

THE BILLY WRIGHT INQUIRY

Chairman: Lord MacLean

DECISION BY THE PANEL

In the Application by

Witness 'ZCM'

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 30th June 2006. The Inquiry has received a number of such applications.
2. Witness 'ZCM' submitted an application requesting anonymity and screening. Witness 'ZCM' also submitted with the application further confidential papers that were for the eyes of the Inquiry Panel only. The Panel received an Individual Threat Risk Assessment for the applicant 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.

3. The Panel also received a generic Risk Assessment and an explanation as to the various categories of risk was submitted by the PSNI. The applicant was provided with a copy of both documents.
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 and those who represent Witness 'ZCM' were given the opportunity to respond.
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 20th Report issued in November 2008.

THE APPLICATION – WITNESS 'ZCM'

7. Witness 'ZCM' seeks anonymity and screening whilst giving evidence. His application is predicated on the fact that he is a serving PSNI Special Branch Officer.
8. 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).
9. 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. We have also taken account of Article 8 issues where they arise.

ARTICLE 2

10. The Individual Threat Risk Assessment provided for Witness 'ZCM' by the Security Service assesses the present threat to him from terrorists as 'moderate'. The Assessment says that, should he give evidence without anonymity, the level of threat would rise within the 'moderate' threat band, reflecting the increased potential of an attack from dissident republican 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' means that an attack is 'possible but not likely'. An increase in threat within the 'moderate' threat band does not therefore meet the high threshold of a 'real and immediate' risk to his life required by Article 2 of ECHR.

COMMON LAW

11. We have given due consideration to all of the points raised in the application. The witness is concerned that, should his identity be lost, it will place him and his family at increased risk because of the nature of his employment, and could adversely impact on his operational effectiveness. We have taken into account that if he gives evidence, an attack on the witness is 'possible but not likely', but note there is no indication that the level of threat to him will increase beyond that after he gives evidence. Accordingly it does not appear to us that there will be a significant increase in the level of risk to him. We are not satisfied that these factors entitle the applicant to protection of his identity.

12. The applicant has expressed subjective fears for his safety should he be required to give evidence without anonymity. Those fears are based on his position as a serving Special Branch Officer, the history of attacks against Police Officers in Northern Ireland, and the nature of the subject matter of this Inquiry. We have taken all of these factors into account along with all of the other points made in support of the application.

13. Both the Individual Threat Risk assessment and the generic Risk Assessment place the existing threat to this applicant at 'moderate' and both state the nature of this individual's evidence to the Inquiry may have an impact on his level of threat.
14. Nonetheless, there are a number of factors in this case that indicate why the applicant's identity should be protected. The nature of the PSNI Special Branch is that it operates in a covert manner. Members and former members of the Special Branch are encouraged not to disclose their association with the Branch. The PSNI is concerned that the exposure of a serving intelligence officer is likely to lead to a loss of confidence amongst those who provide intelligence to it, leading in turn to a reduction in the PSNI's intelligence functionality. Removal of this witness' present effective anonymity might prevent or limit the Special Branch from deploying him to future posts and have a negative impact on his future career prospects.
15. In a more general way, the disclosure of the identities of members and former members of the Special Branch could also have the effect of discouraging individuals from applying to join or remaining in Special Branch.
16. We have had full regard to the Reports of the Independent Monitoring Commission including the 20th Report which states their belief that that 'Dissidents – especially CIRA – not only undertook direct attacks but also engineered public disorder with a view to exploiting the exposure of police officers which they expected to result from it' and 'CIRA was active in undertaking and planning attacks on PSNI officers in the period under review' and '...dissidents have turned their efforts more directly to trying to kill PSNI officers, using a variety of tactics and methods'.
17. 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 others and the risk of serious prejudice to an important public interest. We accept

that this is such a case and the loss of anonymity could potentially reduce the effectiveness of the Special Branch as a whole.

18. 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.

19. Accordingly, the application is granted.

X
R. M. MacLagan
18/02/09

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