

THE BILLY WRIGHT INQUIRY

Chairman: Lord MacLean

DECISION BY THE PANEL

In the Application by

Witness 'DO3'

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 'DO3' submitted an application requesting anonymity and screening. The Panel received an Individual Threat Risk Assessment for Witness 'DO3' 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.
3. Parties who have been granted Representative status at the Inquiry have been given the opportunity to see a copy of the application.
4. Comments were received from John McAtamney and Co, solicitors for Mr. David Wright and those who represent Witness 'DO3' were given the opportunity to comment.

5. 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 18th Report issued in May 2008.

THE APPLICATION – WITNESS ‘DO3’

6. Witness ‘DO3’ seeks anonymity and screening whilst giving evidence. Her application is predicated on the fact that she is a former member of the Security Service.
7. Witness ‘DO3’ avers that, should she be identified:
 - (i) There would be a significant increase in the threat to her and her family;
 - (ii) There would be a potential threat to the lives of Security Service Agents;
 - (iii) It would damage her personal life;
 - (iv) It would damage the effectiveness of the Security Service and therefore national security (i.e. it would damage the public interest).
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.

ARTICLE 2

10. Witness 'DO3' is not known to be a former employee of the Security Service. She is said to be effectively anonymous at present. Accordingly, the Individual Threat Risk Assessment provided for her by the Security Service assesses the present threat to her from Irish related terrorists as 'low'. Should that anonymity be removed the threat to her would rise to 'moderate'. In threat assessment terms 'moderate' means an attack is 'possible but unlikely'. If she is revealed as a former employee of the Service the level of threat would rise within the moderate threat band reflecting the potential for dissident Irish related terrorists to target her. Members of the Security Forces, including members of the Security Service, remain priority targets from such dissident groups. The Assessment says that the increased threat to Witness 'DO3' would persist beyond her participation in the Inquiry to her subsequent life and work.
11. To require this applicant to give evidence in public without protection of identity would therefore materially increase the risk to her and her 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 her life required by Article 2 of the ECHR.

COMMON LAW

12. However, that increase in risk, should Witness 'DO3' be required to give evidence openly, is a relevant consideration in determining whether or not it would be unfair to require her to do so, particularly where the increase in threat could be removed by granting protection of identity.
13. There are other factors in this case that indicate why Witness 'DO3''s identity should be protected. The nature of the Security Service is that it operates in a covert manner. Members and former Members of the Service are encouraged not to disclose their association with the Service. There may be personal

consequences for the witness should her identity be disclosed. Such disclosure could damage personal relationships with persons to whom Witness 'DO3' has not disclosed her association. Revealing the identity of a former officer would destroy her cover and remove her anonymity. Witness 'DO3''s career has included operational postings where she has handled agents. Were she to be identified as a former 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.

14. We have had full regard to the Reports of the Independent Monitoring Commission including the 18th Report which states the Dissident Republican group Oglagh na hEireann (ONH) remains a '...continuing and serious threat, including to the lives of members of the security forces' and CIRA '...undertook extensive targeting, mainly of members of the security forces'. There is no clear reason why those groups would distinguish between a serving and a retired member of the security forces.
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 potentially damage the effectiveness of the Security Service as a whole.
16. We are of the view that it would be unfair to require Witness 'DO3' to give evidence without protection of identity. We do not consider that there is in her case any countervailing reason why her 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 her evidence. In the whole

circumstances, we consider that this applicant should be allowed to give her evidence anonymously and with the benefit of screens.

17. Accordingly, the application is granted.

R. MacLagan

28 August 2008

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