



THE BIRMINGHAM INQUESTS (1974)

Coroner: His Honour Sir Peter Thornton QC

APPLICATION TO REVOKE ANONYMITY ORDER

Introduction

1. This is an application by the British Broadcasting Corporation (BBC) to revoke the anonymity order which I made on 6 March 2019 granting anonymity to a witness known as Witness O in these proceedings.
2. The proceedings are the inquests into the deaths of 21 people who were killed by the Birmingham pub bombings of 21 November 1974. The inquest hearings commenced in Birmingham on 25 February 2019 and concluded on 5 April 2019.
3. Witness O applied through counsel for anonymity. I granted the application on 6 March 2019. I was satisfied that Witness O had subjective fears for his personal safety. He had expressed them in a statement dated 26 February 2019. I was also satisfied that if denied anonymity there was a real risk that he would refuse to give live evidence. His was important evidence, not central to the inquests, but significant on a forewarning issue.
4. Witness O gave evidence in the Inquests on 21 March 2019 by video link from the Republic of Ireland. He gave evidence anonymously. He had agreed in advance to give evidence and had previously given a witness statement to the Solicitor to the Inquests (STI).

The BBC's application

5. In a letter of 8 April 2019 the BBC now applies to revoke the order for Witness O's anonymity. A formal written application from counsel dated 5 April 2019 was attached.
6. BBC Litigation informed me in their letter that Witness O had recently given an interview to the BBC and had consented to the order being revoked. They attached a handwritten note purporting to come from Witness O and signed by him. The note is dated 5 April 2019 and is headed 'To whom it may concern'. A passage in the note states: 'I want to have that anonymity [sic] order lifted as I want to be free to discuss my role in the IRA in the 1970s and my reasons for taking part in the inquest.' There are other passages in the note which purport to give reasons for Witness O's desire to waive his anonymity.

7. It was not clear on the face of it who wrote the body of the note. The letter from BBC Litigation described it as 'Witness O's letter'. The handwriting of the body appeared to be different from the writing of the signature and the content of the note did not read like the words of Witness O. And there were possibly two signatures in the same name. It was not clear.
8. The BBC's letter also informed me that a copy of their application had been copied to Witness O's solicitor.

Witness O's response

9. As a result of the application STI approached Witness O's solicitor. He agreed to meet Witness O the following morning, on 10 April 2019. Following that meeting, STI spoke on the telephone to both Witness O and his solicitor (who were together).
10. The essence of the information provided to STI was as follows:
 - (1) A person from the BBC arrived at Witness O's home without notice. No meeting had been arranged and Witness O had not been contacted in advance.
 - (2) Witness O signed the note (which I have seen) without taking legal advice. The content of the note was not written by Witness O but by a man from the BBC.
 - (3) Witness O says that he was not pressured into signing the note and subsequently being interviewed by the BBC, to which he agreed. But he says he was 'influenced' by the BBC man persuading him and talking him into it.
 - (4) Witness O believes he should not have signed the note. He does not now agree with the contents of it in respect of the waiver.
 - (5) Witness O has taken legal advice from his solicitor and does not want the order to be lifted. He continues to have fears for his safety.
11. It should also be noted that the BBC appear to have gone behind the original order in two respects. First, they persuaded Witness O to sign the note with a name mentioned in full and be interviewed by the BBC in that name, despite knowing that the order was in force. (The first contact with Witness O was on the first day of the jury's deliberations.) Secondly, the BBC's solicitor appears to have sent a copy of their application with the signed note, purporting to be signed by Witness O with a full name in the body of the document, to two firms of solicitors acting on behalf of a number of the families in these Inquests. The note refers to a name which, for the purposes of this application, it is not necessary to confirm or deny as being Witness O's real name. In this way a name attributed to Witness O, if correct, has been revealed in breach of my order.

Further representations

12. Following the telephone call with Witness O and his solicitor on the morning of 10 April 2019, STI wrote an email to the BBC and solicitors acting for all Interested Persons in the Inquests informing them (a) of the BBC's application, (b) STI's telephone call with Witness O, with a summary of its effect, and (c) inviting any representations or further representations in writing by 4pm on 11 April 2019.
13. The BBC and the West Midlands Police (WMP), an Interested Person in the Inquests, and Peter Skelton QC, Counsel to the Inquests (CTI), have provided

written submissions. I am grateful for the speed and clarity of these submissions. No other Interested Person has chosen to respond.

14. The BBC continues to seek the discharge of the anonymity order. They submit that Witness O's subjective fears have vacillated over time, that there is no objective evidence to support those fears, that Witness O has provided in evidence sufficient details for him to be identified, and that one of the reasons for granting him anonymity, namely the real risk that he might refuse to give evidence if not granted anonymity, has now fallen away because he has given evidence.
15. In support of the application the BBC have provided a witness statement (dated 11 April 2019) from Kevin Magee, an experienced journalist, who describes himself as the Investigations Correspondent at BBC News Northern Ireland. He relates his contact with Witness O. He does not deny that he arrived unannounced at Witness O's home during the evening of 4 April 2019, but asserts that his conversations with Witness O were 'lengthy and friendly' and continued the next day, ending with Witness O agreeing to be interviewed on camera. Mr Magee states that the note in which Witness O purports to waive his anonymity was a prepared 'statement' written by Mr Magee because he, Mr Magee, was aware of the anonymity order. Witness O was, he says, under no form of pressure and was relaxed about waiving anonymity.
16. WMP submit that the order should remain in force, essentially because there is no sufficient change of circumstances to justify revocation. Further, WMP submit that lifting the order might adversely impact on part of WMP's ongoing investigations, including lines of inquiry that have 'emerged following evidence given at the inquest'.
17. Mr Skelton QC provides reasons in opposition to the BBC's application.

