

In the matter of section 19(3) Inquiries Act 2005
Application for restriction order by the Metropolitan Police Service
Decision

Introduction

1. On 6 April 2023 I held a closed hearing to consider two applications by the Metropolitan Police Service (“**MPS**”) for restriction orders under s.19 of the Inquiries Act 2005. The subject of the applications concerned statements under caution and records of interviews made by and conducted with Mr Gareth Jenkins and Mrs Anne Chambers (which I will refer to as “**potentially restricted evidence**”).
2. The hearing on 6 April 2023 was held pursuant to rule 12 of the Inquiry Rules 2006 which enabled relevant legal representatives, who had signed confidentiality undertakings, to view the material and make submissions on the applications in a way that would enable them to refer to the underlying material should they wish. Rules 12(3) and 12(4) of the Inquiry Rules 2006 provide a mechanism for such a hearing where the chairman considers that disclosure of potentially restricted evidence to an individual is necessary for the determination of the application and has afforded the person providing or producing the evidence to the inquiry panel, or any other person making the relevant application, an opportunity to make representations.
3. The MPS had agreed to disclosure of the potentially restricted evidence to legal representatives of all Core Participants (which includes Mr Jenkins) and to Mrs Chambers (who is not a Core Participant). The hearing was attended by legal representatives acting for the following parties – the MPS, Mr Jenkins, Mrs Chambers, the Howe + Co Core Participants, the Hudgells Core Participants, the Hodge, Jones & Allen Core Participants, Post Office Ltd, Fujitsu Services Ltd and Ms Paula Vennells.
4. It was agreed in advance that the material relating to Mrs Chambers would not be distributed to the legal representatives for Mr Jenkins and the material relating to

Mr Jenkins would not be distributed to the legal representatives for Mrs Chambers. I was told by Mr Beer KC, Lead Counsel to the Inquiry, that this was for two reasons: firstly, on enquiry neither set of legal representatives believed it was necessary for them to see the material of the other in order fairly to make representations on the applications and, secondly one set of legal representatives thought it might cause difficulty if they saw such material for the purposes of the application but could not discuss it with their client more generally.

5. For the avoidance of doubt, no Core Participant has seen the potentially restricted evidence and disclosure has only been made to legal representatives who have signed confidentiality undertakings.
6. This ruling has been produced as an open ruling to which no restriction applies. I have not felt it necessary to produce a separate closed ruling as I do not need to refer to the content of the material in a way that would undermine the purpose of the application. Indeed, for reasons that will become clear, no party has objected to some reference being made in the Inquiry to parts of the potentially restricted evidence and the submissions before me focused instead on the disclosure and publication of the documents themselves rather than references to or limited summaries of their contents.

Background

7. On 19 January 2023 the Inquiry received two letters from Corker Binning, the solicitors acting for Mr Gareth Jenkins. One of those letters contained an application for a restriction order in respect of records of interview under caution and prepared statements that had been provided to the Inquiry by the MPS.
8. The original application sought to withhold the material in its entirety and had been made on the basis that the material "*may be disclosed to individuals who may be (or may become) potential witnesses of fact (for prosecution or defence) or even suspects in the same criminal investigation*" and that "*as a matter of fundamental principle*" witnesses would never be shown such material and co-suspects would not be shown the accounts of other people who have been interviewed under caution (other than post-charge).

9. In a 'minded to' decision of 27 January 2023 I rejected that application on the basis that I considered the material to be potentially important evidence for this Inquiry to receive and consider in public and that the grounds for a restriction order in the terms sought had not been made out. I did however highlight that the MPS, as provider of the potentially restricted evidence, would have an opportunity to make an application should they consider it appropriate or necessary.
10. The MPS ultimately made two applications. The first application is dated 9 February 2023 and relates to documents concerning Mr Jenkins. The second application is dated 22 March 2023 and relates to documents concerning Mrs Chambers.
11. In respect of Mr Jenkins, the application covers the following documents:
 - a. A prepared statement of Mr Jenkins dated 21 July 2021.
 - b. A prepared statement of Mr Jenkins dated 26 April 2022.
 - c. A record of taped interview of Mr Jenkins dated 21 July 2021.
 - d. A record of taped interview of Mr Jenkins dated 22 September 2021.
 - e. A record of taped interview of Mr Jenkins dated 26 April 2022.
12. In respect of Mrs Chambers, the application covers the following documents:
 - a. A prepared statement of Mrs Chambers dated 14 July 2021.
 - b. A record of taped interview of Mrs Chambers dated 14 July 2021.
 - c. A second record of taped interview of Mrs Chambers dated 14 July 2021.
 - d. A note of Mrs Chambers expanding on paragraph 6 of her prepared statement dated 14 July 2021.
 - e. Introductory statement of Mrs Chambers dated 7 October 2021.
 - f. A record of taped interview of Mrs Chambers dated 7 October 2021.
13. The applications as originally drafted seek restriction orders limiting disclosure to core participants only and that "*there shall be no onward disclosure of those documents by the Core Participants (nor any gist or summary of their contents)*" to

a list of named individuals. The applications also sought a restriction preventing publication of the potentially restricted evidence on the Inquiry's website.

