

THE BILLY WRIGHT INQUIRY

Chairman: Lord MacLean

DECISION BY THE PANEL

In the Application by

Witness M

For

Anonymity at the Preliminary Hearing of
the Inquiry

On

Document Recovery

PROCEDURE

1. On 30 June 2006 the Billy Wright Inquiry [BWI] intimated that it intended to hold a Preliminary Hearing in relation to the recovery of documents from the Northern Ireland Prison Service [NIPS]. That Hearing has been set for Monday 30 October 2006 and subsequent days and will be held in Belfast. Persons likely to be called as witnesses were invited to submit applications for anonymity and/or screening in accordance with the Inquiry's Anonymity Protocol.
2. The Inquiry has received a number of applications. Witness M submitted an application requesting anonymity on 11th September 2006. The application is set out at Appendix 1. Witness M also submitted with the application further confidential papers that were for the eyes of the Inquiry Panel only. The Application was supported by letters of 27 February 2006, 7 March 2006 and 7 July 2006 from NIPS, the points in which were incorporated into a single letter dated 30 August 2006. This letter is at Appendix 2.

3. Parties who have been granted Representative status at the Inquiry were provided with copies of the application and of the supporting letter from NIPS. The information contained therein was supplemented with further detail pertaining to the witness, which is at Appendix 3. Comments were invited from those parties.
4. Comments were received from Messrs Trevor Smyth & Co, the solicitors acting for Mr David Wright, in a letter with an attachment dated 5 September 2006 and a further letter dated 15 September 2006. These letters are at Appendix 4.
5. The Panel sought a Threat Risk Analysis from the Police Service of Northern Ireland [PSNI]. That was received on 12th September 2006 by facsimile and is at Appendix 5. The Inquiry Panel then sought and obtained further particulars from PSNI as to the basis on which that Analysis had been made. Further information was supplied on 28th September 2006 on a confidential basis. Any information from that material which has been taken account of by the Panel in their deliberations is referred to in general terms where appropriate in this Decision.
6. The Panel met and considered each application separately on 12th September 2006 and again on 2nd October 2006. Decisions were taken on the latter date after due consideration of all of the above material and having also considered the Reports of the International Monitoring Commission [IMC] and, in particular, the Eleventh Report of the Commission issued in September 2006. Since the Decisions were taken the IMC has published its Twelfth Report. The Panel has studied that Report and consider that it does not contain any information which might give them cause to reconsider the Decision they have reached in the case of Witness M.

7. The applications received and considered by the Inquiry relate only to witnesses who are likely to be called to give evidence at the Preliminary Hearing referred to. Where any application for anonymity or the use of screens has been granted, the Decision will be kept under review. Should any such witness be called to give evidence at the substantive hearings, his/her applications for anonymity will be considered afresh in accordance with the Inquiry's Anonymity Protocol.
8. All that will be disclosed is the name and designation of a witness. There will be no disclosure of personal information such as private addresses, telephone numbers, contact details or other information that might identify where a witness resides.

CRITERIA

9. The Inquiry being conducted by the Panel is a Public Inquiry and there is an assumption that its proceedings should be conducted in so far as is possible openly and in public. However, the Panel also has a duty as a public body to act in a manner compatible with the European Convention of Human Rights [ECHR]. So far as individual witnesses are concerned, due regard must be had to their rights under Articles 2 and 8 of the ECHR and to the Inquiry's obligation to treat witnesses fairly.
10. In approaching this and other applications we have had regard to the tests formulated in the cases of *R v Lord Saville of Newdigate ex parte A* [2000] 1 WLR 1855; *R [A] v Lord Saville of Newdigate* [2002] 1 WLR 1249 and *R [Family of Derek Bennett] v HM Coroner for Inner London South* [2004] EWCA Civ 1439. It is noted that these tests have been quoted with approval in the Court of Appeal in Northern Ireland in *In Re Donaghy* [2002] NICA 25[1].

11. The criteria that we have applied in considering this and other applications are –

- i. Does the Application disclose a genuinely held fear by the Applicant that his/her right to live safely and free from fear under Article 2 of ECHR [or those of his/her family under Article 8] will be put at risk by a requirement to give evidence publicly at the Preliminary Hearings to be held later this year?;
- ii. To what extent are those fears objectively justified? In other words, is there a serious possibility or a reasonable chance that the giving of evidence at the Preliminary Hearing would give rise to a risk that his/her right to live safely would be endangered?;
- iii. Would it be unfair to any witness to require him/her to give evidence before the Inquiry without protection of identity when to do so would require him/her or members of his/her family to undergo unnecessary risk?;
- iv. Would such risk be alleviated by allowing the witness to give evidence anonymously or with screens or both?; and
- v. If the answer to questions ii or iii and iv are in the affirmative, is there any other compelling reason for naming or identifying the witness when to do so would create or increase that risk?

