OMAGH
BOMBING INQUIRY

Omagh Bombing Inquiry – Ruling on Redaction of Documents

Introduction

1. This ruling concerns the approach which the Inquiry will take with regard to the redaction of documents received by it from the Northern Ireland Office ("NIO") and from the Police Service of Northern Ireland ("PSNI"), either in response to a request made under rule 9 of the Inquiry Rules 2006 or, should this be necessary, in consequence of a requirement issued in terms of section 21 of the Inquiries Act 2005. This ruling addresses the matters canvassed before me at a hearing held on 21 and 22 May in Belfast, at which I heard submissions from Counsel to the Inquiry ("CTI"), along with submissions from counsel for those Core Participants who wished to participate and counsel for various media organisations.

2. The hearing was triggered by two items of correspondence received by the Solicitor to the Inquiry. The first was an application made on behalf of the NIO, dated 15 April 2025, in which it was requested that the names of all junior civil servants identified in relevant disclosure provided by the NIO should be redacted. The second was a Note from the PSNI, dated 24 April 2025, in which it set out, by way of assistance to the Inquiry, a detailed analysis of the approach which it considered the Inquiry might wish to follow in determining whether to redact the names of any individuals appearing in documents provided by the PSNI who were identified in those documents as suspects, either in relation to the Omagh bombing itself or in relation to certain other apparent terrorist acts.

Background

3. The background, or context, in which these matters fall to be considered is to be found in the Inquiry's Protocol on documents, its Protocol on redaction of documents and its Protocol on applications for restriction orders, each published on 20 February 2024. However, at this stage, the issues raised only concern the extent to which documents to be disclosed to Core Participants ought to be redacted. This ruling is not

concerned with the separate question of whether the content of any documentation which is disclosed in an unredacted fashion may, in due course, be aired in evidence and, or, published in the media. Those questions, if they arise, may engage the provisions of sections 18 and 19 of the Inquiries Act 2005.

The Protocol on documents

4. The Inquiry's Protocol on documents concerns the provision of potentially relevant documents by material providers to the Inquiry and the manner in which such documents will be received and handled. This Protocol reflects my approach to how I wish to manage this aspect of the Inquiry, exercising my discretion under s.17 of the Inquiries Act 2005 to direct the procedure and conduct of the Inquiry subject to the need to act with fairness and avoid any unnecessary cost. Taken shortly, the Protocol provides that potentially relevant documents should be provided by material providers in an unredacted fashion and, in an effort to be as transparent as possible, that the Inquiry will work on the assumption that it will disclose all such documents to Core Participants. The Protocol provides that Core Participants will be required to sign confidentiality undertakings and that any disclosure made to them by the Inquiry will be subject to these undertakings until such time as the document is made public by the Inquiry.

The Protocol on redaction of documents

5. The purpose of this Protocol is to explain how the Inquiry will prepare documents for disclosure and publication (if that arises). Again, taken shortly, it sets out a three-stage process which is to be followed. The first stage is a request to material providers, the scope of which is to be set by the Inquiry's legal team. At the second stage, the Inquiry's legal team will review documents provided in response to such requests to identify those which, in their determination, are relevant to the Inquiry's Terms of Reference. At the third stage, documents identified as being relevant are to be shared back with the relevant material provider who will be given an opportunity to review and approve any redactions applied by the Inquiry legal team and to identify any further redactions which the material provider may seek before disclosure to Core Participants. Once this exercise has been completed, the Inquiry's legal team will consider any request for further redaction and will either agree or reject it, in whole or in part, in which case the material provider will be given an opportunity to apply for a restriction order to prevent disclosure of the information which it seeks to redact. In these circumstances, the Protocol on applications for restriction orders will apply.

6. At paragraph 12 of the Protocol on redaction of documents there is an explanation of the general approach which the Inquiry will take with regard to redaction before disclosure to Core Participants. For present purposes it is sufficient to note that this may include content within documents which:

> b. is considered to be both irrelevant to the Inquiry's Terms of Reference and sensitive; and
>
> c. constitutes personal data within the meaning of UK Data Protection legislation, further disclosure of which is prohibited by that legislation.

7. Paragraph 13 of the Protocol provides that where the Inquiry decides to redact material falling within either of these two categories it will do so without the need for any application or request and that it will decide whether any such redaction is required on a case-by-case basis.

