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IN THE CORONER'S COURT IN NORTHERN IRELAND

IN THE MATTER OF AN INQUEST INTO THE DEATHS OF LAWRENCE JOSEPH McNALLY, ANTHONY PATRICK DORIS AND MICHAEL JAMES RYAN

RULING ON APPLICATIONS BY POLICE WITNESSES FOR ANONYMITY AND SCREENING

HUMPHREYS J

Introduction

[1] Applications have been made by former police officers, presently ciphered P1, P3, P4, P5, P6, P8, P9, P10, P11, P14, P15, P16, P17 and P19, all of whom are due to give evidence in these inquest proceedings. They were all attached to Headquarters Mobile Support Unit ('HMSU') at the time of the deaths in question. Each seeks special measures in the form of anonymity and screening which are opposed by the next of kin ('NOK').

[2] The applications were grounded on the following:

(i) A general statement of the legal principles;

(ii) A statement from Chief Superintendent Rowan Moore;

(iii) Statements from each of the individuals;

(iv) Various materials in relation to threats posed by, in particular, dissident republicans;

(v) Police assessments of risk;

(vi) Security Services threat assessment.

The Legal Principles

[3] The legal principles governing such applications are by now well-established. Coroners have powers at common law to regulate their own proceedings including, where required, affording protection to witnesses by providing special measures. Since the enactment of the Human Rights Act 1998, coroners also have a duty to take such measures as are required to satisfy the obligations imposed by Article 2 of the European Convention on Human Rights ('ECHR').

[4] In *Re Officer L* [2007] UKHL 36 Lord Carswell explained that a tribunal faced with such an application should apply the common law test with an excursion, if necessary, into the territory of Article 2. Subjective beliefs and fears can be taken into account at common law. Article 2 requires the tribunal to consider whether a risk to the witness's life would be created or materially increased if evidence was not given anonymously. If so, then the question is asked whether that risk amounts to a 'real and immediate risk' to life, that is to say one which is objectively verified and present and continuing. If there is no such risk, then Article 2 drops out of the picture and the application is dealt with on common law principles.

[5] The common law approach is grounded on fairness and involves an analysis of:

(i) The individual circumstances of the witness;

(ii) The subjective fears of the witness;

(iii) The likely effect of the grant of anonymity or screening;

(iv) Any objective evidence of risk;

(v) Any other relevant factors relating to whether it would be unfair for the witness to give evidence without some protective measures.

[6] In *Re C's Application* [2012] NICA 47 Girvan LJ stated:

> "Those authorities, albeit in a different context, together with Lord Dyson's contrast between a fanciful risk and a significant risk lends support to the view that a real and immediate risk points to a risk which is neither fanciful nor trivial and which is present (or in a case such as the present will be present if a particular course of action is or is not taken). In a stable and law abiding society the risk of homicidal attacks on individual is fortunately rare and statistically will be a very uncommon occurrence. Before the state can be fairly criticised for failing to prevent a homicidal attack it is right that the circumstances must

> bring home to the state authorities that a person is under a threat of substance. In the French text of the judgment in Osman the term for a real risk is *menace d'une manière reélle.* In the context of Northern Ireland which has been subjected to decades of homicidal attacks on individuals by organised terrorists the threat to life has been real, though for the bulk of the population it is not a threat directed at them individually so that for most the risk is not present and continuing in the sense of immediate to them. For some, such as members of the police force, the level of threat has been and continues to be at a much higher level and it is much more immediate. It cannot be considered as anything close to fanciful and it is significant. The requirement to give evidence imposed on officers involved in this inquest will, according to the evidence, increase a present threat possibly significantly depending on the nature of the evidence and other unknown contingencies arising out of the inquest. The risk accordingly must qualify as real, continuous and present." [para 71]

[7] A Coroner is, of course, a public authority for the purposes of the Human Rights Act 1998 and, when Article 2 is in play, is under a duty to address the proportionate response to the identified risk. Stephens J described the 'precautionary approach' required in this context in *Re Jordan* [2014] NIQB 11 as requiring recognition that:

> "(a) On one side of the balance the public authority is dealing with the potential for a catastrophic loss of life and/or
>
> (b) The public authority is having to anticipate prospectively in circumstances where events at the inquest and the consequences as a result may not be predictable from all the subjective perspectives in play including those who would carry out murderous attacks." [para 118]

[8] In the Ballymurphy Inquests Keegan J observed that existing threat assessments were low but noted that if anonymity were to be denied at the inquest, then such threat could "potentially rise above the low threat band." The use of the word 'potentially' is unsurprising since such risk assessments are necessarily prospective.