THE APPLICATION - WITNESS M

12. Witness M has applied for anonymity. He has been employed by NIPS in an administrative capacity since 1992 and continues to be employed by them. He bases his application on a fear that if he gives evidence at the Inquiry he and his family will be exposed to a “significantly greater level of risk to his personal safety than he is at present”. He adopts the general arguments that are also

put forward by his employers on his behalf and has provided the Inquiry with some details of his personal circumstances.

13. The Threat Risk Analysis provided by PSNI on 12th September has assessed the level of threat to Witness M, as a serving civil servant associated with NIPS, as moderate. However, in the materials supplied to the Inquiry supporting that analysis it is stated that the current threat to civil servants is likely to be low. That analysis is a generic assessment that applies to all serving civil servants whether they are to give evidence to the Billy Wright Inquiry or not. Such assessments do not take account of individual circumstances. However, the Inquiry has been advised by PSNI that there is no evidence of any specific current threat to witnesses giving evidence to the Inquiry.

14. Accompanying his application Witness M submitted documentation which provided evidence that at the end of 2002 he had been the subject of a specific death threat from a dissident republican group. The Panel has taken account of that specific threat.

15. The Panel has also had regard to the Reports of the IMC and in particular to the Eleventh Report dated September 2006. The Commission record at paragraphs 3.5 and 3.6 of their Report –

i. “We remain of the firm view that PIRA is committed to following a political path. It is not engaged in terrorist activity...”

ii. “Dissident republicans do pose a continuing threat to the security forces and constitute the most significant security threat in Northern Ireland. They have continued to engage in paramilitary activity and recent events have shown their wish to maintain their capability to do so. It remains the case that

they have been hampered in what they do both by their limited expertise and capacity and by the continuing efforts of law enforcement agencies north and south.”

iii. “Loyalist paramilitary groups do not at present constitute an active terrorist-type threat to the security forces.”

The Panel has noted that that assessment is one that is reflected in the materials supplied by PSNI that support their Threat Risk Analysis of 11th September 2006.

DECISION

16. The Panel has considered all of the material provided to it in support of this application and has taken account of the representations made on behalf of Mr David Wright. It has had due regard to the general Threat Risk Analysis and supporting background material provided by PSNI. Moreover, the Panel has also had regard to the Reports of the IMC and in particular to the Eleventh Report of that body.
17. Although it is recognised that anonymity, once lost, is lost for all time, and that there is a possibility that the nature of risk may change and in particular may increase, the Inquiry has been advised by PSNI that the most significant factor likely to give rise to an increase in the present threat is the nature of the evidence to be given by the witness. Witness M is being called to speak principally to the searching for and recovery of documents held by NIPS Headquarters. He was not involved in any of the substantive issues that the Inquiry will address at its full hearings. It is not anticipated that this witness will be required to testify at those hearings.
18. The thrust of Witness M’s application is the threat posed to him and his family by virtue of the fact of his employment with NIPS. The Threat Risk

Analysis provided to the Panel states that there is a moderate risk to his safety by virtue of that employment. The supporting material for that assessment, however, states that civil servants would not normally attract the same level of threat as those more directly involved in the prison regime in Northern Ireland and that the current threat to civil servants is likely to be low. However, Witness M has been the subject of a specific threat from a dissident republican group. Such groups according to the IMC's 11th and 12th Reports are still active. The Inquiry has sought a specific current Threat Risk Analysis for this witness. PSNI have advised that such an analysis will take a number of weeks and will not be available until about the middle of November 2006.

19. In the circumstances we have concluded that, since there may be an objective basis for Witness M's fears for the safety of himself or his family, and until the current Threat Risk Analysis is received, he should be afforded protection of identity. He will accordingly be allowed to give evidence at the Preliminary Hearing in circumstances where his name will not be disclosed and will be withheld from the family of the deceased including their legal representatives, all other parties to the Inquiry and their legal representatives, members of the public, and representatives of the media until such time as the Panel are in possession of all the relevant facts and can take a fully informed decision in his case. Should the Panel decide on receipt of the Threat Risk Analysis that there are no good grounds for affording Witness M some protection of identity, his name will be publicly disclosed. Witness M has not requested screening. The Application is therefore granted for the time being..

20. For the sake of completeness, we are satisfied that there is nothing deriving from the principle of open justice that compels us to require Witness M to give evidence without the benefit of the protection of anonymity before such time as a fully informed decision can be taken. The Preliminary Hearing at which he is expected to give evidence is a

procedural type hearing into the existence and extent of recovery of documents and the grant of anonymity would not impinge upon the ability of the Inquiry to comply with its Terms of Reference.

SIGNED BY THE CHAIRMAN FOR AND ON BEHALF OF THE INQUIRY PANEL

DATED 9TH OCTOBER 2006