OMAGH
BOMBING INQUIRY

INQUIRY LEGAL TEAM NOTE

(ANONYMITY APPLICATIONS)

Introduction

1. This Note is provided to set out the process for applications for Restriction Orders for Anonymity in the Omagh Bombing Inquiry (the Inquiry). It does not address applications for special measures, such as screening, which we would propose the Inquiry should address at a later stage when it has been determined who will be called to give live evidence.

2. In the first Part of this Note we set out the legal principles which apply in respect of anonymity applications in an inquiry under the 2005 Act. We do so in detail so that, unless there is any disagreement or matters on which a CP wishes to put particular emphasis, the same does not need to be repeated in every application.

3. In the second Part of this Note we set out the process by which anonymity applications will be determined in the Inquiry. This Part of the Note is written in the context of the Inquiry having received a number of anonymity applications *reactively* to date.

4. By *reactively* we mean that such applications have been made in response to requests for evidence from individual witnesses by the Inquiry. We consider that it would be strongly preferable for all anonymity applications which are reasonably foreseeable to be made at one time, and determined at a single hearing and by a single ruling. This is desirable for at least two reasons: as a proportionate and efficient use of the Inquiry's and the CPs' resources and, most importantly, to ensure there are no delays to disclosure caused by individuals being named in documents where anonymity applications are thought to be required. The Inquiry therefore requires anonymity applications to be made proactively. Late applications will require proper justification.

5. However, given the imperative to make progress in this Inquiry and the benefit in the Chairman giving early decisions and directions to Core Participants concerning matters which impact on disclosure, and so as not set deadlines for Core Participants which are unachievable, the process in this Note requires Core Participants to (i) consider what applications they shall wish to make in the course of the Inquiry; (ii) inform the Chairman of these applications, describe each in summary form, and state what they consider to be a reasonable timetable for making those applications; and (iii) make one or more representative anonymity applications to be determined in the week commencing 16 March 2026.

Part 1: Law

Section 19 of the Inquires Act 2005

6. Section 19 of the Inquiries Act 2005 empowers the Chairman to make restrictions upon the attendance of the public at the inquiry and on the disclosure or publication of any evidence or documents provided to the inquiry.

7. Section 19(3) provides that, in making a restriction order, the Chairman must specify only such restrictions:

    a. As are required by any statutory provision, retained enforceable EU obligation, or rule of law (section 19(3)(a)); or

    b. As the Chairman considers to be conducive to the inquiry fulfilling its terms of reference or to be necessary in the public interest (section 19(3)(b)).

8. When considering whether a restriction order should be imposed under section 19(3)(b), the Chairman must have regard "in particular" to the matters set out in section 19(4):

    a. The extent to which any restriction on attendance disclosure or publication might inhibit the allaying of public concern;

b. Any risk of harm or damage that could be avoided or reduced by such a restriction;

c. Any conditions as to confidentiality subject to which a person acquired information that he is to give, or has given to the inquiry; and

d. The extent to which not imposing any particular restriction would be likely-

i. To cause delay or to impair the efficient or effectiveness of the inquiry, or

ii. Otherwise result in additional cost (whether to public funds or to witnesses or others).

9. Section 19(5) provides that (for the purpose of section 19(4)(b) above) a risk of harm or damage includes "in particular" a risk of: a) death or injury; b) damage to national security or international relations; c) damage to the economic interests of the UK or any part of the UK; d) damage caused by disclosure of commercially sensitive information.

10. Where the basis for an application for a restriction order is risk of serious harm to national security[1] the approach which would be taken by the courts in resolving a claim for public interest immunity ("PII") is informative.

11. In *R (Mohamed) v Secretary of State for Foreign and Commonwealth Affairs (No 2)* [2009] 1 WLR 2653 at [34] the Divisional Court set out the four questions which should be posed in resolving a PII application: (1) whether there is a public interest in bringing the material into the public domain; (2) whether disclosure will bring about a real risk of serious harm to an important public interest and, if so, which interest; (3) whether the real risk of serious harm to national security and

[1] We can see that national security may be argued to be engaged on these facts. For example it may be argued that a failure to bestow anonymity on an individual may directly cause harm to national security by making that person vulnerable to approach or interference by hostile actors, or that there will be challenges of recruitment and staff retention in essential roles if staff do not have confidence that their identities will be protected by future inquiries.

international relations can be protected by other methods or more limited disclosure; and (4) if the alternatives are insufficient, where the public interest lies.