The Inquiries Act 2005

14. Section 19 of the Inquiries Act 2005 provides as follows (insofar as is relevant):

- “(1) Restrictions may, in accordance with this section, be imposed on—*
- (a) ...*
 - (b) disclosure or publication of any evidence or documents given, produced or provided to an inquiry.*
- (2) Restrictions may be imposed in either or both of the following ways—*
- (a) ...*
 - (b) by being specified in an order (a “restriction order”) made by the chairman during the course of the inquiry.*
- (3) A restriction notice or restriction order must specify only such restrictions—*
- (a) as are required by any statutory provision, retained enforceable EU obligation or rule of law, or*
 - (b) as the Minister or chairman considers to be conducive to the inquiry fulfilling its terms of reference or to be necessary in the public interest, having regard in particular to the matters mentioned in subsection (4).*
- (4) Those matters are—*
- (a) the extent to which any restriction on attendance, disclosure or publication might inhibit the allaying of public concern;*
 - (b) any risk of harm or damage that could be avoided or reduced by any such restriction;*
 - (c) any conditions as to confidentiality subject to which a person acquired information that he is to give, or has given, to the inquiry;*
 - (d) the extent to which not imposing any particular restriction would be likely—*
 - (i) to cause delay or to impair the efficiency or effectiveness of the inquiry, or*
 - (ii) otherwise to result in additional cost (whether to public funds or to witnesses or others).*
- (5) In subsection (4)(b) “harm or damage” includes in particular—*
- (a) death or injury;*

(b) damage to national security or international relations;

(c) damage to the economic interests of the United Kingdom or of any part of the United Kingdom;

(d) damage caused by disclosure of commercially sensitive information.”

15. The MPS's application is made under s.19(3)(b) of the Inquiries Act 2005 and I am therefore required to have regard in particular (though not exclusively) to the matters set out in s.19(4).

The Position of the Parties

16. Written submissions in response to the MPS' applications were initially received on behalf of the Core Participants represented respectively by Howe + Co and Hudgells Solicitors. Hodge, Jones & Allen had already expressed agreement with the position of Howe + Co in respect of the earlier application that had been made on behalf of Mr Jenkins. A note from Counsel to the Inquiry was then circulated, posing a series of questions for the MPS.

17. Additional submissions were subsequently received from the legal representatives acting for all of the Subpostmaster Core Participants and a response was provided by the MPS. The cross-disclosure of these submissions helped to significantly narrow the issues before me.

18. In respect of the form of order, Mr Little KC described the application in his oral submissions as *“relatively limited in its compass”*. In response to a concern that had been raised by Counsel to the Inquiry, he clarified that the order that is sought does not inhibit in any way the ability of Counsel to the Inquiry to ask all relevant questions and, to the extent necessary, Counsel for Core Participants (though he was not alone in expressing a preference for Counsel to the Inquiry to ask the questions). Mr Little KC helpfully explained that the reference to a *“gist or summary”* in his application was aimed at trying to avoid any attempt being made to provide, in essence, the *“full context and content of the interview without*

providing the actual document itself” rather than prohibiting any reference to their content in questioning witnesses.

