

THE BILLY WRIGHT INQUIRY

Chairman: Lord MacLean

DECISION BY THE PANEL

In the Application by

Witness 'DO1'

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 'DO1' submitted an application requesting anonymity and screening on 20 July 2007. This application is set out at Appendix 1.
3. The Panel received an individual Threat Risk Assessment for Witness 'DO1' 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. These are set out at Appendix 2. A response to those comments was received from those representing the witness on 3 December 2007. This is set out at Appendix 3.

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] and, in particular, the 17th Report issued in November 2007.

THE APPLICATION – witness ‘DO1’

7. Witness ‘DO1’ 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. In common with other applicants represented by the solicitors for the Security Service, Witness ‘DO1’ 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 significant interference with and damage to his personal life;
- iii. It would damage the effectiveness of the Security Service and therefore national security.

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. The applicant 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 assessment is that 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 the applicant 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

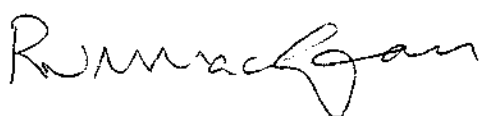
13. However, that increase in risk, should the applicant be required to give evidence openly, is a relevant consideration in determining whether or not it would be unfair to require him to do so, particularly where the increase in threat could be removed by granting protection of identity.

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 the applicant 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 the applicant who is a highly experienced officer. 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. We are of the view that it would be unfair to require the witness to give evidence without protection of identity. We do 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.

 11/01/08

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

APPENDIX

1. APPLICATION FOR ANONYMITY AND SCREENING
2. COMMENTS MADE BY MR DAVID WRIGHT
3. RESPONSE TO COMMENTS BY DAVID WRIGHT



Janet Marsh
The Billy Wright Inquiry
Conference House
152 Morrison Street
The Exchange
Edinburgh
EH3 8EB

Our ref:

Your ref:

Date: 20 July 2007

Dear Ms Marsh,

ANONYMITY APPLICATION FOR DESK OFFICER 1

1. I hereby apply for anonymity for my client, to be referred to as Desk Officer 1 ("DO 1"), so that:

- (i) his name is redacted from all documents and witness statements; and
- (ii) he is screened should he be called to give oral evidence.

2. The basis for this application is that, should DO 1 be identified by name or appearance as a member of the Security Service:

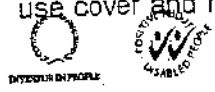
- (i) there would be a significant increase in the threat to him and his family;
- (ii) it would damage his personal life; and
- (iii) it would damage the effectiveness of the Security Service and therefore national security (i.e. it would damage the public interest).

3. This letter sets out the main factors in support of the application, in so far as it is possible to do so in an "open" letter. I have no objection to this letter being made available to the interested parties. Additional detail is contained in the attached protectively marked annex. A protectively marked threat assessment, prepared by the Security Service, is also attached. Please ensure that the annex and threat assessment are not distributed to the parties and that they are stored and handled as appropriate.

4. The Security Service supports this application.

Background

5. All past and present members of the Security Service are authorised and encouraged to use cover and not to disclose to anyone other than immediate members of their family or trusted



Freedom of information:
This information is supplied in confidence and may not be disclosed other than to the agreed readership, without prior reference to the Security Service. Within the UK, this material is exempt from disclosure under the relevant Freedom of Information Acts and may be subject to exemption under the Environmental Information Regulations and the Data Protection Act 1998.

Do not reply to named individuals.
Please address correspondence to the following:

| | |
|----------------------|--------------------|
| The Secretary | Tel: 020 7930 9000 |
| The Security Service | www.mi5.gov.uk |
| PO Box 3255 | |
| London SW1P 1AE | |



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friends and contacts that they are (or were) members of the Security Service. They endeavour to maintain cover for the duration of their careers and even after retirement. As a result, they are effectively anonymous.

6. To disclose the identity of a Security Service officer, or former officer, in this Inquiry would destroy this cover and remove the officer's anonymity. This would occur if an officer's name were to be included in documents or if an officer were named or permitted to give evidence unscreened at an oral hearing.

Threat to life

7. The increasing availability of personal information held on computerised databases makes it relatively easy to establish home addresses of individuals should their identities be revealed. There will be considerable media interest in the Inquiry and its proceedings and it is likely that efforts will be made by the press to identify any member of the Security Service, past or present, who is named in, or seen to be a witness to, the Inquiry. Terrorist organisations, hostile intelligence organisations and criminal organisations would similarly be able to identify any members of the Service named or unscreened in the Inquiry.

8. The Security Service's role in countering Irish-related terrorism leads to republican terrorist groups regarding its personnel as legitimate and potentially attractive targets. Such groups are unlikely to draw a distinction between current and former members of the Service. Where their identities are not known, individual Security Service personnel have a low level of vulnerability. However, once identified, the potential exists for them to be singled out for attack. If their identity became known to a terrorist organisation they could become priority targets. This would particularly apply were a member of staff's name to be associated with a public inquiry such as this, given its contentious subject matter and association with allegations of state collusion, even if that member of staff was not subject to express criticism in the course of the Inquiry. Staff are advised and trained to be vigilant, but terrorist organisations can be effectively organised and vigilance alone cannot be sufficient protection from such groups.

9. It is anticipated that the security measures to be put in place by the Inquiry at the hearings will be sufficient to counter any threat to witnesses while they are giving evidence, although I reserve the right to revisit this issue in the light of experience. The greater and more significant concern is the residual threat thereafter.

