THE BIRMINGHAM INQUESTS (1974)

Coroner: His Honour Sir Peter Thornton QC

APPLICATION FOR ANONYMITY

Introduction

1. This is an application for anonymity in inquest proceedings by a witness who is currently known as Witness O.

2. The proceedings are the inquests into the Birmingham pub bombings of 21 November 1974 which led to the deaths of 21 people.

3. One of the issues in the inquests, which I identified earlier in my Ruling on Scope of 3 July 2017, is known as the forewarning issue:

> Whether West Midlands Police (WMP) or other state agency had prior knowledge that a bomb attack would take place on or around 21 November 1974, and whether further steps could or should have been taken to prevent the bombings that did occur.

4. In my Further Ruling on Scope of 31 December 2018 I concluded that there were six separate topics relevant to the forewarning issue. One of those was an alleged conversation in HMP Winson Green on 9 November 1974, some 12 days before the bombings, in which Witness O is said to have informed another prisoner: 'Birmingham is going to be hit next week'.

5. Witness O denies that this conversation took place. He can also give evidence on other matters related to the bombings. They include bomb warnings by the IRA, coded warnings and the attribution of the bombings, all relevant to issues within scope.

6. To date, the anonymity of Witness O has been preserved on a temporary basis until my ruling. Appropriate redactions on statements provided by Witness O and other relevant materials relating to the prison conversation have been kept in place. These statements and materials have been provided to Interested Persons in the inquests as relevant material.

7. It is a particular feature of this application that Witness O is outside the jurisdiction and cannot therefore be compelled to give evidence. It is also to be

noted that Witness O has been cooperative throughout, complying with detailed requests for information on behalf of myself, the Coroner.

The law

8. The applicable legal principles are helpfully summarised by the Court of Appeal in *R (T) v HM Senior Coroner for the County of West Yorkshire (Western Area)* [2017] EWCA Civ 318, [2018] 2 WLR 211, at [55]-[64]. Open justice is the fundamental principle in respect of all proceedings before any court, including coroners' courts (at [56]). One very important aspect of the principle is the naming of those before the court (at [58]).

9. Accordingly, any restriction on the principle, by the coroner exercising the power to make an order for the anonymity of a witness (and others), 'requires cogent justification' (at [59]). In practice the coroner must conduct a balancing exercise between the principle of open justice and countervailing rights. The process is 'highly fact specific' (at [63]):

> It must take into account the evaluation of the purpose of the principle of open justice as applied to the facts of the case and the potential value of the information in question in advancing that purpose, as against the risk of harm the disclosure might cause the maintenance of an effective judicial process or to the legitimate interests of others.

10. I shall apply those considerations in deciding this application.

11. I have read all Witness O's statements and interviews and reminded myself of the underlying materials and other witness statements on the prison conversation issue.

The application

12. Witness O has been represented by counsel, Mr Sam Jacobs, for whose written and oral representations I am most grateful.

13. He applies for anonymity for Witness O on the basis of Witness O's short statement of 26 February 2019 in which he expresses subjective fears:

> I am very fearful of having my identity disclosed during the Inquest into the Birmingham pub bombings, as the Inquest will re-open a lot of old wounds and bitter emotions. While I have not received any threats to my personal safety I think such threats will become very possible if my identity is disclosed.

14. There is no objective risk assessment of these fears, although the written application (1 March 2019) suggests that there is available a risk assessment carried out by the Garda in the Republic of Ireland and that Witness O's solicitor has requested but not received it. My knowledge of the position is that on 8 January 2019 the Garda informed by my legal team that an assessment was available if we requested it. We requested it. But the Garda wrote on 14 January 2019 that they could only provide it if Witness O requested it.

15. Be that as it may, there is no objective assessment of Witness O's stated fears.

16. Mr Jacobs submits on behalf of Witness O that Witness O's fears are rational and honestly and sincerely held. He submits that I, the Coroner, and the

Interested Persons have sufficient information about Witness O in order to assess his credibility and ask pertinent questions.