19. In respect of the reasons for making the application Mr Little KC emphasised the public interest and public importance, if it is appropriate, for a charging decision to be made and for any prosecution arising, and for all issues to go to the jury. He explained that the MPS’ application wasn’t to be taken as agreement that it would be unfair to try any suspects should the order not be granted but “*that is not the same as saying that there is no prospect of an abuse of process application being made or that there’s no prospect of it being successful*”. The application was therefore put on the basis of s.19(3) and (4) and Mr Little KC submitted that there is a risk of harm of damage to the criminal investigation (s.19(4)(b)) and also that not granting the application would be likely to impair the efficiency or effectiveness of the Inquiry (s.19(4)(d)).
20. Concerns had been expressed in written submissions filed on behalf of Mrs Chambers regarding disclosure of the potentially restricted evidence to Lee Castleton, a Subpostmaster Core Participant. In this respect, Mr Little KC queried the extent to which it would be necessary to call Mr Castleton to give evidence in criminal proceedings bearing in mind that he would be regarded as a victim rather than an important witness of primary facts and the issues that had been identified in respect of other such witnesses therefore did not apply.
21. Mr Little KC also addressed what had been described by Mr Beer in his introductory remarks as the “*sluggish pace*” of the police investigation. His explanation focused on issues of legal professional privilege which had been a more difficult task than was envisaged. Mr Little KC also emphasised the large amount of documentation which needed to be considered before proper first accounts could be taken.
22. In respect of publication of the potentially restricted evidence on the Inquiry website, Mr Little endorsed a ‘wait and see’ approach which would not rule out publication at some later stage before the conclusion of the Inquiry.

23. Ms Dobbin KC, on behalf of Mr Jenkins, began her oral submissions by highlighting that in proceeding to call her client to give evidence in the absence of an Attorney General's undertaking, the Inquiry needed to ensure that it "*didn't do anything in this unusual context that risked the fairness of the criminal process*". She repeated the submission that had been made in Mr Jenkins's original application that as "*a matter of fundamental principle*" witnesses in criminal proceedings do not get to see the sorts of material that was addressed in the application.
24. Ms Dobbin's oral submissions added considerable flesh to the submissions that formed the basis of Mr Jenkins's earlier (unsuccessful) application. She highlighted the risk that a dishonest witness might tailor their accounts or that even an honest witness may suppress a genuine doubt if they discover that a witness or a co-defendant is going to give evidence to a certain effect. Reliance was placed on *R (Green) v Police Complaints Authority* [2004] UKHL 6, [2004] 1 WLR 725 to support this submission. Whilst I was not taken to any particular passage it seems to me that concerns of a similar nature (but in very different circumstances) are expressed by Lord Rodger at [71]. Ms Dobbin KC further submitted that witnesses may be cross-examined at any future trial on the basis that their evidence is undermined by the fact that they have had the opportunity to see the potentially restricted evidence. Ms Dobbin KC cautioned against reliance upon these documents when, for example, the Inquiry has its own powers to obtain information which is not reliant or dependent on the police and submitted that a public inquiry was not the forum to test accounts given to the police.
25. Whilst the above points were forcefully put by Ms Dobbin KC, she did not ultimately argue against the proposal of a limited restriction order which would permit disclosure to Core Participants in the way that was proposed by the MPS.
26. Mr Biggs, on behalf of Mrs Chambers, highlighted that his concern was with questioning relating to his client's involvement in the Lee Castleton civil trial which, he submitted, was really an issue for the future as it is likely to only be addressed in Phase 4 of the Inquiry. Insofar as that was concerned, Mr Biggs was concerned about disclosure to Mr Castleton who, despite the degree of comfort provided by the MPS' submissions, may nevertheless be required to give evidence in any

potential future trial. Mr Biggs highlighted that interviews were based on the concept of consent and legitimate expectation and the starting position is that anyone who might be a witness does not get to see the transcript, albeit there might be particular circumstances which allow a party to move away from that position. In Mr Biggs's submission, the restriction order relating to Mrs Chambers' interviews should extend to Mr Castleton. In respect of publication of the potentially restricted evidence, Mr Biggs endorsed the wait and see approach.

27. The positions of the Subpostmaster Core Participants were broadly aligned. They were all concerned to ensure that nothing occurs which might jeopardise any future criminal proceedings and were therefore supportive of the making of a restriction order. This was a point that was made first (in the order in which oral submissions were made) by Mr Moloney KC speaking on behalf of the Hudgells Core Participants.
28. Mr Stein KC, on behalf of the Howe + Co Core Participants submitted that there should be a review date with an update as to the progress that is being made on the police investigation. He submitted that there could not be a fetter on an application for Core Participants to ask questions or an absolute rule that only Counsel to the Inquiry would ask particular questions on a particular topic. Mr Stein KC emphasised his concern at the MPS's submission that the investigation had experienced delays arising from issues in obtaining certain documentation.
29. Ms Page on behalf of the Hodge Jones & Allen Core Participants focused in particular on Mr Castleton and submitted that he would not want anything to happen to jeopardise any proceedings and that he would understand if there needed to be special provision for him as a Core Participant. Ms Page also highlighted that this may be the case for Ms Misra in respect of the material relating to Mr Jenkins. Consistent with the position taken by Mr Biggs, Ms Page highlighted that this was likely to be more of an issue in Phase 4 than Phase 3.
30. Mr Henderson on behalf of Post Office Ltd did not make submissions in respect of the restriction order but made several observations in respect of the cooperation between the Post Office and the MPS, in case the suggestion had been made that

any delay in the investigation was the fault of the Post Office. No submissions were made by Mr Whittam KC for Fujitsu Services Ltd or Mr Moss for Ms Vennells.