8. Paragraph 16 of the Protocol notes that the procedures identified are not intended to cover every eventuality, nor every procedural issue that may arise, and that it may require to be departed from in exceptional cases in compliance with the Chair's statutory obligation to act fairly.

PSNI

9. It may be helpful if I address first what turned out to be the more straightforward of the two issues, namely that raised by the PSNI. The Note prepared on behalf of the PSNI concerned the fact that the Inquiry sought disclosure from it of documentation in relation to investigations which it had carried out into the Omagh bombing and other potentially linked preceding incidents. The names of various individuals who were investigated as suspects in relation to these incidents were contained within this documentation.

10. There was no submission made to the effect that I should take any particular step at this stage. Instead, it was suggested that when considering whether there was a need to redact the names of any suspects who were investigated, the Inquiry legal team should take account of the approach and the principles set out in the Note. In the end, there was no dispute between any of the contributing counsel as to what the correct approach should be. All were content to follow the approach explained by CTI, which I can therefore set out in fairly short order.

11. The fact that an individual was investigated as a suspect for a criminal offence, but not charged, is capable of falling within the ambit of that person's right to respect for their private life, as protected by Article 8 ECHR. As a general rule, or legitimate starting point, such a

person has a reasonable expectation of privacy in respect of information relating to that investigation. This does not constitute a legal rule or presumption. In each individual case it will be necessary to make a determination by reference to all of the circumstances of the case whether, on an objective basis, the reasonable expectation either does not arise at all or, has been significantly reduced. These are the applicable principles which can be drawn from the decision of the Supreme Court in the case of *Bloomberg LP v ZXC* [2022] UKSC 5.

12. The application of these principles in the Inquiry means that if, in the case of any given suspect mentioned, a reasonable expectation of privacy does not arise then there will be no need for redaction (the Article 8 right will not have been engaged). If a suspect objectively does have such an expectation, then whether redaction takes place or not will depend on whether that expectation is outweighed by the Article 2 ECHR rights of the Core Participants. If the expectation is reduced, that will bear upon the weight to be attached to the individual's Article 8 right.

13. No expectation of privacy can arise in the case of an individual charged with a criminal offence in relation to the matter under investigation. Nor can any such expectation arise in relation to those who were defendants in civil proceedings brought in connection with any of the relevant incidents.

14. With these principles in mind, the Inquiry legal team intends to approach the question of whether redaction is necessary in three stages. The first stage will be to identify into which of two categories the particular identified suspect falls.

Category 1 –

This category applies to any individual identified as a suspect, either in respect of the Omagh bombing or in respect of a potentially linked incident, and who has been publicly named in the media or Parliament as having been investigated in either capacity.

Category 2 –

This category applies to any individual identified as a suspect, either in respect of the Omagh bombing or in respect of a potentially linked incident, and who has not been publicly named in media reporting as having been investigated.

15. At this first stage the provisional approach taken will be to assume that those in Category 1 have no reasonable expectation of privacy, given that the relevant information is already public knowledge.

It will be assumed that those in Category 2 do have such a reasonable expectation.

16. The second stage will then involve a more focused examination of the circumstances relating to each named suspect for the purpose of determining whether the initial assessment falls to be adjusted one way or the other.

17. At the third stage, attention will be brought to bear on any identified suspect in respect of whom it has been determined that a reasonable expectation of privacy does exist. The Inquiry legal team will proceed upon the view that the terms of section 17 of the Inquiries Act 2005 would constitute a lawful basis for disclosure of the names of any such suspect to the Core Participants, and thus for interfering with their Article 8 rights. The final step will be to perform an assessment as to whether it is necessary to protect the procedural rights of the non-state Core Participants, and proportionate, for the names of such suspects to appear unredacted in the disclosure to them. If that exercise results in the balance favouring the protection of the suspect's Article 8 rights then the PSNI will be invited to make an application for a restriction order in respect of that suspect.

18. Two further matters ought to be set out. The first is that an entirely separate approach will be followed should there be a real and significant issue of potential harm in relation to any particular suspect brought to the attention of the Inquiry legal team. The second concerns the eliciting of evidence before the Inquiry at a public hearing. There will be a process in place which identifies in advance the evidence to be led or the scope of any questioning. Should it become clear that there is a need to elicit the name of any suspect which has been provided in unredacted disclosure, then it is recognised that there may be a requirement to revisit the question of where the Article 8 balance ought to fall. If that arises, then Article 10 ECHR may well be a highly relevant factor and the media will be given an opportunity to contribute to any legal debate which is necessary. Consideration will also be given to the need to inform the individual suspect of what is proposed and seek any representations which they may wish to make.

