

PUBLIC INQUIRY INTO THE DEATH OF JERMAINE BAKER

FURTHER RULING ON RESTRICTION ORDER APPLICATIONS UNDER SECTION 19 INQUIRIES ACT 2005

- 1) AN APPLICATION FOR ANONYMITY BY A179
- 2) APPLICATIONS FOR SPECIAL MEASURES FOR MPS WITNESSES
- 3) SMALL TEAMS INTERVENTION CAPABILITY

28 APRIL 2021

1. This ruling should be read in conjunction with my open rulings of 26 March 2021 and 19 April 2021 providing reasons for my decisions on the applications for anonymity made by and on behalf of serving and former Metropolitan Police Service (MPS) officers.
2. This ruling will deal with three separate applications made by the MPS:
 - a. An application for anonymity by A179;
 - b. An application for special measures for MPS witnesses;
 - c. An application for the redaction and non-disclosure of material relating to Small Teams Intervention Capability (STIC).
3. In oral submissions before me on 15 March 2021 all Core Participants were in agreement about the test that I must apply in applications under s.19 Inquiries Act 2005 (the Act). The relevant legal principles were set out in detail in my ruling of 19 April 2021 at paragraphs 5-25 and will not be repeated here.
4. I summarised them at paragraph 3 of my second ruling as follows:
 - a. The starting point, under s18 of the Act, is a presumption that the Inquiry will be held in public. This includes the ability for members of the public to see and hear proceedings, and to view or obtain copies of documents given, produced or provided to the Inquiry.
 - b. Under s19 of the Act, an order can be made restricting attendance at Inquiry hearings, including granting anonymity to a witness by restricting disclosure and publication of their identity.
 - c. An order under s19 of the Act must specify only those restrictions that are required in all the circumstances.
 - d. Pursuant to s19(3)(a) of the Act and s6 of the Human Rights Act 1998 my decision must consider the duties imposed by Article 2, Article 3 and Article 8 of the European Convention on Human Rights (“ECHR”).

- e. S19(4) of the Inquiries Act 2005 provides a list of factors to which I must have regard, including the extent to which any restriction order might inhibit the allaying of public concern by this Inquiry, any risk of harm or damage (as defined by s19(5)) that could be avoided by a restriction order and the likely effect of any order on the conduct of this Inquiry.
- f. Although there is some significant overlap with my duties under the ECHR, the test for anonymity is broader under the common law. The factors identified in the judgement of the House of Lords in *Re Officer L* [2007] UKHL 36, which concerned the anonymity of officers during the Bloody Sunday Inquiry, are of particular relevance.

Application for anonymity for A179

- 5. On 14 April 2021 I received an application on behalf of an officer identified as A179 for anonymity and the following measures required to preserve that anonymity:
 - a. The witness' name and address to be withheld;
 - b. The witness to be referred to by cipher only;
 - c. The witness not to be asked questions which might lead to their identification;
 - d. The witness to give evidence screened from the public gallery;
 - e. The witness to be permitted to enter and leave the Inquiry room through a route not available to members of the public.
- 6. In support of A179's application I have received both OPEN and CLOSED statements from A179, as well as an OPEN statement from Superintendent Ross McKibbin as lead for Counter Terrorism Specialist Firearms Officers (CTSFO) within the Specialist Firearms Command of the MPS, and accompanying OPEN and CLOSED risk assessments. I have based my ruling upon the information available in the OPEN statement and have not considered it necessary to rely upon the CLOSED information. There is no CLOSED addendum to this ruling.
- 7. A179's application was circulated to all Core Participants who were invited to make any submissions they considered necessary. I have received no written submissions and I have not been informed that any Core Participant wishes to address me orally on this application. Those representing Jermaine Baker's family have confirmed they do not wish to make any submissions, save for that the witness should not be screened from approved family members. I have kept in mind the submissions made by all Core Participants on 15 March 2021 and in particular the submissions made on applications for other serving CTSFOs.
- 8. A179 is a trained CTSFO but on the morning of 11 December 2015 was deployed in the control room for Operation Ankaa. A179 was not previously allocated a cipher because at the time of Operation Ankaa he was not an operational CTSFO. He has provided statements to the IOPC and for use in the criminal proceedings in his own name. I have previously indicated, in relation to FE3, FE6 and FE12 in particular that the fact that a witness' name has previously been disclosed is relevant to, but not determinative of, the application for anonymity during this Inquiry.