Decision

31. It is common ground amongst all those who made submissions before me that the Inquiry should avoid harm to the criminal investigations. It goes without saying that I share that view and it is something that I take very seriously and have well in mind when making decisions which potentially impact upon those investigations.
32. As Mr Little KC has rightly identified, the test under s.19(3) Inquiries Act 2005 does not require me to be satisfied that a fair trial would not be possible in the absence of a restriction order, but only that a restriction is conducive to the inquiry fulfilling its terms of reference or is necessary in the public interest having regard in particular to the matters mentioned in subsection (4).
33. I am somewhat sceptical about whether the kinds of concerns regarding contamination of evidence or tailoring of accounts that have been articulated before me could or would arise on the facts of the present case. However, taking the precautionary approach urged upon me by the MPS, I am content that the s.19(3) test is nevertheless satisfied because of the risk (howsoever small) of harm or damage to the integrity of the criminal investigation and any subsequent prosecution (s.19(4)(b)). I have therefore decided to make a restriction order in the terms set out in an annex to this decision.
34. Mr Beer KC was right to identify that the order as originally drafted by the MPS appeared to prohibit Counsel to the Inquiry or Counsel for Core Participants from putting part of an interview or part of a statement to a witness if it was necessary to do so. However, Mr Little KC clarified that this was not his intention and, by removing reference to “*any gist or summary*”, the amended order avoids any doubt that this is permitted, for example in order to expose an inconsistent account. No party sought to persuade me that this would result in any unfairness or risk the integrity of the criminal investigation (or prosecution).

35. As I explained during the course of the hearing, I do not consider it necessary to list the names of individuals to whom onward disclosure is prohibited in the order. All Core Participants who receive disclosure from the Inquiry have signed a confidentiality undertaking prohibiting them from disclosing the information unless and until it is in the public domain. I would take very seriously any breach of that undertaking.
36. I have made a separate provision in respect of prohibiting disclosure of material relating to Mrs Chambers to Mr Jenkins and material relating to Mr Jenkins to Mrs Chambers. Mr Jenkins is a Core Participant and would otherwise be entitled to the material and Mrs Chambers may otherwise receive disclosure as a witness. In respect of those Core Participants who are corporate or other entities rather than individuals, I make clear that disclosure should not be made beyond those who are specifically authorised to give instructions to their legal teams. This is in order to prevent wider disclosure within those organisations, which might include potential witnesses.
37. I have removed reference in the amended order to disclosure of 'no comment' police interviews because in my view these are not relevant evidence and they do not therefore need to be disclosed to Core Participants on relevance grounds in any event.
38. In respect of the questions that are ultimately put to Mr Jenkins and Mrs Chambers, the MPS has not sought any particular restriction or limitation, albeit Mr Little KC expressed a preference for Counsel to the Inquiry to ask the questions covering the potentially restricted evidence. In his written submissions Mr Biggs submitted that there "*ought to be no need for a Core Participant to cross examine on the interviews and there would be no basis upon which to permit that*".
39. The Inquiry has produced a 'Protocol for Providing Oral Evidence at Hearings'. That protocol sets out that under rule 10 of the Inquiry Rules 2006 only Counsel to the Inquiry or the Inquiry panel may ask questions of a witness. This is a general rule and reflects the fundamentally inquisitorial nature of a public inquiry. The Protocol then sets out a process by which questions may be submitted by Core Participants and a response is provided indicating which proposed issues or

questions Counsel to the Inquiry will pursue and which the recognised legal representative has been given permission to pursue (or which shall not be taken forward during the oral hearing subject to a separate application).

40. I consider that the above process meets the concerns that have been expressed in respect of questioning of Mr Jenkins and Mrs Chambers. It is in my view unlikely that there will be a question regarding the potentially restricted evidence that is reasonable to ask and which will not be pursued by Counsel to the Inquiry. As Mr Stein KC emphasised, I cannot rule out an application by a Core Participant to ask a question that has not been asked by Counsel to the Inquiry, but in light of the procedure that is now well-established in this Inquiry I do not consider it necessary to make a separate provision within the restriction order that addresses this possibility (which I can address if and to the extent that it arises).