Decision and reasons

18. I have considered these competing interests and submissions carefully, bearing in mind, as I did at the time of making the order, that open justice is a fundamental principle in respect of all proceedings before any court, including coroners' courts: see *R (T) v HM Senior Coroner for the County of West Yorkshire (Western Area)* [2018] 2 WLR 211 at [55]-[64]. Any restriction on the principle, by the coroner exercising the power to make an order for the anonymity of a witness, 'requires cogent justification' (*ibid.* 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' (*ibid.* at [63]).
19. Having considered all of these matters carefully and in the context of the principle above, I conclude that there are in my judgment no sufficient reasons for revoking the order for anonymity. My reasons are as follows:
 - (1) I am satisfied that Witness O continues to have subjective fears for his safety. I was satisfied on the original application that his fears were genuine fears. I am still so satisfied. In his short statement of 26 February 2019 he stated:

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.

There is no reason for those fears to have dissipated. In giving evidence, Witness O was asked by counsel for a number of the families, Mr Leslie Thomas QC, whether he might be putting himself at risk as a result of what he was saying. He answered, 'I could be.'

- (2) Admittedly there is no objective police risk assessment. Witness O's original application suggested that one had been carried out by the Garda in the Republic of Ireland but it had not reached Witness O's solicitor and has not been provided to me. There are, however, objective factors which undoubtedly underline the risk to Witness O's safety. Far from the risk having reduced because his evidence has been completed, as the BBC submits, Witness O has raised his personal profile quite substantially, and has as a result increased the risk to his personal safety.
- (3) He gave evidence (by video link) about himself as an IRA Volunteer in Manchester and then Birmingham and he named some of those he had been involved with and some he had later learned were involved in the Birmingham pub bombings. He claimed to have had the permission of the head of the IRA to give evidence, but refused to name him because he could get shot. He referred to a number of private conversations with members or ex-members of the IRA which, presumably, he did not have permission to relate. The evidence suggested, as I noted in my original ruling, that there is still bitterness, antagonism and strongly held sectarian views. This seems to be amply reflected in the 'blog' exhibited to Mr Magee's statement. All of this confirms that Witness O's fears are genuinely held and objectively justified.
- (4) I am also satisfied that Witness O does not wish to waive his anonymity, and for good reason. He was taken by surprise by the unannounced BBC journalist. He signed the statement prepared by the journalist without legal advice. I am satisfied that his apparent consent to waive anonymity was not informed consent and is now unequivocally retracted. It is unfair for the BBC to submit that he has vacillated. Had the consent been genuine informed consent, a clear change of heart, I would have been minded to lift the order. But having consulted with his solicitor, Witness O does not now agree with the contents of the statement in respect of waiver. He was not pressured into signing the statement and later giving an interview to the BBC, but he said he was 'influenced' by the BBC persuading him and talking him into it. The BBC's claim that it was 'Witness O's letter' rather overstates the position. The suggestion in the application that anonymity was no longer desired by Witness O 'in his own words' does not ring true. I do not find that the statement signed by Witness O is reliable evidence of genuine consent to be named.
- (5) It is true that my second reason for originally granting anonymity, namely that without the order there was the possibility that Witness O might not give evidence, has fallen away. But that does not diminish my primary reason for anonymity, namely subjective fears on Witness O's part which are, as I said in the original ruling and repeat now, entirely understandable in the context of these proceedings.
- (6) Further, having been granted anonymity by the Coroner, Witness O must have believed that he had a reasonable expectation of continued anonymity,

not just before giving evidence and during it, but afterwards, both during the Inquests and following their conclusion. The anonymity order was not granted with a time limit or with a view to lapsing after Witness O's evidence was completed. It was always anticipated that the order would remain in force. If revoked now, for the reasons suggested by the BBC, there is a real risk that other witnesses seeking protection by way of anonymity might be reluctant to come forward to give evidence, knowing that the order could be easily revoked.

- (7) The BBC submit that the order should not remain in force because Witness O has been 'identified', by his accent and by details provided by him in evidence. Whether that is right or wrong, the information he provided did not lead directly to any identification by Mr Magee, an experienced journalist in Irish affairs. He had to rely upon hearsay 'sources in Belfast' (whose identities he does not reveal) to tell him who Witness O is alleged to be. What matters is that the cipher has provided sufficient and proportionate protection to Witness O in the proceedings and beyond.
- (8) I acknowledge WMP's final submission that revocation of the order could impact upon ongoing investigations. This may not be central to my reasoning, but I do not consider that WMP would make such a submission lightly. It is a factor which I therefore take into account.

20. For these reasons, I am satisfied that there is no good reason for revoking this order. The application by the BBC is refused.

HH SIR PETER THORNTON QC
Coroner

12 April 2019