9. A179 is now an operational CTSFO. The majority of the work he undertakes is covert and when he does undertake an overt role he ensures his face is covered to protect his identity. I previously heard that CTSFOs need to deploy covertly in close proximity to dangerous and armed criminals and may be deployed at short notice against OCNs. I am satisfied that there could be a significant impact upon the operational effectiveness of A179's unit if his identity is divulged. Furthermore, the impact upon operational effectiveness is not confined to future activity, but also to current and ongoing operations.
10. I refer to my findings in relation to CTSFOs in my previous ruling because the operational risks are broadly consistent but I emphasise that each application for anonymity has been considered on its own merit and there are no 'categories' within which all officers will be granted or refused anonymity.
11. A179 has expressed subjective fears for his safety and that of his family, particularly because of the regularity with which he is involved in operations relating to serious crime, threats to life and counter terrorism. A risk assessment, provided by Superintendent Ross McKibbin has assessed the likelihood of A179's identification having an effect on his family as high and the impact on his family as high. The risk assessment also concluded that the disclosure of A179's identity would have a severe impact on his ability to perform his role and may compromise his safety and the safety of those he was deployed with. His future value as an operative would be compromised as he would no longer be able to deploy covertly.
12. Whether I carry out the balancing exercise required by reference to statute and/or common law the result is the same. It is necessary to grant A179 anonymity in order to ensure the protection of his convention and common law rights, and to ensure the continuing operational effectiveness of the CTSFO unit in the MPS. The grant of this order will not impinge upon the work of this Inquiry or upon its ability to hold individuals and institutions to account as necessary.
13. I will make a restriction order granting anonymity to A179 in the same terms as the orders previously made. In particular, the terms of the order will not prevent A179 from being seen by the family of Jermaine Baker, their legal representatives or such members of the press as I expressly permit. I have previously set out the process whereby members of the press are asked to indicate their intention to view the evidence of anonymous witnesses so that CPs have the opportunity to confirm their accreditation and to raise any objections which properly apply.

Application for special measures for MPS witnesses

14. On 12 April 2021 I received an application from the MPS for special measures for a number of serving and former police officers. Save for two officers (Darren Stewart and Ronan O'Connor) the order sought is as follows:
 - a. The witness' image not to be broadcast during any live stream or publication of his/her evidence;

- b. The witness to be permitted to enter and leave the inquiry room through a route not available to members of the public;
 - c. The media to be prohibited from publishing the witness' image or other identifying feature pursuant to section 11 of the Contempt of Court Act 1981.
15. Darren Stewart and Ronan O'Connor additionally apply for an order that no audio of their evidence to be broadcast during any live stream or audio/video publication of their evidence.
16. The application was circulated to all Core Participants and to representatives of the press who were invited to make submissions. No submissions were received.
17. As with the application, my rulings are grouped below where they share common characteristics or are made on shared grounds. However, each application has been carefully scrutinised and weighed on its own merits.
18. A final decision has not yet been made on whether or not this Inquiry will be live streamed. Any decision will be kept under review in light of the prevailing government guidance and restrictions. For that reason, I will rule on these applications on the basis that the hearings will be live streamed. If no livestream is required then a number of the orders sought and granted will clearly fall away.

Officers currently performing a covert policing role

19. DS Stuart Yardsley was involved in collecting and summarising cell site and telephone evidence for the trial of the conspirators in Operation Ankaa. DS Yardsley is currently a team leader on a dedicated surveillance team within the covert command. He deploys daily in a covert role on operations relating to organised crime and counter terrorism. He was not performing this role at the time of Operation Ankaa or when the anonymity applications were submitted by the MPS. Inspector Dave Darby has confirmed that if special measures are not granted in the terms sought there is a considerable risk that DS Yardsley would no longer be able to carry out his role.
20. I have previously stated that the public interest in the future operational effectiveness of the MPS, and in particular the police officers I am considering, is relevant to the balancing exercise I must conduct. Those representing the family of Mr Baker previously agreed that it is difficult to resist applications for anonymity where there is a proper evidential basis for finding a threat to effective policing.
21. I have set out above, in my ruling on A179, the importance of anonymity for serving covert officers. I am satisfied that the order sought is necessary based upon the risk that publishing DS Yardsley's image would pose to the officer, to his unit and to the effectiveness of current and future deployments. I note that the order will not prevent the witnesses' identity being known to Core Participants or to the public. It does not prevent the witness from being seen and heard by anyone present in the hearing room, including the press and family members. It does not limit the public access to or reporting of his evidence. Importantly, I

am satisfied that granting the order will not inhibit the work of the Inquiry or otherwise undermine public confidence in the Inquiry.