12. In *Secretary of State for Foreign and Commonwealth Affairs v Asst Deputy Coroner for Inner North London* [2013] EWHC 3724 (Admin) (the "Litvinenko Case") from [53] to [61], Goldring LJ set out nine key principles in respect of PII applications in inquests, with a particular emphasis on national security. Although this is neither a PII application nor an inquest, there are significant parallels:

    a. First, it is axiomatic that public justice is of fundamental importance. Even in cases in which national security is said to be at stake, it is for the courts, not the Government, to decide whether or not a claim to PII should be upheld [53];

    b. Second, the context of the balancing exercise, and whether it concerns national security, is critical [54];

    c. Third, there must be evidence to support an assertion that there is a real risk of damage to national security [55];

    d. Fourth, where there is "such evidence and its disclosure would have a sufficiently grave effect on national security, that would normally be an end to the matter" and enough for disclosure to be withheld. Only in less clear cases need the balancing exercise be carried out [56];

    e. Fifth, the Secretary of State's view as to the nature and extent of damage to national security which will flow from disclosure should be accepted unless there are cogent or solid reasons to reject it [57];

    f. Sixth, "the Secretary of State knew more about national security than the Coroner. The Coroner knew more about the proper administration of justice than the Secretary of State" [58];

g. Seventh, "a real and significant risk of damage to national security will generally, but not invariably, preclude disclosure." The decision is for the coroner, not the Secretary of State [59];

h. Eighth, in rejecting a Certificate from the Secretary of State, the Coroner must conclude that damage to national security is outweighed by damage to the administration of justice [60]; and

i. Ninth, a Coroner must give reasons for a decision [61].

13. It is not for a Court simply to salute a ministerial flag*: Mohamed v Secretary of State for the Home Departmen*t [2014] 3 All ER 760 at [20]. However, the Chairman may recognise the relative institutional competences of the Inquiry and a suitably experienced applicant, a point recently re-iterated by the Supreme Court in *R (Begum) v Special Immigration Appeals Commission* [2021] UKSC 7; [2021] AC 765 at [55-62,109].

14. While much of the jurisprudence (such as *Mohamed*) refers to Ministerial judgement and assertion of national security, this is not an absolute requirement, particularly where an organisation not headed by a Minister is involved. *In R v Chief Constable of West Midlands Police ex parte Wiley* [1995] 1 AC 274, public interest immunity was asserted by the Chief Constable personally. In *Kelly v Commissioner of Police of the Metropolis* (CA, The Times, August 20, 1997), it was suggested that public interest immunity could be waived by an officer of Commissioner or Assistant Commissioner rank.

15. It should be noted that some of the considerations which apply to applications for special measures in criminal cases do not apply to inquests (e.g. the point that the defendant has a right to confront his accuser, including by investigating the accuser's background) (*R v Davis* [2008] 1 AC 1128 at [21]).

16. However, in general terms the open justice principle applies with full force to inquests and inquiries (*Re LM (Reporting Restrictions: Coroner's Inquest)* [2007] CP Rep 48 at [26]-[40]).

Open justice

17. The Chairman is required to take proper account of the fundamental principle of open justice, which applies to coroners' courts and, by extension, continuations of coronial investigations in this forum: see *R (A) v Inner South London Coroner* [2005] UKHRR 44 at [20].

18. We note and repeat Part 1 of our Note on CMROs which address the Inquiry's commitment to openness.

19. The open justice principle holds that the administration of justice should generally take place in the open, as a safeguard and to maintain public confidence. See *Scott v Scott* [1913] AC 417 at 437-39 and 476-78; *A-G v Leveller Magazine Ltd* [1979] AC 440 at 449-50. In more recent times, courts applying this principle have recognised that giving names and personalities to witnesses and others featuring in the evidence can be an important aspect of openness in the justice system (*In re Guardian News and Media Ltd* [2010] 2 AC 697 at [63]).

20. Where a witness seeks to justify anonymity by reference to his/her rights to private and family life under Article 8 of the ECHR, the court usually has to perform a balancing exercise which weighs those rights against the free speech rights of media organisations under Article 10 (In re S (A Child) [2005] 1 AC 593 at [16]-[17]; SSHD v AP (No. 2) [2010] 1 WLR 1652 at [7).

21. This balancing exercise is "highly fact-specific" and "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 harm the disclosure might cause the maintenance of an

effective judicial process or to the legitimate interests of others": see *R (T) v West Yorkshire (Western Area) Coroner* [2018] 2 WLR 211 at [63].

Restrictions required by statutory provision

22. Restrictions may be "required" under s.19(3)(a) by virtue of s.6 of the Human Rights Act 1998 (HRA 1998), and the obligation thereby imposed on public authorities not to act in a manner that is incompatible with rights under the European Convention on Human Rights (ECHR).

23. **Article 2** and/or **Article 3 ECHR** may be engaged where an applicant establishes that there is a real and immediate risk of harm.

24. **Article 2** provides that everyone's right to life shall be protected by law. This imposes a negative obligation on the state and its agents not to take life save in certain specified situations. It also imposes positive obligations to protect life, which fall into two categories: (i) a general duty on the state; and (ii) operational duties which are owed by state agents and agencies in certain types of case.

