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IN THE CORONER'S COURT IN NORTHERN IRELAND

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IN THE MATTER OF AN INQUEST INTO THE DEATHS OF JOHN DOUGAL, PATRICK BUTLER, NOEL FITZPATRICK, DAVID McCAFFERTY AND MARGARET GARGAN ('THE SPRINGHILL INQUEST')

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RULING (NUMBER 8)
ON AN APPLICATION BY SM207 FOR ANONYMITY

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SCOFFIELD J (sitting as a coroner)

[1] This is an inquest into five deaths which occurred on 9 July 1972 in the Springhill and Westrock areas of Belfast. A brief summary of the factual background is contained in my ruling of 27 February 2023 ('Ruling No 1'): [2023] NICoroner 24. This ruling concerns an application on the part of a former military witness (FMW), known as SM207, for a grant of anonymity in these proceedings. I dealt with a range of such applications from FMWs in this inquest in Ruling No 6 ([2024] NICoroner 9). As noted at para [41] of that ruling, upon request I left aside a determination on SM207's application, which is now contained in this ruling.

[2] SM207's application shared many of the common features of the applications of other FMWs which led to me granting anonymity (see paras [29]-[45] of Ruling No 6). The reason why SM207's application was dealt with separately is because submissions received on behalf of some of the next of kin (NOK) of the deceased, shortly before the hearing at which the applications were considered, took issue with his application partly on the basis that, it was thought, he *may* be able to be identified from open source material. This material was provided to me by the NOK; but circulated only to a limited number of PIPs in the inquest.

[3] Mr Aiken KC for the MOD expressed concern and disapproval at this course of action, suggesting that it was wrong for a PIP to seek to undermine the grant of anonymity by conducting their own research. On behalf of the NOK, Ms Doherty KC took issue with that submission, contending that, since a final determination on anonymity had not been made, there was nothing inappropriate in PIPs seeking to determine whether the anonymity of the relevant witness had been so compromised already that it would be wrong for the coroner to grant anonymity. In the course of

exchanges in relation to this issue I raised the question whether there may be a duty of candour upon an applicant for the grant of anonymity to identify to the relevant coroner (or other judicial officer, as the case may be) material which undermined their application. I have since received further brief representations in writing touching upon this issue.

[4] Were it not for the above issue, which was raised at the last minute, I would have granted anonymity to SM207 on the same basis as I did to the other FMWs who have applied for it in the course of these proceedings.

[5] I accept that it is plainly relevant to an application for anonymity and may indeed be a proper reason for refusing such an application if the witness seeking it has already effectively lost anonymity in the context in which it is sought. I discussed this briefly at paras [42]-[45] of Ruling No 6.

[6] I also consider that there is an obligation upon a witness seeking such an order to draw to the attention of the judge considering their application information known to them which would or may render their application pointless. In *KL and NN v Sunday Newspapers Ltd* [2015] NIQB 88; [2017] NI 229, Stephens J addressed this issue at paras [16]-[17] of his judgment in the following terms:

> "[16] The general procedure for applying for anonymity and reporting restriction orders should closely follow, suitably adapted to the procedure in Northern Ireland, the *Practice Guidance* issued by Lord Neuberger of Abbotsbury MR, as Head of Civil Justice, entitled *Interim Non-Disclosure Orders* [2012] 1 WLR 1003, which came into effect on 1 August 2011 considered in the light of the decision in *A v British Broadcasting Corporation* [2014] UKSC 25, [2014] 2 All ER 1037, [2015] AC 588. The guidance sets out recommended practice regarding any application for interim injunctive relief in civil proceedings to restrain the publication of information: an interim non-disclosure order. It also provides guidance concerning the proper approach to the general principle of open justice in respect of such applications and explains the proper approach to the model interim non-disclosure order a copy of which is attached to the guidance. It also sets out the law as at 1 August 2011.
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> [17] Amongst other matters para [30] of the guidance emphasises the obligation on the applicant to make full, fair and accurate disclosure of all material information to the court. It states:

> 'Particular care should be taken in every application for an interim non-disclosure order, and *especially where an application is made without notice*, by applicants to comply with *the high duty to make full, fair and accurate disclosure of all material information to the court and to draw the court's attention to significant factual, legal and procedural aspects of the case*. The applicant's advocate, so far as it is consistent with the urgency of the application, has a particular duty to see that the correct legal procedures and forms are used; that a written skeleton argument and a properly drafted order are prepared personally by her or him and lodged with the court before the oral hearing; and that, at the hearing, the court's attention is drawn to unusual features of the evidence adduced, to the applicable law and to the formalities and procedure to be observed including how, if at all, the order submitted departs from the model order.' [Emphasis added]
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> The obligation in ex parte applications to proceed 'with the highest good faith' and to make full and frank disclosure of all material facts arises because the court is asked to grant relief without the person against whom the relief is sought having the opportunity to be heard. The guidance makes it clear that in relation to applications for orders such as anonymity and reporting restriction orders the obligation applies in relation to every application regardless of whether it is ex parte or on notice. Anonymity and reporting restriction orders affect the public who are not represented in court and also affect other media organisations and those who wish to use social media. The obligation of full and frank disclosure continues to apply given the public interests in play even if the application is on notice and I consider that it continues to apply even if an interim order is made so that if further information that could lead to the order being set aside becomes available to the applicant, then the court and the parties should be informed."