22. PC Natalie Guest was involved in the surveillance of the Audi prior to its interception. She currently works as a surveillance officer within the MPS anti-corruption unit. Detective Inspector Dave Wiltshire has confirmed that her identification would risk compromising her ability to carry out that role effectively and may compromise future operations. For that reason, in the event that surveillance officers are asked to give evidence in court an application would be made for special measures in similar terms to the present application. The Inquiry Legal Team currently propose to read PC Guest's evidence. Should she be called to give oral evidence, special measures in the terms sought would be granted for the reasons set out above.
23. On 11 December 2015 DS David Reddy was listening to the audio probe from the Audi in the covert monitoring post. He currently works as a surveillance officer within the MPS anti-corruption unit which requires him to deploy covertly. He has deployed covertly on twenty occasions since January 2021. The MPS has accepted that the subjects of the operations on which DS Reddy will be deployed are unlikely to be in the public gallery but submits that the broadcast or publication of DS Reddy's image would make performance of his duties impossible.
24. Detective Inspector Matthew Wyatt of Police Anti-Corruption Command has confirmed that DS Reddy's role relies upon a high level of anonymity and the publication of his image would significantly impact the Anti-Corruption Command's operational effectiveness. As with DS Yardsley and PC Guest I am satisfied that the order sought is necessary for the same reasons.
25. DC Gary Jopling was covertly deployed supporting surveillance officers during Operation Ankaa. DC Jopling was directly involved in the arrests of Eren Hayser and Ozcan Eren. He is currently deploying on a daily basis as a covert surveillance officer attached to Specialist Crime (Proactive Operations). He is involved in operations in North London relating to OCGs involved in large scale drug supply, firearms offences and money laundering. DC Jopling has stated his fear that there would be a serious risk to his personal safety when conducting surveillance on violent subjects if his image was published. DC Jopling's supervisor, DS John Baker, has confirmed that both DC Jopling's safety and the operations in which he is involved would be compromised by the publication of his image. DS Baker also stated that it would have an adverse effect on DC Jopling's future progression.
26. Having conducted the necessary balancing exercise I am persuaded, as with the officers above, that the order sought for DC Gary Jopling is necessary for the reasons given.
27. An application for CI Bill Scammell has now been withdrawn.

Officers and retired officers who fear reprisals

28. DS Brendan Gilmour was involved in the directed surveillance during Operation Ankaa and shadowed the Strategic Firearms Commander. He is now a Superintendent and a Senior Police Adviser seconded to the Home Office Science to oversee delivery of

government commissioned science and technology support and capabilities to national policing functions. His role is overt although the work he supports is sensitive. Superintendent Gilmour was granted special measures to prevent the broadcast of his image during the Leveson Inquiry but his career service history, including his posting to the Counter Terrorism Command was revealed. Superintendent Gilmour fears that if his name and history were to be linked to his image this would create a risk to himself and his family. I have been provided with CLOSED evidence about Superintendent Gilmour's particular grounds for fearing a risk to himself and to his family were his image to be broadcast.

29. I have previously noted that based upon the evidence available about the Tottenham Turks, the subjective fears expressed by officers in this case are not without foundation. Whilst in Superintendent Gilmour's case the threshold would not have been met for an order granting him anonymity, I am satisfied from the evidence provided to me, including the CLOSED evidence, that this more limited order is well founded in statute and at common law, having regard to Superintendent Gilmour's convention rights. In particular, and as stated above, this order will not prevent the witness from being seen and heard by anyone present in the hearing room, including the press and family members. It does not limit the public access to or reporting of his evidence.
30. DC Gary Kinch was a specialist crime officer involved in the investigation, disruption and prosecution of the Tottenham Turks and other OCNs. He acted as the OIC during the trial of the conspirators. DC Kinch is currently in a non-public facing role in the MPS in order to assist this inquiry. DC Kinch fears reprisals for his work in past operations, including operations involving the Tottenham Turks. As with other officers for whom orders have been granted, I accept that a subjective fear of reprisals from the Tottenham Turks is not without foundation.
31. DC Kinch is due to retire from the MPS in 2022 and has expressed a desire to return to covert work in the future. If he were unable to do so because his image had been broadcast during this inquiry, it would harm his earning potential. I am satisfied that this is a factor properly to be weighed in the balance. Taking into account all of the material before me, I grant the order sought.
32. DI Rob Murray was the Senior Investigating Officer for Operation Utara and Operation Ankaa. He is now retired. I have received CLOSED evidence about his current employment and, in particular, how the broadcast of his image during this Inquiry would harm his capacity to continue in that role. DI Murray has also expressed some fear of reprisals for his work in past operations, including operations involving the Tottenham Turks.
33. I have carefully balanced the public interest factors, DI Murray's common law and convention rights, as well as the need for open justice. Having done so I am persuaded that the order is necessary. To refuse this order would significantly affect the witness' ability to continue in his current employment. I note that this DI Murray's evidence is significant and may be the subject of some media interest but that this order will not prevent full and open reporting of his evidence.