The Evidence

[9] The generic evidence before me in each application alluded to a number of attacks by dissident republicans in recent years on police officers, including the shots being fired at police which resulted in the death of Lyra McKee and undercar bomb being planted in 2019. It has been observed that there is a reduction in the number of such attacks but as recently as this month, the New Irish Republican Army ('IRA') has renewed its threat against 'Crown Forces.'

[10] The statement from DS Moore reveals that he has overall responsibility for Specialist Operations Branch, which delivers covert surveillance in Northern Ireland. The training of specialist surveillance and firearms officers is time consuming and expensive, with many applicants not making the grade. He expresses a concern that if retired officers are not afforded protective measures this will have a chilling effect on future officers being attracted to this kind of police work.

[11] Counsel for the applicants also relied upon evidence disclosed by the PSNI in the form of redacted intelligence materials to emphasise the context of this inquest. These included information to the effect that the Provisional Irish Republican Army ('PIRA') in East Tyrone had vowed revenge for the deaths in Coagh.

[12] It was stressed that each of these witnesses lives and works in Northern Ireland and that screening is required to avoid recognition or identification, whether deliberate or inadvertent.

[13] The threat assessment of the Security Services states:

> "Should any of the above witnesses be denied the benefit of screening and anonymity at the Ryan, Doris, McNally inquest the threat to them in NI from dissident republicans could potentially rise above the LOW threat band."

[14] Counsel for the NOK objected to any form of special measures being adopted, whether anonymity or screening, given that this represents a departure from the principle of open justice. Any such derogation must be justified and, in any event, the question of anonymity should be decoupled from that of screening. If the coroner was minded to grant anonymity, screening should not follow as a matter of course but must be a proportionate interference with open justice.

[15] It was argued that these witnesses played less controversial roles in the events at Coagh than the military witnesses. None of them fired a shot and this must speak to the question of risk.

[16] I have taken all the generic evidence into account in the respective individual applications. I have applied the precautionary approach in analysing each and am cognisant of the following:

(i) If either the common law test is satisfied or Article 2 is engaged, then anonymity is the minimum protection which the court should afford;

(ii) The question of screening is separate one, representing as it does a more significant infringement of the open justice principle;

(iii) Even if screened from public view, the witnesses would be seen by the coroner and legal representatives, as well as being heard by those in the public gallery and the media. To this extent, it would constitute a limited restriction (see Hutton LCJ in *Re MOD's Application* [1994] NI 279);

(iv) Some recent authorities and analysis have cast doubt on the efficacy of demeanour as a means of assessing the credibility of a witness – see, for example, Leggatt LJ in *R (on the application of SS) v Secretary of State for the Home Department* [2018] EWCA Civ 1391;

(v) The wider the pool of persons who see the witnesses, the greater the risk of recognition or identification.

Individual Evidence

[17] P1 was a sergeant attached to HMSU for over 20 years, carrying out specialist covert and overt operations. He has previously been targeted by the IRA and expresses grave concerns about his safety and that of his family if his identity were revealed. Since leaving the police he has worked in security operations and believes that revelation of his identity would present serious difficulties for his present work. Article 2 is engaged in this case and P1 also satisfies the common law test. Both anonymity and screening should be provided.

[18] P3 lives in close proximity to individuals directly involved in this inquest and their associates. He was an HMSU sergeant at the time of this incident and states he would be regarded as a 'prestige target' for those active terrorist groups in Northern Ireland. He currently works in a sensitive government role and is genuinely fearful that if his identity becomes known his family will be placed at risk. Article 2 is engaged in this case and P3 also satisfies the common law test. Both anonymity and screening should be provided.

[19] P4 was a constable attached to HMSU at the time of Coagh. His former wife was the subject of a pipe bomb attack and required an emergency Special Purchase of Evacuated Dwellings ('SPED'). He currently works for the government in contracts involving the police and regularly visits Police Service of Northern Ireland (PSNI') stations. He expresses concerns about the impact of his identity becoming

known on his ability to work, his own well being and that of his family. Article 2 is engaged in this case and P4 also satisfies the common law test. Both anonymity and screening should be provided.

[20] P5 was a constable attached to HMSU and is from the local area where these shootings occurred. Relatives of his were killed in the Troubles. His wife enjoys a media profile. He expresses genuine fear about giving evidence without the benefit of anonymity and screening. Article 2 is engaged in this case and P5 also satisfies the common law test. Both anonymity and screening should be provided.

[21] P6 was an HMSU constable at the time and currently works for the PSNI as a civil servant as well as having a property management company in the local area. He expresses the view that revelation of his identity would place both him and his family at risk. Article 2 is engaged in this case and P6 also satisfies the common law test. Both anonymity and screening should be provided.