The NIO Application

19. The NIO application was supported by a witness statement of Sharon Carter, Deputy Director of the Legacy Group, Northern Ireland Office, and was advanced by Ms Fee K.C. in terms of a skeleton argument tendered to the Inquiry. All three documents focused on the naming of junior civil servants, which I understood to mean anyone regardless of age, experience or function who was not a member of the

Senior Civil Service. Each concerned documentation disclosed by the NIO and both Ms Carter's statement and the skeleton argument bore to present the position of the Secretary of State for Northern Ireland. The propositions advanced can be set out under three headings: relevance, privacy and risk.

Relevance

20. The contention advanced was that, as a class, the identity of those junior civil servants associated to any extent with documentation disclosed to the Inquiry was irrelevant. There was accordingly no basis upon which they should be identified through disclosure. The position fell to be contrasted with members of the Senior Civil Service, who were public facing and likely to be known as employees of the State. Since officeholders in this category had a greater degree of constitutional responsibility for decisions implementing government policy, it had traditionally been accepted that they may be publicly identified. Accordingly, it was recognised that the identity of those members of the Senior Civil Service named in documents provided to the Inquiry did constitute relevant information and ought not, as a matter of course, to be redacted.

21. On the Secretary of State's argument, the submission on relevance was not undermined to any extent by anything said in the decision of *R (on the application of IAB and others) v Secretary of State for the Home Department*, either in the first instance decision of Swift J, or in the Court of Appeal decision upholding his judgment[1]. The import of the discussion in that litigation about the effect which the duty of candour had on the extent of necessary disclosure had no application to the circumstances with which I was concerned.

22. There were said to be two reasons for this. First, unlike in the present situation, the court in the *IAB* litigation was provided with redacted material only and was not aware of the names which lay beneath those redactions. The NIO had provided documentation to the Inquiry in an unredacted fashion and it was only at the stage of further disclosure to core participants that redaction should be applied. Since the Inquiry legal team would be well equipped to assess the significance of the documentation provided, if it transpired that the name of a particular junior civil servant appeared to be of relevance then the question of whether that name should be disclosed could be addressed at that stage.

[1] The citations for these judgments are, respectively, [2024] 1 W.L.R. 1876 and [2024] 1 W.L.R. 1916.

23. Second, in the *IAB* litigation, the court was concerned with the very specific duty of candour owed by the government in judicial review proceedings. That duty arose because of the obligation to explain the decision-making process and therefore had particular consequences for disclosure in proceedings of that sort. The position was different where the proceedings in question are a Public Inquiry with no power to determine civil or criminal liability.

Privacy

24. The proposition advanced under this heading appeared to undergo something of a progression as between the content of the application and the argument presented at the hearing. In both the application and the supporting statement, it was explained that there is an expectation that junior officials are entitled to a greater degree of privacy from personal exposure than their Senior Civil Service colleagues. As it was put in Ms Carter's statement:

> "Junior officials across the NIO conduct their work on the understanding and expectation that their names will not enter the public domain where this is not necessary. Such individuals are simply carrying out their public duties pursuant to government policy and are in no position publicly to defend themselves on their own account."

Consistent with this approach, Ms Carter explained that the names of junior civil servants are redacted from relevant Freedom of Information Act responses.

25. At the hearing, the contention advanced on behalf of the Secretary of State was that the fact of employment as a junior civil servant fell within the concept of private life and engaged the protections afforded by Article 8 ECHR. Since the Inquiry would be provided with unredacted material, and therefore able to see the names concerned, and since the particular name of a junior civil servant would add nothing to the substance of the material provided, the public interest in open justice would not outweigh the protection to be afforded, as a class, to the Article 8 rights of those junior civil servants. An aspect of this contention was the specific significance which identification as an employee of the State would have within Northern Ireland in the context of its legacy of armed conflict and dissident threat. In this context, Ms Fee informed me that NIO employees may not have been open in discussing their employer, even to family and friends.