[7] In the present context, an applicant for anonymity should make full and frank disclosure of matters both in support of, and which may undermine, their application for anonymity. This perhaps applies with additional force where, as in legacy inquests, PIPs (unlike other parties in civil proceedings) will likely not know

the name or identity of the witness seeking anonymity at all; and will therefore not be in a position, if opposing the application, to do their own open research on the matter.

[8] I also accept Ms Doherty's submission that there was nothing improper in the effort which was made by the NOK to bring to the court's attention information which, in their submission, fatally undermined the application for anonymity. SM207 has been provisionally granted a cipher pending an application by him for anonymity, so that any such application (if made in due course) would not be futile. Unless and until a determination on his application has been made, there is nothing improper – at least in the circumstances as arose in this case – in a PIP seeking to ascertain whether the witness's application is so frail or compromised to the extent that it should be refused.

[9] On the other hand, I also reject any suggestion – insofar as it is made – that SM207 has failed in his duty of candour to the court. As well as identifying matters in support of his application, such as his ill health, his application also referred to his having held many high-profile and public-facing posts since his retirement; to the fact that his friends and neighbours are aware of his past employment; and to his having an online presence. Further information has also since been provided to me by way of correspondence from the Crown Solicitor's Office (CSO). This correspondence was not shared with other PIPs on the basis that it would or may undermine the witness's anonymity, if granted. For this reason, such applications are usually shared with PIPs in redacted form.

[10] The CSO correspondence confirmed that when SM207 was preparing his application for anonymity and screening application in conjunction with a solicitor within CSO, he explained that he had an online presence and drew attention to certain content relating to him on the internet. When the solicitor was drafting the application, this was reflected in the reference to SM207 having an online presence. The materials SM207 highlighted in this regard were not annexed to the application on the basis that this would increase the risk, through human error in inadequate redaction, of his identity being confirmed to other parties by the making of the application itself. I understand that this is consistent with the practice of CSO, when alerted by an applicant for anonymity to the fact of an online presence, to refer to the matter obliquely in applications. This was considered sufficient to raise the matter such that, should further enquiries be necessary, these could be requested.

[11] As indicated above, on the basis of the further information available to me, I am satisfied that SM207 did not act in breach of his duty of candour. I am bound to say, however, that there may be cases where the approach on the part of CSO described above is unlikely to be adequate to discharge that duty. If, for instance, there was material which clearly indicated that the grant of anonymity was unwarranted in a particular case, mere reference to the applicant having an online presence (or words to that effect) would be inadequate to draw to the coroner's attention the need for further enquiry in relation to the matter. As I have noted

above, where a witness has been provisionally granted anonymity pending an application, other PIPs will be deprived of the facility of undertaking a search to identify such material, otherwise than by trying to do so in a speculative manner from fragments of information, as occurred in this case. There is obviously a spectrum of cases. There is also an understandable desire not to defeat an application by the provision of material which will have the effect of identifying the witness seeking anonymity by the mere making of the application; but that ought to be able to be dealt with by careful redaction. Some element of judgment on the part of the legal representatives concerned may be required but, when in doubt, the safer course is to make the disclosure to the coroner or judge in the first instance.

[12] I do not intend to either confirm or deny whether the information discovered by the NOK relates to the witness whose application is under consideration. However, even assuming that it did, I would not consider it sufficient to defeat the application. As I commented in Ruling No 6 (at para [45]):

> "It must always be recognised that there will be cases where, for a variety of reasons, the protection provided by the grant of anonymity or application of a cipher in proceedings such as these will be imperfect or, with ingenuity and determination, is capable of being circumvented. That does not mean that it will necessarily be inappropriate to provide what protection can be afforded, where legitimate issues or fears of risk to life arise, simply because the protection is not watertight. Each case must be assessed on its own merits."

[13] In civil proceedings, some of the parties to the proceedings (and even others attending the proceedings or the press covering them) will frequently be aware of the identity of another party or witness who is granted anonymity. In those circumstances, the purpose of the protective measures granted, such as reporting restrictions, is to mitigate the risk of harm which may befall the witness arising from a wider circulation of their identity to the world at large. In article 2 terms, where the obligation to take operational measures to protect life arises, the court must take measures within the scope of its powers which, judged reasonably, might have been expected to mitigate or avoid that risk. It will often be reasonable to provide certain protective measures even if the level of protection so afforded is not perfect.

[14] SM207's application was advanced on the basis of his concern that if his name and identity were "released in connection with this inquest" then his and his family's safety may be compromised. Even on the assumption that the material sourced by the NOK did relate to this witness, it does not identify any involvement with the circumstances giving rise to the deaths under investigation in these proceedings or anything close to that. It is certainly not in the territory, also discussed in Ruling No 6, of anonymity having been decisively lost in the relevant context because of recent and widespread publication of the witness's name in

connection with these very proceedings. The information provided indicates that the individual it concerns occupied various positions in the British Army and mentions briefly (without specifics or dates) that they served in Northern Ireland. It would not in my view undermine the efficacy of an application for anonymity in these proceedings designed to mitigate the risk identified in the threat assessment as arising should the witness be denied anonymity specifically in relation to this inquest.

[15] For these reasons, in conjunction with those already expressed in Ruling No 6, I grant SM207's application for anonymity.