for the inquiry to be open and transparent and for officers' undercover names to be released. They submitted that the police practice of NCND has no role to play in the inquiry and that competing public interests such as holding the police to account and upholding the rule of law outweigh any public interest to protect undercover policing. What's more, without the names of undercover officers, it would be impossible for the NPSCPs, the victims of undercover policing, to participate in the inquiry in a meaningful way and would mean that those people who still aren't aware that they were targeted by undercover policing would remain in the dark.

The ruling by Lord Justice Pitchford is a promising step to ensuring the inquiry is open, and will alleviate public concerns.

Notably, the ruling recognises the necessity of disclosure if non-police witnesses and core participants are to play a meaningful role in the inquiry;

*"I accept that if core participants and witnesses do not have access to information that directly affects them, their ability meaningfully to contribute to the resolution of important issues in the Inquiry may be compromised" [para 109].*

On the face of it, the Chairman didn't follow the line put forward by victims of undercover policing to prohibit the use of NCND in the Inquiry. However, the implications are that he will not allow the Police to use the policy as a trump card to prevent disclosure. It's heartening, and right, that the Chairman underlines the need for victims to have access to information.

The Chairman's ruling makes it clear that a restriction order will only be granted when there is sufficient evidence to prove that the risk of harm likely to be caused by disclosure outweighs the public interest in openness. Even then he recognises the need to explore all alternative methods of protection, including those of the police, before deciding in favour of a restriction order.

Although the true extent of the Chairman's ruling will be determined when he comes to decide each individual application for restriction orders, it is clear that he has opted for a hearing predicated largely on openness and that any secrecy will need to be justified by evidence.

Where the balance of interests ultimately rest will only become clearer once the first application rulings are made. However, there is concern amongst the NPSCPs that the inquiry could become mired by endless applications for restrictions on every single piece of information thereby hampering the proceedings. Engagement in the inquiry by victims such as our client Neville Lawrence will depend largely on its ability to proceed with transparency and efficacy.