Risk

26. The submissions under this heading were presented in a number of different ways. First, it was suggested in Ms Carter's statement that redaction would avoid the risk of individuals becoming targets of

unwarranted personal blame, harassment or threats to their personal or physical safety. The validity of these concerns was supported by giving examples of protests which had taken place in response to the work undertaken by the NIO. The subject matter of the protests mentioned ranged across issues concerning abortion, sexual education, legacy and reconciliation, payments to victims and support for the holding of particular Public Inquiries. I was informed that as recently as March of this year a group of individuals protesting about the situation in Palestine had gained access to the reception area of the NIO building in Belfast requiring the attendance of the police in order to allow normal staff access to resume.

27. Ms Carter gave two specific examples of what were said to have been incidents of intimidation. In 2023, a member of staff was subject to a series of obsessive social media posts which claimed she was part of a 'serial killer gang". The following year a previous Minister for State at the NIO, the Rt. Hon. Steve Baker MP, was confronted by a member of the public regarding the NIO's stance in respect of the situation in Palestine and was followed by an activist making him feel intimidated and harassed.

28. The second approach advanced by Ms Carter was that there might be an increased likelihood of the NIO experiencing retention and recruitment issues, should the names of members of staff who were linked to one of the policies associated with the Department not be redacted. Many of these policies were controversial in one or other of the communities in Northern Ireland.

29. The third approach advanced concerned the circumstances of those whom she referred to as "defence personnel". Attention was drawn to the fact that members of the British military had been targeted in terrorist events in recent years and there was accordingly a duty under Article 2 ECHR to take reasonable steps to protect life, which would include redacting the names of staff involved in "defence roles". Over and above the personal risk posed to junior civil servants involved in such roles, the open availability of staff names, their email addresses and information as to their roles would enable improved intelligence and targeting information to be obtained by terrorist and extremist groups, along with foreign intelligence services. Such information would be of considerable value to a hostile actor and thus impact on the government's ability to deliver national security outputs.

30. At the hearing Ms Fee presented her submissions in a more focused manner (although those identified above were not departed from). The proposition was that "there may be" some junior civil

servants working in defence or security roles whose Article 2 rights were engaged, thus requiring the Inquiry to take steps to safeguard their lives[2]. This was developed by stating that dissident republican groups are actively planning and carrying out attacks, including on members of the security forces and those employed by the State. Accordingly, the identification of a junior civil servant in a document could assist with targeting more readily. Support for these submissions and the contention that they vouched the need for redaction was sought by reference to the cases of *In Re Officer L* [2007] UKHL 36 and *In Re C* [2012] NICA 47.

31. As had been advanced in Ms Carter's statement, Ms Fee also submitted that the open availability of staff names, email addresses and their roles enabled intelligence and targeting information of considerable value to be available to a hostile actor.

Discussion and Ruling

32. I shall address the submissions in the same order as set out above.

Candour and relevance

33. In the case of *R (on the application of IAB and others)*, both in the judgment of Swift J and in the decision of the Court of Appeal, there is discussion as to the principles involved in considering the proposed redaction of documents provided by government departments. The practical considerations which arise in such an exercise are also canvassed. The contention advanced in that litigation was that the names of all junior civil servants should be redacted from documentation disclosed to the court. That contention was roundly rejected, both at first instance and on appeal. The question then arises as to whether the principles and practicalities discussed help to provide any guidance to me in the approach which I should take to the same proposition.

34. The particular form of litigation in which those discussions occurred was judicial review. In the submissions presented to me on behalf of the Secretary of State for Northern Ireland, that fact is said to distinguish the statements made by the combined group of learned judges to the extent that they provide little, if any, guidance in relation to the issue with which I am faced. I disagree.

35. In my view, there is no distinction of substance to be drawn between the obligation to explain a decision-making process, such as might feature in judicial review proceedings, and the obligation to

[2] Page 81, line 14 of the Day 1 transcript - 05212025-OMAGH.pdf

explain the decision-making process which arises in the context of the present Inquiry. The overarching question to be investigated by the Inquiry is whether there were reasonable steps which could have been taken by the UK state authorities to prevent the Omagh bombing. That is a complex exercise which will require many different decision-making processes to be explored and understood.

