

THE BILLY WRIGHT INQUIRY

Chairman: Lord MacLean

DECISION BY THE PANEL

In the Application by

Witness 'BM'

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 'BM' has submitted an application requesting anonymity and screening. Witness 'BM' also submitted with the application further confidential papers that were for the eyes of the Inquiry Panel only. Any information from these documents that has been taken into account by the Panel in their deliberations is referred to in general terms where appropriate in this decision. The application was supported by correspondence from the Inquiries Co-ordination Unit of the Northern Ireland Office (NIO) and the Northern Ireland Prison Service (NIPS).
3. The Panel received an individual Threat Risk Assessment for Witness 'BM' from the Security Service along with confidential additional information from the Police Service of Northern Ireland (PSNI). The applicant was sent a restricted part of the Security Service assessment and a redacted version of the PSNI information as the Inquiry Panel was refused permission by both agencies to disclose the

material in full. No conclusion adverse to the application has been based on any material undisclosed to the applicant.

4. The Inquiry also received a Generic Risk Assessment along with an explanation as to the various categories of risk. A copy of this was sent to the applicant.
5. Parties who have been granted Representative status at the Inquiry have been given the opportunity to see a copy of the application and of the supporting letters from NIO and NIPS. Comments were received from the family of Billy Wright through their solicitor John McAtamney and a response to those comments was received from those representing the witness. More recently, the Inquiry received confidential information from the Operations Directorate of Prison Service Headquarters. This has been considered by the Panel and a summary has been sent to the relevant parties. Comments from those parties have been received and considered.
6. The Panel met and considered all of the above material together with the Reports of the International Monitoring Commission (IMC), in particular the 18th Report from May 2008.
7. 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 on Human Rights (ECHR).
8. In approaching this and other applications we have had regard to the opinions of their Lordships in the case of *In re Officer L (Respondent) (Northern Ireland)* [2007] UKHL 36 at paragraph 29 and have considered the applications on a common law basis, having regard to Article 2 issues where that is necessary. We have also considered Article 8 issues where they arise.

The Application – Witness ‘BM’

9. Witness ‘BM’ seeks anonymity and screening whilst giving evidence. His application is predicated on the fact that he is a retired Prison Officer.

Article 2

10. The Generic Risk Assessment places the existing threat to retired Prison staff at ‘moderate’. The individual Threat Risk Assessment provided for the applicant by the Security Service assesses that in the event that he gives evidence without anonymity and screening, the level of threat would rise to ‘moderate’, reflecting the increased potential of an attack by dissident republican terrorist groups. To require this applicant to give evidence in public without protection of identity would therefore 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 ECHR. There is no current Police intelligence or information which would give rise to concerns in respect of the applicant’s security.

Common Law

11. The applicant has expressed subjective fears for his safety should he be required to give evidence openly in public. Those fears are based on his position as a retired Prison Officer, the history of attacks against Prison Officers in Northern Ireland, the nature of the subject matter of this Inquiry, and the fact that he has worked at HMP Maze. The applicant also adopts the general arguments put forward by NJO and NIPS on his behalf. We have noted all of these factors and have taken them into account.

12. The applicant states that he has kept a low profile since retirement. Following the shooting of Billy Wright he developed a medical condition which necessitated absence from work for eleven months. We have carefully considered a medical report lodged on his behalf. It is the opinion of a Consultant that the applicant is likely to suffer '*significant psychological distress*' if he gives evidence without anonymity and screening. We have taken this opinion into account. We note that no consideration has been given to the provision of a video-link facility. We note that he was able to resume his employment. He would feel vulnerable in his present job if his identity and previous occupation were known. We take into account these factors and all of the other points made in support of the application. We note that he gave evidence at the Coroner's Inquest following the murder.

13. Both the Generic Risk Assessment and the individual Threat Risk Assessment indicate that the applicant's actual evidence to the Inquiry may have an impact on his level of threat. This witness will be called to speak to the events of the 27 December 1997 on which date he was on duty in H Block 6. He conveyed an instruction from a Senior Officer to a colleague. His evidence is largely uncontroversial. There is no indication that the witness will be criticised for his actions on 27 December 1997. We have taken account of the fact that there will be an increase in the level of threat to the applicant in the event that he is required to give evidence at the Inquiry without the provision of anonymity and screening. However, there is no indication that the level of threat to him will rise beyond 'moderate'.

14. We have given careful consideration to the terms of the IMC Reports and in particular, the 18th Report from May 2008. In particular, we have taken into account that dissident republican terrorist groups continue to pose a significant threat. The LVF has not been involved in any terrorist activity during the same period and is thought to have no political purpose. We note there is no reference to any attacks on Prison Service personnel in the latest Report. There was only one paramilitary murder in the period. The total number of casualties from

shootings and assaults has risen. However, the figure for shootings is the second lowest since 2003 and is said to confirm the trend for less casualties from shootings.

15. We have also taken account of the supplementary confidential information received by the Inquiry from the Operations Directorate of Prison Service Headquarters. We do not consider that the information contained therein has any direct relevance to the application.

16. In the whole circumstances, we do not consider that it would be unfair to require the witness to give evidence before the Inquiry without anonymity and screening. Accordingly, the application is refused.

R. Maclean

20/05/08

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