

THE BILLY WRIGHT INQUIRY

Chairman: Lord MacLean

DECISION BY THE PANEL

In the Application by

Witness 'EA'

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 'EA' submitted an application requesting anonymity and screening. Witness 'EA' also submitted with the application further confidential papers that were for the eyes of the Inquiry Panel only. 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. The Panel received an Individual Threat Risk Assessment for Witness 'EA' from the Security Service. The applicant was sent a restricted part of the Security Service assessment as the Inquiry Panel was refused permission 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 Police Service of Northern Ireland (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 redacted copy of the application.
5. Comments were received from John McAtamney and Co, solicitors for Mr. David Wright and a response to those comments was received from those who represent Witness 'EA'.
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 18th Report issued in May 2008.

THE APPLICATION – WITNESS 'EA'

7. Witness 'EA' seeks anonymity and screening whilst giving evidence. His application is predicated on the fact that he is serving senior British Army Intelligence 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.

ARTICLE 2

10. The Individual Threat Risk Assessment provided for Witness 'EA' by the Security Service assesses the present threat to him from terrorist groups as 'moderate'. The Assessment says that, should he be required to give evidence without anonymity, the level of threat to him would rise within the 'moderate' threat band reflecting the increased potential from 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. In threat assessment terms 'moderate' means an attack is 'possible but unlikely'. An increase in 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 the ECHR.

COMMON LAW

11. However, that increase in risk, should Witness 'EA' 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.
12. We have given due consideration to all of the points raised in the application and the comments of the solicitors for Mr. David Wright. The witness is concerned that, should his identity be lost, it will place him at risk because of the nature of his employment. 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 the moderate threat band 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.
13. There are other factors in this case that indicate why Witness 'EA's' identity should be protected. The nature of Army Intelligence is that it operates in a

covert manner. His senior role in sensitive intelligence gathering activities in Northern Ireland in the past is not known. There may be personal consequences for the witness should his identity be disclosed. Such disclosure could damage personal relationships with persons to whom Witness 'EA' has not disclosed his association. Revealing the identity of a serving Army Intelligence Officer would potentially put him and his current colleagues at risk. Witness 'EA''s career has included operational postings where he was privy to the identity of police and Security Service agents in Northern Ireland. Were he to be identified as a member of Army Intelligence Corps 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 PSNI to recruit or retain agents would be damaged. Removal of this witness' present effective anonymity might prevent or limit the Army from deploying him to future posts and have a negative impact on his future career prospects.

14. In a more general way, the disclosure of the identities of members of the Army Intelligence Corps could also have the effect of discouraging individuals from applying to join or remaining in that Corps.
15. 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 an individual's evidence to the Inquiry may have an impact on his level of threat.
16. 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'.
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 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 Military Intelligence as a whole.

18. We are of the view that it would be unfair to require Witness 'EA' 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.

R. M. Maclean
28 August 2008
~~October~~ 2008

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