36. A brief look at the Inquiry's Terms of Reference and at the Provisional List of Issues issued on its behalf demonstrates this. At paragraph 2 b. of the Terms of Reference, the requirement is to consider the adequacy of the measures taken by UK state authorities to disrupt those dissident republican terrorists involved in attacks in the period prior to the bombing. This is to include consideration of any change in the measures used or approach taken following the Belfast Good Friday agreement. At paragraph 2 c. the requirement is to consider the adequacy of the policies and practices of UK state authorities in sharing intelligence between themselves and with the authorities in the Republic of Ireland. The Provisional List of Issues identifies at paragraph 1 (a to j), and at paragraph 2 (d - e), other detailed matters all of which are likely to involve understanding and assessing the various decision-making processes involved.

37. Looking more broadly, there are other resources which may inform the correct response of a government department to requests for disclosure from the Chair of a Public Inquiry. The Seven Principles of Public Life apply to anyone who works as a public office holder, which includes all people appointed to work in the Civil Service. The fourth of these principles is accountability, which provides that public office holders are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this. The fifth principle is openness, which provides that public office holders should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for doing so.

38. The Hillsborough Charter, signed on 6 September 2023 by the then Deputy Prime Minister, gave certain commitments to the families of those bereaved by public tragedy. The third itemised commitment was to:

> "Approach forms of public scrutiny – including public inquiries and inquests – with candour, in an open, honest and transparent way, making full disclosure of relevant documents, material and facts. Our objective is to assist the search for truth. We accept that we should learn from the findings of external scrutiny and from past mistakes."

In correspondence about opening statements in this Inquiry, dated 11 April 2025, the Government Legal Department acknowledged that the Government would abide by the Hillsborough Charter, including approaching the Inquiry with candour and transparency.

39. For these reasons, I do not accept that the duty of candour discussed in the *IAB* litigation should be thought of as being any more exacting than that which applies in Public Inquiries. It is correct, of course, that the documents have been disclosed by the NIO to the Inquiry in an unredacted fashion, but the duty of candour is owed as much to the Core Participants as it is to the Inquiry itself.

40. The proper understanding of the duty of candour owed to a Public Inquiry goes to inform the extent of appropriate disclosure, as it does in judicial review proceedings. Just as the Secretary of State's submissions on candour and relevance were intertwined, so the relationship between candour and relevance helps to inform the proper resolution of the question. In my view, the approach taken by Swift J is illuminating. At paragraph 22 in his judgment, he explained that:

> "… redaction on grounds of relevance alone ought to be confined to clear situations where the information redacted does not concern the decision under challenge. The names the Secretaries of State seek to protect are not in this class. Names of civil servants should not routinely be redacted from disclosable documents; redaction should take place only when it is necessary for good and sufficient reason. This conclusion is consistent with the obligation of candour and with the general principle of cooperation between public authorities and the court that is one foundation for judicial scrutiny."

41. The Inquiry legal team will only disclose documentation which it considers bears in a relevant fashion on the work to be undertaken. It is unrealistic and overly simplistic to assert that the identity of all junior civil servants associated with these documents is irrelevant. Editing a relevant document in this way may risk removing information that goes to explain its provenance and context. Furthermore, examples were provided by some of the bereaved and survivor Core Participants of circumstances in which, as they suggested, identity would be relevant. This observation also draws attention to the fact that the overarching approach suggested by the Secretary of State fails to take account of the contribution which may be made by those Core Participants who have been campaigning and researching many of the issues with which the Inquiry is concerned for decades. The Inquiry legal team would undoubtedly benefit from being able to draw upon the reservoir of knowledge which they will have acquired. That benefit will be lost, or at least diminished, if redactions are to be applied in the manner contended for.

Practical considerations

42. Important practical considerations are associated with the suggestion that the names of all junior civil servants should be redacted from disclosed documentation. The way in which these are explained by Swift J in the *IAB* litigation at paragraph 18 of his judgment seems to me to encapsulate the extent of the difficulties introduced by routine redaction in a compelling manner. His analysis bears direct quoting:

