

THE BILLY WRIGHT INQUIRY

Chairman: Lord MacLean

DECISION BY THE PANEL

In the Application by

Witness 'ZCB'

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 'ZCB' submitted an application requesting anonymity and screening. Witness 'ZCB' 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. 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 'ZCB' were given the opportunity to respond.
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 'ZCB'

6. Witness 'ZCB' seeks anonymity and screening whilst giving evidence. His application is predicated on the fact that he is an IT Consultant who is contracted to PSNI with access to the PSNI intelligence databases.
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 of Human Rights (ECHR).
8. 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

9. The individual Threat Risk Assessment provided for Witness 'ZCB' by the Security Service assesses the present threat to him from terrorists as 'low'. The individual Threat Risk Assessment provided for him by the Security Service assesses that, should he give evidence without anonymity, the level of threat would remain as 'low'. To require this applicant to give evidence in public without protection of identity would therefore not increase the risk to him and his family. 'Low' means that an attack is 'unlikely'. The assessed threat does not therefore meet the high threshold of a 'real and immediate' risk to his life required by Article 2 of ECHR.

COMMON LAW

10. 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 his own security and that of his family and colleagues, at significant risk. We have taken into account that an attack on the witness is 'unlikely' and 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 impact on the level of risk to him. We are not satisfied that these factors entitle the applicant to protection of his identity.
11. 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 an IT Consultant contracted by the PSNI to work on their recent and current information and intelligence systems.

12. We have had full regard to the Reports of the Independent Monitoring Commission including the 18th Report which states their belief that 'Dissidents have sought to target the homes and places of work of PSNI officers and of members of the public' and that dissident groups '...undertook extensive targeting, mainly of members of the security forces'.
13. 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 witness to the PSNI as a whole if his name and identity became known, considering his work on PSNI intelligence systems. It would not be appropriate for knowledge of the PSNI intelligence structures to become known. We believe that Witness 'ZCB' is so closely linked with the PSNI that anyone wishing to target the security forces may not distinguish between an outside contractor and a Special Branch officer.
14. In all the circumstances, we are of the view that it would be unfair to require this 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.
15. Accordingly, we consider that this applicant should be allowed to give his evidence anonymously and with the benefit of screens and the application is granted.

R. MacFarlane
2 July 2008

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