

THE BILLY WRIGHT INQUIRY

Chairman: Lord MacLean

DECISION BY THE PANEL

In the Application by

Witness 'AH'

For

Anonymity and Screening at the Billy
Wright Inquiry

INTRODUCTION

1. Persons likely to be called as witnesses before the Billy Wright Inquiry (The Inquiry) were invited to submit applications for anonymity and/or screening in accordance with the Inquiry's Anonymity Protocol of 30 June 2006. The Inquiry has received a number of such applications.
2. Witness 'AH' submitted an application requesting anonymity and screening on 20 July 2007.
3. The Panel received an individual Threat Risk Assessment for witness 'AH' from the Security Service. Any information from that material which has been taken into account by the Panel in their deliberations is referred to in general terms where appropriate in this Decision.
4. Parties who have been granted Representative status at the Inquiry have been given the opportunity to see a copy of the application.
5. Comments were received from John McAtamney and Co, solicitors for Mr. David Wright, on 19 November 2007 and a response to those comments was received from those who represent witness 'AH' on 3 December 2007.

6. The Panel met and considered this application. A decision was taken after due consideration of all of the above material and having also considered the Reports of the International Monitoring Commission (IMC), in particular the 17th Report issued in November 2007.

THE APPLICATION – WITNESS ‘AH’

7. Witness ‘AH’ seeks anonymity and screening whilst giving evidence. His application is predicated on the fact that he is a serving member of the Security Service.

8. Witness ‘AH’ avers that, should he be identified:

- (i) There would be a significant increase in the threat to him and his family;
- (ii) There would be a potential threat to the lives of Security Service Agents;
- (iii) It would damage his personal life;
- (iv) It would damage the effectiveness of the Security Service and therefore national security (i.e. it would damage the public interest).

9. The Inquiry being conducted by the Panel is a Public Inquiry and there is a presumption that its proceedings should be conducted, in so far as is possible, openly and in public. However, the Panel also has a duty to act fairly and in a manner compatible with the European Convention of Human Rights (ECHR).

10. In approaching this and other applications the Panel has had regard to the opinions of their Lordships in the case of *In re Officer L (Respondent) (Northern Ireland) [2007] UKHL 36* and has considered the applications on a common law basis, having regard to Article 2 where that is necessary.

Article 2

11. Witness ‘AH’ is not known to be an employee of the Security Service. He is said to be effectively anonymous at present. Accordingly, the Threat Risk Assessment provided

for him by the Security Service assesses the present threat to him from Irish related terrorists as 'low'. Should that anonymity be removed, the level of threat would rise to 'moderate', reflecting the potential for dissident Irish related terrorists to target him. Members of the Security Forces, including members of the Security Service, remain priority targets from such dissident groups. The assessment is that the increased threat to witness 'AH' would persist beyond his participation in the Inquiry to his subsequent life and work.

12. To require this applicant to give evidence in public without protection of identity would therefore materially increase the risk to him and his family. "Moderate", in threat assessment terms, means that an attack is "possible but not likely". An increase in threat to "moderate" does not therefore meet the high threshold of a "real and immediate" risk to his life required by Article 2 of the ECHR.

Common Law

13. However, that increase in risk, should witness 'AH' be required to give evidence openly, is a relevant consideration in determining whether or not it would be unfair to require him to do so, particularly where the increase in threat could be removed by granting protection of identity.

14. There are other factors in this case that indicate why the applicant's identity should be protected. The nature of the Security Service is that it operates in a covert manner. Members of the Service are encouraged not to disclose their association with the Service. There may be personal consequences for the witness should his identity be disclosed. Such disclosure could damage personal relationships with persons to whom witness 'AH' has not disclosed his association. Removal of his present effective anonymity might prevent or limit the Security Service from deploying him to certain posts in the future and have a significant negative impact on his future career prospects. Equally, such disclosure could reduce the effectiveness of the Security Service through a restriction on the possible future deployment of witness 'AH' who is a highly experienced officer. Furthermore, the applicant's career has included operational postings where he has

handled agents. Were he to be identified as a member of the Security Service there would also be a potential threat to the lives of any agents who might be identified by association and, potentially, a consequential loss of intelligence. The ability of the Security Service to recruit or retain agents would be damaged. In a more general way, the disclosure of the identities of members of the Service could also have the effect of discouraging individuals from applying to join or remaining in the Security Service.

15. The Courts have long recognised that circumstances may arise in which normal disclosure of identity cannot be made without the risk of danger to the witness and the risk of serious prejudice to an important public interest. The Panel accepts in this case that loss of anonymity would reduce the applicant's future operational effectiveness and potentially reduce the effectiveness of the Security Service as a whole.

16. The Panel is of the view that it would be unfair to require the witness to give evidence without protection of identity. The Panel does not consider that there is in his case any countervailing reason why his evidence should be given openly. The substantive testimony of the witness will be heard by the public. Identification of the witness is not essential to the delivery of his evidence. In the whole circumstances, we consider that this applicant should be allowed to give his evidence anonymously and with the benefit of screens.

17. Accordingly, the application is granted.

R. Maclean
20/02/08

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