Officers for whom anonymity applications were refused

34. Neil Williams was the Tactical Firearms Commander for Operation Ankaa. He planned Operation Ankaa and was present in the control room C3000 on 11 December 2015. He was the subject of a recommendation by the IOPC that his role in Operation Ankaa gave rise to a case to answer on misconduct, to which his decision to retire was closely linked. On 26 March 2021 I refused an application for anonymity made on Mr Williams' behalf. I concluded that there was some objective reasoning behind his subjective fears for retribution. Whilst they did not justify anonymity in his case I indicated that I was minded to grant an order in the terms now sought. For all the reasons previously given I remain satisfied that an order prohibiting the publication of Mr Williams' image and allowing him the use of a separate entrance is reasonable and necessary for the protection of his common law and convention rights.
35. Darren Stewart is a retired CTSFO who was Operational Firearms Commander for Team Alpha. He delivered an operational briefing and provided armed support following the Serco van. I received CLOSED evidence about the nature of his current employment and his family circumstances. That evidence did not persuade me that an order granting him anonymity was necessary or that a failure to allow it would amount to a breach of his statutory, Common Law or Article 8 rights. However, I indicated that I was minded to grant an order in terms now sought. I remain of that view for the reasons I have already given.
36. For reasons developed in the closed material, Mr Stewart also applies for an order prohibiting the broadcast of the audio of his evidence. In the event that the substantive hearings are not livestreamed such a restriction will not be necessary. If the hearings are livestreamed then Mr Stewart's evidence will be broadcast without showing his face and with a delay which allow for voice distortion to be applied to his audio evidence. I am satisfied that these restrictions will adequately meet the concerns raised in the CLOSED evidence.
37. Ronan O'Connor is a retired CTSFO. He drove the Charlie vehicle, which included W80, and restrained Gokay Sogucakli in Bracknell Close. In support of his application for anonymity and screens I received CLOSED material relating to his current employment and personal circumstances but was not satisfied that the grant of anonymity and screens was necessary. For the reasons previously given I am satisfied that Mr O'Connor's rights, under common law and Article 8, will be adequately protected by the order now sought (including the application for voice distortion should the hearings be livestreamed).
38. Paul Tombs is a retired CTSFO who was the driver of the control vehicle. He assisted with first aid to Mr Baker. In support of his application for anonymity and screens I received CLOSED material about Mr Tombs' family and current role. I concluded that the chances of his identification are very remote, but that the consequences of his identification are such that, although an order for anonymity and screens was not required to ensure that M Tombs' statutory, convention and common law rights are preserved. I am, however, satisfied that an order prohibiting the broadcast of his image and the use of a separate entrance is required.

Small teams intervention capability

39. The MPS initially applied for a restriction order for the non-disclosure of material related to a Small Teams Intervention Capability (STIC), a tactic available during the deployment of firearms officers. The MPS initially submitted that the material was both irrelevant and sensitive, based upon the risk to future operational effectiveness. I was not at that time persuaded that STIC was irrelevant to my terms of reference, not least because Mr Butt QC conceded in oral submissions that there was a STIC available on 11 December 2015 in the jump off vehicle.
40. I directed that the MPS material relating to STIC, and that of the College of Policing, be made available to Core Participants for inspection to allow them to make submissions on relevance and sensitivity. In order to insist, the Inquiry's policing experts Mr Ian Arundale and Mr Colin Burrows were asked to produce a short report on the relevance of STIC to Operation Ankaa.
41. Mr Arundale and Mr Burrows made no criticism of the composition of or use of the team in the 'jump-off' vehicle. The team in the jump off vehicle was not wholly consistent with what is now a more sophisticated tactical resource known as STIC. Mr Arundale and Mr Burrows concluded that the team in the jump off vehicle was consistent with a standard Armed Response Vehicle (ARV) crew and provided an additional resource available.
42. On 15 April 2021 Counsel to the Inquiry circulated written submissions and proposed redactions to the material. CTI submitted that their proposed redactions allowed for the disclosure of the material relevant to the Inquiry but did not require the disclosure of any sensitive material. On 19 April 2021 Core Participants had the opportunity to inspect all of the material. No Core Participant has made any further submissions, in particular no Core Participant has disagreed with the approach proposed by CTI.
43. I am satisfied that CTI's proposed redactions allow for the disclosure of all relevant material. As such, no restriction order is required.