> "Redaction leads to significant practical difficulties. The present case is an example of a common situation where email exchanges and other contemporaneous documents are disclosed to explain a decision-making process. Most decisions made within central government now involve significantly sized groups of civil servants. On any occasion one civil servant within the group might be the sender of the message, might be the recipient of the message, or might (usually, will probably) be copied in. Sometimes (as in this case), the civil servants within the group are spread across different government departments. At the least, redacting names makes the decision-making process and the significance of each document disclosed more difficult to understand. In some instances, it may obscure the significance of a document almost completely. When correspondence and other documents are disclosed for the purpose of evidencing a decision-making process it will rarely be the case that it will not assist the court's understanding of that process and the decision itself to know by whom or to whom documents were sent, forwarded, or copied. In most cases, when this information is redacted, any outsider's understanding of the documents (and for this purpose the court is an outsider) is significantly hampered. Misunderstanding and misinterpretation become commonplace. When documents are disclosed, and parties then rely on them by including them in the hearing bundle, the court is under a practical obligation to consider those documents with a view to making sense of how the information in the documents bears upon the legality of the decision under challenge. All this is made much more difficult and much more time-consuming when (for example) successive strings of email correspondence, each pages long, are entirely anonymised. The same point applies to names redacted in the body of correspondence or other documents. All such redactions only detract from the intelligibility of the document and impair achievement of the purpose for which the document was disclosed in the litigation."

I can do no better than to adopt these observations.

43. For the reasons set out at paragraphs 33 to 42 above, I reject the submissions advanced on behalf of the Secretary of State in relation to candour and relevance. The names of those who feature in relevant

documents will in many cases constitute relevant information. It is far too soon to decide otherwise on a wholesale basis, although the position may be different when it is decided what evidence is to be elicited about which particular documents. The practical problems associated with redaction also count against taking a wholesale approach at this stage.

Privacy

44. In both the original application and Ms Carter's statement it is asserted that junior civil service officials are entitled to a greater degree of privacy from personal exposure than their more senior colleagues, and therefore have an expectation of confidentiality. Accordingly, their names should be redacted from the disclosed documentation. This is presented as a general proposition, just as it was in the *IAB* litigation. In other words, the general assertion did not depend on the fact that the proceedings in *IAB* concerned judicial review. The proposition on confidentiality presented to me is, therefore, on the face of it, indistinguishable from the contention advanced and rejected in the *IAB* litigation. It is also difficult to reconcile it with the content of the Principles of Public Life and those of the Hillsborough Charter, as quoted at paragraphs 37 and 38 above.

45. I was given no explanation as to the basis of this contended for expectation of confidentiality, such as might distinguish it from the proposition advanced in the *IAB* litigation. That is perplexing given the manner in which the contention was treated by Swift J at paragraph 25 of his decision. He said there that no general expectation of confidentiality could be reasonable and would not attach to any person as a matter of general employment law. Pertinently, he went on to state that:

> "Moreover, when at work civil servants are not involved in anything that can be described as a private activity, they are exercising public functions as part of the public service of the country."

That appears to me to be a statement which goes to define the concept of a civil servant. It is not a description which is moulded for the purposes of subsequent scrutiny by any particular form of litigation. In these circumstances I do not accept that the general contention advanced in the original application is one that I can give effect to.

46. At the hearing it was contended, for the first time, that disclosure of the names of the junior civil servants concerned would constitute an unjustified interference with their Article 8 rights. The expectation of privacy argued for in the *IAB* litigation does not seem to have been framed in this manner. The first question is therefore whether the fact of a person's employment as a civil servant falls within the concept of the right to respect for a person's private life. There is no analysis of

this in the Secretary of State's skeleton argument and, when asked, Ms Fee was unable to identify any authority by way of support for the proposition.

47. As I would understand it, the European Court of Human Rights has always taken the view that "private life" is a broad term not susceptible to exhaustive definition. It includes "the right to establish and to develop relationships with other human beings, especially in the emotional field for the development and fulfilment of one's own personality" – *X v Iceland* No 6825/74. When this was endorsed in the case of *Niemitz v Germany No 13710/88*, the court concluded that there was no reason of principle why this understanding of the notion of "private life" should be taken to exclude activities of a professional or business nature since it was, in the court's view, in the course of their working lives that the majority of people have a significant if not the greatest opportunity of developing relationships with the outside world.