41. That leaves the issue of Mr Castleton and, although not identified in the MPS's application, Ms Misra and any other individuals who are Core Participants who may be identified as victims by the MPS. I have heard what Mr Little KC has had to say in respect of Mr Castleton and agree with him that the risks that have been identified in respect of contamination or tailoring of evidence do not appear to be present in those cases. There is also no application before me seeking to restrict disclosure to a list of potential victims. However, I have also heard Ms Page's submission that her clients would understand if special provision were made for their cases. I consider that the best approach to this concern is for those representatives of individuals who are in the same category as Mr Castleton or Ms Misra to consider with care whether it is necessary for their clients to see the materials or whether doing so might unnecessarily provide defence counsel in any prosecution (should it take place) with a potential line of cross examination that can be easily avoided by not viewing the material. I do not consider it is necessary to make special provision for this within the restriction order itself nor does that seem possible in the absence of a comprehensive and authoritative list of individuals.

42. No party sought to impose this restriction indefinitely. Indeed, Mr Beer KC's concern regarding the "*sluggish*" pace of the MPS investigation calls for careful scrutiny of the duration of the restriction that has been sought, which arises in large part due to the fact that the MPS has not yet taken initial accounts from relevant

witnesses. Having considered the matter, I have decided that it would be appropriate to hold a review before Mr Jenkins and Mrs Chambers are called to give evidence in Phase 4 of the Inquiry. That is likely to be, at the earliest, in July of this year. The restriction order is therefore made with a proviso that it is to last until further order, with a review not later than 1 July 2023.

43. Finally, it is necessary to address a matter that was raised by Ms Dobbin KC at the outset of her submissions in respect of the overall fairness of the proceedings towards her client. Ms Dobbin KC suggested that proceeding to call her client to give evidence in the absence of an undertaking from the Attorney General was an “*unusual context*” and that this had relevance to the matter that was before me. My decision of 16 November 2022, refusing the application to request an undertaking from the Attorney General, made very clear that the decision as to whether or not to make such a request is entirely dependent upon the relevant facts and, to that extent, I do not accept that the decision was in any way “*unusual*”. I note that the decision was not challenged by Mr Jenkins nor, so far as the Inquiry is aware, was an approach made to the Attorney General directly by Mr Jenkins’s representatives upon my refusal. In any event, as Ms Dobbin KC did not object to the terms of the restriction order that were proposed by the MPS, it seems to me that any concern in this regard have now been met by the terms of the order that are set out in the annex to this decision.

44. I wish to thank all parties for their helpful submissions which allowed this matter to be addressed promptly and without delay to the Inquiry’s timetable.

Sir Wyn Williams

19 April 2023

ANNEX

In exercise of the power under section 19 of the Inquiries Act 2005 and to give effect to the ruling dated 19 April 2023, **IT IS ORDERED THAT:**

1. Subject to paragraph 2, the disclosure of the following documents to Core Participants shall be restricted to the limited extent that there shall be no onward disclosure of those documents by Core Participants or their legal teams:
 - a. The Prepared Statement of Gareth Jenkins dated 21 July 2021
 - b. The Prepared Statement of Gareth Jenkins dated 26 April 2022
2. No disclosure shall be made of the documents (a) and (b) in paragraph 1 of this Order to Anne Chambers or her legal team.
3. Subject to paragraph 4, the disclosure of the following to Core Participants shall be restricted to the limited extent that there shall be no onward disclosure of those documents by Core Participants or their legal teams:
 - a. The Prepared Statement of Anne Chambers dated 14 July 2021
 - b. The first record of the police interview with Anne Chambers dated 14 July 2021
 - c. The second record of the police interview with Anne Chambers dated 14 July 2021
 - d. The note of Anne Chambers expanding on paragraph 6 of her Prepared Statement dated 14 July 2021
 - e. The introductory statement of Anne Chambers dated 7 October 2021
 - f. the record of police interview with Anne Chambers dated 7 October 2021
4. No disclosure shall be made of the documents (a) to (f) in paragraph 3 of this Order to Gareth Jenkins or his legal team.
5. In the case of Core Participants that are bodies of persons corporate or unincorporate, disclosure of the documents identified at paragraphs 1 and 3 of this

Order is to be limited to those individuals who are authorised to give instructions to the Core Participant's legal team.

6. None of the documents referred to in this Order shall be placed on the Inquiry's website.
7. There be liberty to apply to amend or discharge this Order and a formal review shall take place not later than 1 July 2023.