

PUBLIC INQUIRY INTO THE DEATH OF JERMAINE BAKER

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

APPLICATION FOR SPECIAL MEASURES ON BEHALF OF SUPT STANCOMBE

15 June 2021

1. This ruling should be read in conjunction with my open rulings of 26 March 2021, 19 April 2021 and 28 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 addresses one serving officer of the MPS, Supt Simon Stancombe. Although his application is made late in the day, it has only recently been confirmed that he will be called as a witness.
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.

The application

5. The application is made on behalf of the MPS in OPEN and CLOSED documents dated 9 June 2021. I also have Supt Stancombe's CLOSED substantive witness statement and a CLOSED statement in support of the application, which tell me something of the officer's background.
6. The written application is straightforward. The CLOSED application is one paragraph longer than the OPEN document.
7. The MPS seeks the following special measures by way of a restriction order:
 - 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.
8. These measures are consistent with those that I have been invited to grant, and have granted, in respect of other witnesses in previous rulings.
9. The application was circulated to all Core Participants and to representatives of the press who were invited to make submissions. No submissions were received.
10. On account of information with which I am provided in the CLOSED application and evidence, I am satisfied that the restriction order should properly be made in the terms sought by the MPS. I do grant the order.
11. Although I recognise that granting any order of this sort is some infringement on open justice and the Article 10 rights of the media to report on proceedings, I consider that the infringement is particularly limited (and easily outweighed) in this case. The witness will only give evidence in CLOSED session, and accordingly there is no need for any application for screening; I will see him and all individuals who are in the room when he gives evidence will see him and have the opportunity to assess his demeanour as he gives his evidence. Moreover, although there is always some benefit in adding "colour" to press

reporting by the use of photographs, there is likely to be very little (if any) reporting of Supt Stancombe's evidence where it is all given in CLOSED.

12. In the circumstances, I consider that the order falls to be granted. I am persuaded that pursuant both to my common law duty of fairness and my statutory duty of fairness, I should make the order. Moreover, the making of this order is likely, in my view, to improve the quality of Supt Stancombe's evidence to the Inquiry.
13. The order I am making is also conducive to the operational effectiveness of the MPS, which is a weighty consideration on these facts. As I said in my 28 April 2021 ruling, 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.
14. Taking into account the factors to which I am directed in section 19(4) of the Inquiries Act 2005, I do not consider that the making of this order will have more than a minimal effect on the allaying of public concern, since Supt Stancombe will give evidence in CLOSED session in any event. It will cause no impairment to the efficiency or effectiveness of the inquiry, for the same reason, and will add little to the cost of proceedings. Balanced against that, on the basis of the CLOSED material, I consider that the making of the order will mitigate some risk of harm or damage.
15. Although I have not decided the application on this basis, I am satisfied that were I to determine the application by balancing the witness's Article 8 ECHR rights with competing Article 10 rights, I would conclude that it would be necessary to make the order and that such an infringement with the witness's Article 8 ECHR rights could not be justified.
16. Accordingly, I make the order in the terms sought, pursuant to s19(2)(b) of the Inquiries Act 2005.

HH Clement Goldstone QC
Chairman, Jermaine Baker Inquiry

15 June 2021