48. It is therefore undoubtedly the case that there are a number of ways in which a person's Article 8 rights can be engaged in the context of their work or professional activities. So, for example, restrictions on an individual's professional life may fall within Article 8 where they have repercussions on the manner in which he or she constructs his or her social identity by developing relationships with others. In addition, professional life is often intricately linked to private life, especially if factors relating to private life, in the strict sense of the term, are regarded as qualifying criteria for a given profession. Professional life is therefore part of the zone of interaction between a person and others which, even in a public context, may fall within the scope of "private life" – *Fernandez Martinez v Spain* GC No 56030/07 paragraph 109. Following this approach, the court has taken the view that employment disputes can in certain circumstances engage an individual's Article 8 rights – see for example the Grand Chamber decision in *Denisov v Ukraine* No 76639/11. It is also well settled that to monitor an employee's telephone, email or internet use while at work would, in the ordinary course, constitute an interference with their Article 8 rights – *Copland v UK* No 62617/00.

49. However, none of these examples assist in determining the question of whether Article 8 is in fact engaged in the manner suggested on behalf of the Secretary of State. In *Campbell v MGN Ltd* [2004] 2 AC 457, Lord Nicholls explained, at para 21, that when exploring the ambit of an individual's "private life" the touchstone was whether in respect of the disclosed facts in question the person had a reasonable expectation of privacy. At paragraph 92, Lord Hope explained that the underlying question in all cases where it is alleged that there has been

a breach of the duty of confidence is whether the information that was disclosed was private and not public. As he stated, there must be some interest of a private nature that the claimant wishes to protect.

50. If it is correct that when at work civil servants are not involved in anything that can be described as a private activity, and that they are in fact exercising public functions, then the touchstone mentioned by Lord Nicholls is not met. Nor is there an interest of a private nature to be protected. This line of analysis is consistent with what was said, albeit in a slightly different context, by the Court of Appeal in delivering its decision in the *IAB* litigation. At paragraph 32, the court rejected the contention that civil servants could have had an expectation that their names would be withheld as a matter of routine. In my view, the reasoning which led to that conclusion applies equally to a Public Inquiry.

51. On this analysis, I cannot detect any support for the underlying proposition advanced on behalf of the Secretary of State to the effect that disclosure of the names of the junior civil servants, as a class, would engage their Article 8 rights to respect for their private lives. I may, perhaps, be entitled to feel fortified in coming to this view by the fact that the written argument setting out the proposition, signed by two senior and two junior counsel, with the backing of the Government Legal Department, conspicuously omits to include any authority or submission in support of the point.

52. In the context of arguing for an expectation of confidentiality, and in the course of Ms Fee's submissions concerning Article 8, it was sought to make something of the fact that those working within the NIO might feel uncomfortable or concerned about disclosing the fact of their employment in light of their own family or community circumstances. It seemed to me that this approach came close to confusing arguments in relation to risk with arguments in relation to Article 8. I am also aware, through work conducted by the Inquiry in relation to documents already disclosed, that many of those identified as junior civil servants are open about the fact of their employment on social media.

53. For these reasons, I do not accept that the argument set out in writing and presented by Ms Fee advances the position beyond that contained in the original application. I am not persuaded that there is any valid general expectation of confidentiality which should be given effect to and which would lead to the redaction of the names of junior civil servants from documents assessed as relevant by the Inquiry legal team. Nor am I persuaded that, as a class, junior civil servants have an

Article 8 right which is engaged by the fact of their identities being included in documents to be disclosed to Core Participants.

54. However, should it transpire that for a particular individual, disclosure of the fact of employment within the NIO does have an identifiable impact on an aspect of what may properly fall within the ambit of private life, such as, for example, alluded to in the European case law mentioned above, then I would be content to hear submissions as to where the balance should lie, for that particular individual, as between protecting those rights and those of open justice and the Article 2 rights of the Core Participants.

Risk

55. The submissions under the category of risk as a basis upon which redaction should be carried out are troubling for a number of reasons. By way of introduction, I easily recognise that the passages quoted in the skeleton argument from the cases of *Re Officer L* and *In Re C* go to illustrate the extent to which it has, in the past, been necessary to be vigilant as to the safety of some of those who performed public duties in Northern Ireland. I also recognise that the nature and sources of the risks canvassed in those decisions were, on occasions, sufficient to engage the Article 2 rights of individuals called to give evidence and sufficient to warrant steps being taken to afford protection, such as by granting anonymity, even despite the countervailing interests of open justice and accountability.