17. Mr Jacobs further submits, and he has underlined this in his oral submissions, that Witness O lives outside the court's jurisdiction, beyond the court's powers of compulsion (see paragraph 1, Schedule 5, Coroners and Justice Act 2009) and is more likely to give his evidence voluntarily and freely if anonymity is preserved. Anonymity would be likely to improve the quality of his evidence.

Interested Persons

18. All Interested Persons, who include those representing some of the families of the deceased as well as the West Midlands Police, have taken a neutral position on the application. Having said that, they have all indicated that they would welcome the opportunity to ask Witness O questions (with or without anonymity).

The media

19. The media have been given full notice of this application. The application and other materials have been made available to them. Indeed, quite some time ago, I drafted a Note, entitled *The Anonymity of Witnesses*, as guidance for the sort of practical and legal issues which might arise in an application for anonymity. This Note was circulated to the media as well as to all Interested Persons.

20. The media has chosen not to make representations, written or oral, in relation to this application. I do, however, bear in mind their interests.

Decision

21. I have decided to grant this application. Witness O will retain his anonymity for the purposes of these inquest proceedings.

22. I am satisfied that Witness O has genuine subjective fears. They are expressed simply in his application statement, but they are entirely understandable in the context of these proceedings. As Mr Jacobs submitted, he will be placing himself in the public spotlight as an IRA bomber who is at odds with other IRA bombers and who is prepared to speak out about private conversations with them: 'Whichever way he looks he will not find friends.' I agree with this assessment.

23. Unfortunately no objective risk assessment by the police is available. The Garda have apparently made an assessment, but, for whatever reason, despite requests it has not reached me, nor indeed Mr Jacobs. But any sensible assessment demonstrates that Witness O could face real difficulties. Although these events go back 44 years, it is clear that there is still bitterness, antagonism and strongly held sectarian views.

24. Furthermore, the fact that Witness O is outside the jurisdiction is a compelling factor. He cannot be required to give evidence. I would not, of course, accede to any threat or demand that evidence from outside the jurisdiction would only be provided on the condition that anonymity were granted. It should be said straightaway that Witness O has not done that. He has not demanded anonymity, even though an interview by the Garda and the West Midlands Police came close to giving him an assurance. Witness O may not have a formal expectation of anonymity, but right from the start he has cooperated, as he has done throughout, on the basis that he strongly wished it.

25. In these circumstances, if denied anonymity, there is in my judgment a real risk that he will refuse to give live evidence. That would be unfortunate. It is much better that he gives live evidence (which will probably be by video link). I can quite understand why Interested Persons wish to ask him questions. They have all said that they do. His credibility may need to be tested. Some of the detail in his statements will undoubtedly need to be explored. But nobody has suggested that anonymity will hinder this kind of questioning. In my view it is likely to improve it. Reading his statements to the jury would be a much less effective and thorough means of adducing his evidence.

26. His is important evidence, not central to the inquests, but significant on the forewarning issue, the existence of which, I was reminded in submissions, was the reason why the Senior Coroner decided in June 2016 to resume these inquests.

27. I have had the important principle of open justice at the forefront of my mind in considering this application. But I have decided on the specific facts of this case that the due process of the inquests will gain more with Witness O's anonymity than without it. In my judgment the important balancing exercise falls clearly in favour of anonymity, for the reasons I have given. In fairness to the witness, and in accordance with my common law duty, I will provide him with anonymity. This application is therefore granted.

Footnote

28. It follows from my decision to grant Witness O anonymity that a person known only as Witness P should also receive anonymity. Witness P is not in fact a witness but he will be mentioned in the evidence. He was allegedly the second party to the prison conversation on 9 November 1974. It is clear to me on the information I have seen that disclosure of P's identity could well lead to the identity of Witness O. There is no good reason for P's identity to be disclosed and nobody in the inquests has suggested otherwise.

HH SIR PETER THORNTON QC
Coroner

6 March 2019