10. DO 1, in common with most past and present members of the Security Service, is currently effectively anonymous. It will be seen from the attached threat assessment that, were he to lose that anonymity through disclosure by the Inquiry of his identity as a member of the Security Service, it would significantly increase the threat to him and therefore the risk that he or his family would be killed or suffer serious harm.

Interference with private life

11. The revelation of DO 1's identity as a member of the Service would damage his personal life. In common with other current and former members of the Service, DO 1 has only revealed to selected close individuals that he works for the Service. The revelation of his role through the Inquiry, rather than in the manner and at the time of his choosing, could damage his relationships with other friends and acquaintances who were not previously aware of his occupation.



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12. Further, DO 1 still works for the Security Service. Any publicity of his name or appearance would prevent or limit the Security Service from deploying him to certain posts in the future. This could have a significant negative impact on his future career.

Damage to the public interest

13. As indicated above, any publicity of DO 1's name or appearance would limit or prevent the Security Service from deploying him to certain posts in the future. DO 1 is a highly experienced officer. At a time when resources are under strain and experience is in demand, this could in turn reduce the effectiveness of the Security Service and thereby weaken its ability to protect national security. This would cause real harm to the public interest.

14. The Security Service has always maintained to staff that it will seek to protect their identity and try to prevent disclosure of their names in public fora. For staff identities to be disclosed in a public inquiry could well have the effect of discouraging individuals from applying to or remaining in the Service. This in turn could have an adverse impact on the Service's ability to protect national security, again causing harm to the public interest.

Conclusion

15. Anonymity and screening applications have been granted by the trial judge in every criminal trial in which Security Service officers have been required to give evidence, in both Northern Ireland and Great Britain, following claims for Public Interest Immunity. The principle of anonymity for current and former members of the Service was also upheld in the Bloody Sunday Inquiry. The basis of the claims for anonymity and screening in these cases was substantially the same as that being made in this instance.

16. It is submitted that, for the reasons set out above and in the attached annex, the Inquiry must grant anonymity and screening to DO 1, both under the Human Rights Act 1998 and the principles of common law. However, I would wish the opportunity to amend or supplement these submissions in the light of the ruling of the House of Lords on the issue of anonymity in the Robert Hamill Inquiry.

17. Please do not hesitate to contact me, should you require any further information for the purposes of this application or if I can be of any further assistance. In addition, should the Panel be minded not to grant this application, I would be grateful for the opportunity to make further representations, both orally and in writing.

Yours sincerely,

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JOHN MCATAMNEY & CO

Solicitors

87 Broughshane Street, Ballymena,
Co Antrim, BT43 6ED

15 November 2007

19 NOV 2007

Telephone (028) 256 55816
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Email - john@johnmcatamney.co.uk
lauren@johnmcatamney.co.uk

Ms. Janet Marsh,
The Billy Wright Inquiry
Conference House
152 Morrison Street, The Exchange
EDINBURGH EH3 8EB

Our ref: JMCA/HS

Dear Madam

RE: BILLY WRIGHT INQUIRY
APPLICATIONS FOR ANONYMITY AND SCREENING

We apologise for the delay in this matter.

However, we now enclose herewith Response on behalf of the Billy Wright family in relation to the various Applications for anonymity and screening.

We trust same is of assistance.

Yours faithfully,

JOHN MCATAMNEY & CO.

John McAtamney LLB.

Associate: Lauren Davey LLB.

SUBMISSIONS ON BEHALF OF DAVID WRIGHT REGARDING
APPLICATIONS FOR ANONYMITY AND SCREENING RECEIVED IN
SEPTEMBER 2007

Mr David Wright has instructed his Legal Representatives to make the following submissions in respect of the 54 Applications received to date for anonymity and/or screening.

It is proposed that whilst there will be general principals underlying these submissions it is proposed to deal with each Application in the order made and comments shall be made in respect of each proposed Witness Application whilst observations regarding the general security risk that pertains to Northern Ireland and the legal guidance that has now been provided by the Hamill Judgment in The House of Lords shall be referred to at the close of these submissions.

The first witness is Witness AA.

MI5 Witness – Desk Officer 1

As this person is a member of the Security Services it is accepted that he is exempted in normal course and the Courts state that such person be granted anonymity and it is conceded that the Inquiry Panel should adopt a similar approach here and he is entitled to anonymity.

It is also accepted that screening from the public gallery cannot be opposed in relation to this witness.

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Janet Marsh
The Billy Wright Inquiry
Conference House
152 Morrison Street
The Exchange
Edinburgh
EH3 8EB

Our ref:

Your ref:

Date: 3 December 2007

Dear Janet,

APPLICATIONS FOR ANONYMITY AND SCREENING

1. Thank you for your letter of 28 September, received on 30 November, which enclosed the comments of Messrs John McAtamney & Co. on my clients' applications for anonymity and screening from the public gallery. In their responses to my clients' applications, Messrs John McAtamney & Co. either accept that they are entitled to anonymity and screening, accept that anonymity and screening "may" be granted, or indicate that they do not oppose the applications. I have taken it that the different forms of their responses are not intended to be material.
2. In the circumstances, I have no additional submissions to make, save to invite the inquiry to grant my clients' applications.

Yours sincerely,

LA3

LA/3

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Correspondence to this address must be under double cover.
The outer envelope should not be sent to the Security Service or an individual by name but be addressed to the following:

The Secretary
PO Box 5656
London EC1A 1AH

Tel: 020 7828 8688
Fax: 020 7630 1428
www.mi5.gov.uk

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