56. That then brings me to the concerns. The first matter which is brought into focus is that for Article 2 to be engaged there needs to be a particular level of risk, namely a real and immediate risk that is present and continuing and that level of risk requires to be objectively verified. So, in each of the two cases mentioned, evidence of both general and individualised risk assessment was available to the decision-makers. Furthermore, each case concerned very obvious and identified targets, individual named police officers, and what was addressed was the risk to them of giving evidence in a public setting. The risks which were identified for those police officers giving evidence in 2007 and 2012, in relation to fatal incidents with which they were directly involved, cannot simply be transferred across to the circumstances of junior civil servants in the NIO or in other unspecified roles.

57. It is also relevant to ask how the nature of the risk identified in the cases of *Re Officer L* and *In Re C* compares with what is founded upon in the present application. The accounts of lawful protest in relation to matters such as abortion and sexual legislation, as given by

Ms Carter, do not even begin to provide evidence of risk of a relevant nature. Nor does the account of a sit-in protest in relation to events in Palestine. The matter concerning the social media posts was no doubt upsetting for the individual, but it does not appear to come near the standard required and, importantly, demonstrates the ability to resolve the issue by other means, namely informing the police. Pestering a Government Minister in public about an issue of legitimate and widespread public concern seems unlikely to be viewed by many as an issue of real concern. I doubt whether anything needs to be said about the suggestion of retention difficulties. It is entirely vague and generalised.

58. Just as troubling, these descriptions of risk appear to have been advanced in support of a class-based approach seeking to encompass all junior civil servants within the NIO and possibly elsewhere. That seems to me to be entirely misplaced.

59. The next matter of concern arises out of the manner in which the submission on risk was focused before me at the hearing. It was presented on a speculative basis. I quote from para 34 of the skeleton argument:

> "As identified in the Secretary of State's application there *may be* some junior civil servants (e.g. working in defence or security roles) for whom the risks to their safety *may be* of a different character. Article 2 ECHR requires that everyone's right to life shall be protected by law. That is an operational duty on the State (in this case the Inquiry) to safeguard the lives of those within its jurisdiction" (my emphasis).

60. The explanation for this approach became clear in correspondence received by the Inquiry after the conclusion of the hearing. This explained that no attempt has been made to identify whether any particular civil servant is, or is not, at any level of risk. The reason given was, in summary, that such a task is not quick or straightforward.

61. When it comes to trying to understand who it is that the Secretary of State considers is potentially at risk, the matter is just as unsatisfactory. The category spoken of in Ms Carter's statement comprises "defence personnel", those in a "defence role" and "defence staff". Furthermore, the nature of the risk appeared to shift seamlessly from personal risk to national security and back again. Whether these descriptions of personnel are to be taken to apply to civil servants within the NIO, or to others, is entirely unclear, although the presence of risk is vouched by mentioning the targeting of members of the British military in recent years. It is not obvious why I am invited to treat this

fact as vouching risk to junior members of the civil service. The matter was not made any clearer during the course of the hearing.

62. The final matter to which attention requires to be drawn is this. In both Ms Carter's statement and the skeleton argument the contention is advanced that the "release and open naming" and the "open availability" of the names of civil servants will have the consequences complained of. As was made plain at paragraph 18 of the Note of Counsel to the Inquiry circulated on 14 May, all that is under consideration at this stage is disclosure to Core Participants. That point was further emphasised by CTI in his opening address at the hearing. Despite that, the submissions addressed risk on the basis of publication. Each Core Participant has signed a confidentiality undertaking and no submissions whatsoever were addressed to the concept of risk arising from disclosure within this restricted group.

63. As CTI stated, if an issue engaging the Article 2 rights of a particular junior official is brought to the attention of the Inquiry, and is properly evidenced, then, of course, those rights will be respected. If, as was done in the Dawn Sturgess Inquiry (Restriction Order Ruling 19 August 2022), it can be demonstrated that to disclose the names of individuals operating within a particular grouping or function would interfere with the interests of national security, then I would give consideration to approaching that group on a class basis. In either situation, the question would then be whether or not it was necessary for me to make a restriction order in terms of section 19 of the 2005 Act. In the meantime, the submissions on behalf of the Secretary of State based on risk cannot be given effect to.

64. In all of these circumstances the application presented on behalf of the Secretary of State for Northern Ireland is refused. The disclosure of materials with names of junior officials has, until now, been held back. That material will now start to be disclosed to Core Participants without those names being redacted.

Rt. Hon. Lord Turnbull
Omagh Bombing Inquiry
2 June 2025