[22] P8 was an HMSU constable who remains in the employment of the PSNI. He states that his is genuinely fearful of the consequences of giving evidence without protection, both for him and his immediate family. Article 2 is engaged in this case and P8 also satisfies the common law test. Both anonymity and screening should be provided.

[23] P9 was an HMSU constable at the time, rising to the rank of Detective Inspector before retirement. He worked in East Tyrone and would be recognisable to those from the area. He has written a book and regularly makes contributions to the media about policing. However, he states that he has not detailed his involvement in specific incidents such as Coagh. He was SPED as a result of a threat from the Real IRA in East Tyrone in 2004/5. He perceives himself to be at real risk of serious harm if his identity were revealed. Article 2 is engaged in this case and P9 also satisfies the common law test. Both anonymity and screening should be provided. There is also an application for voice distortion for this witness which will be dealt with subsequently.

[24] P10's father was a senior figure in the criminal justice system who was SPED twice. He was an HMSU constable at the time and now works for the PSNI as an instructor. His partner is also employed by the police in a civilian capacity. He believes both their personal safety would be compromised by his identity becoming known. Article 2 is engaged in this case and P10 also satisfies the common law test. Both anonymity and screening should be provided.

[25] P11 was an HMSU sergeant and spent his career working in East Tyrone and Armagh. He states he would be readily recognisable to people from that area. He has been the subject of threats in the past and was SPED on one occasion. His family have close links to the police. He was discharged from the police in 2004 due to his chronic Post Traumatic Stress Disorder ('PTSD'). He also has a media profile and believes that knowledge of his identity would give rise to a real risk of personal

harm. Article 2 is engaged in this case and P11 also satisfies the common law test. Both anonymity and screening should be provided.

[26] P14 was an HMSU constable at the time of Coagh and was a sergeant based at Castlereagh at the time of his retirement. He has been the subject of direct terrorist threat and his personal security was previously compromised by the Castlereagh break in. He was offered SPED at that time. His personal security remains an extreme concern to him and his is fearful that if his identity became known he would be placed at serious risk. Article 2 is engaged in this case and P14 also satisfies the common law test. Both anonymity and screening should be provided.

[27] P15 was attached to HMSU at the time of Coagh and thereafter with Tactical Support Group and Special Branch. He worked specifically on top secret anti-terrorist operations. He now works in property management. His is fearful that disclosure of his identity would give rise to a serious risk of harm. Article 2 is engaged in this case and P15 also satisfies the common law test. Both anonymity and screening should be provided.

[28] P16 is from the area of the incident and played sport in the region. He says he would be readily identifiable by local people. He was attached to HMSU and now works for the PSNI as a civilian. He believes his life would be at risk if his identity were known. Article 2 is engaged in this case and P16 also satisfies the common law test. Both anonymity and screening should be provided.

[29] P17 was an HMSU constable and a family member was subject to terrorist attack and was SPED. He currently works for the PSNI and regularly travels to police stations. He expresses genuine concern as to the risk to his life if his identity is revealed. Article 2 is engaged in this case and P17 also satisfies the common law test. Both anonymity and screening should be provided.

[30] P19 was attached to the Tasking and Coordinating Group at the time of the incident as a Detective Inspector. He was in a high-level organisational role and was subject to terrorist threats during his career, including being SPED in 1991. His son is a serving police officer. He believes revelation of his identity would pose a grave risk to both himself and his family. Article 2 is engaged in this case and P19 also satisfies the common law test. Both anonymity and screening should be provided.

Extent of Screening

[31] In each case, I have concluded that the witnesses should be screened from all, including the NOK, save for the coroner and the legal representatives of the PIPs. I am aware that coroners have adopted different approaches. In the Pearse Jordan and Daniel Carson inquests, for instance, the witnesses were screened from the public but not the NOK. In McCaughey and Grew, the screening extended to the NOK. In the Manchester Arena Inquiry, the witnesses were screened from everyone except designated counsel.

[32] This will be a fact specific question in any case. The context of the deaths is important. These deceased died whilst on active service with the IRA and, at least at one stage, the evidence suggested that organisation vowed revenge. Applying the precautionary principle, I am satisfied that the screening approach in this case is both necessary and proportionate.

Consequential Directions

[33] As a result of this ruling, it follows that:

(i) The names of these witnesses should be redacted from all inquest documents;

(ii) Arrangements should be put in place to enable the witnesses to enter, remain and leave the courthouse in a manner which protects their identity;

(iii) No photograph should be taken of any of these witnesses entering or leaving the courthouse and nothing should be published which would tend to lead to their identification.

[34] I will hear counsel on any other issues which may arise.