25. The general duty has been described as requiring the state to "establish a framework of laws, precautions, procedures and means of enforcement which will, to the greatest extent reasonably practicable, protect life." A determination of whether that general duty has been complied with involves assessing the adequacy of legislation, policies, procedures and systems at a relatively high level of generality, taking into account their overall effect and the resources available to support them (see *R (AP) v HM Coroner for Worcestershire* (cited above) at [52] and [65]-[74]).

26. In certain types of case, it has been held that state agents (including the courts and this Inquiry – (*Guardian* at [27]) may owe an operational duty to protect an individual citizen or group of citizens against specific kinds of danger. This type of duty was first recognised by the ECtHR in *Osman v UK* (2000) 29 EHRR 245, a case concerning the duty of the police to protect individuals against reported threats.

Where the duty applies, the Court formulated the critical test for breach of the duty as follows (at [116]):

> "It must be established to [the] satisfaction [of the Court] that the authorities knew or ought to have known at the time of the existence of a real and immediate risk to the life of the individual or individuals from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk."

27. In this test, the word "real" is to be interpreted as a risk more than remote or fanciful (a low threshold), and the word "immediate" as "present and continuing" (rather than sudden or topical) (*Rabone v Pennine Care NHS Trust* [2012] 2 AC 72 at [38]-[39]; *Re Officer L* at [20]). Breach of A2 duties in relation to a death may be established without proof that a relevant failure probably caused the death. It is only necessary to prove that the deceased lost a substantial chance of surviving as a result of the breach (*Van Colle v Chief Constable of Hertfordshire* [2009] 1 AC 225 at [138]).

28. The duty is engaged only where there is a risk to life. A risk of causing physical harm, even serious harm is not enough (see *Carr v G4S Care and Justice Services (UK) Limited* [2022] EWHC 3003 (KB) at [161], following *R (Kent County Council) v HM Coroner for the County of Kent* [2012] EWHC 2768 (Admin).

29. Where Article 2 or 3 is engaged, it is very likely that this will outweigh any public interest in press freedom: *"where threats to life or safety are involved, the right of the press to freedom of expression obviously has to yield"* (*Guardian* at [27]). In contrast, the claim of a witness whose anonymity is based on Article 8 (which we address below) "may, in principle, be weaker" (*Police Officer's Application (Leave Stage)* [2012] NIQB 3 at [13]).

30. Risks of harm falling short of real and immediate risk of death (or of serious harm such as might engage Article 3 rights) may be relevant to the balancing exercise (*Sunday Newspaper Ltd's Application (Judgment No. 2)* (2012) NIQB at [17]).

31. Where a risk does fall short of the Article 2 threshold, the Chairman may go on to consider Article 3 and whether there is a real and immediate risk of ill treatment. Article 3 provides that no-one shall be subjected to torture, or to inhuman or degrading treatment or punishment. the threshold under Article 3 is one of objectively verified immediate risk of torture, or inhuman or degrading treatment.

32. **Article 8 ECHR** may be invoked to prevent or mitigate infringements of:

    a. Private and family life;

    b. Reputation (*Pfeifer v Austria* (2009) 48 EHRR 8 at [35]); and

    c. Professional life and the pursuit of a chosen career or livelihood (*Niemietz v Germany* (1993) 16 EHRR 97 at [29]).

33. Any interference with Article 8 rights must be both necessary and proportionate to be permissible. In determining whether Article 8 affords a ground for granting anonymity, the Chairman should therefore conduct the following three stage enquiry:

    a. Would the refusal of anonymity and/or other restrictions and the subsequent disclosure of the applicant's identify result in an interference with the applicant's rights under Article 8?

    b. If so, can that interference be justified as being necessary in a democratic society in the interests of the rights and freedoms of others?

    c. If so, is the interference a proportionate measure in pursuit of that justification?

34. The Inquiry is under a statutory duty to act fairly (see s.17 of the 2005 Act). This is coextensive with the common law duty of fairness which is described in the following paragraphs.

Restrictions required by rule of law

35. The common law duty of fairness can give rise to a requirement for restrictions to be ordered. Considerations under the common law test and of ECHR rights will overlap, but the common law test is broader in scope.

36. In general terms, the Chairman is asked to consider whether greater unfairness results from the public identification of the applicant or from restricting the presumption of open justice to the extent requested.

37. Matters which have been held to be relevant to the balancing exercise (in the context of witness anonymity) include:

    a. **The Inquiry's ability to arrive at the truth** (*Re Officer L* at [14]).

    b. **The public's ability to follow and understand the evidence** (*Re Officer L* at [14].)

    c. **Objective threats to Convention rights**. The rights of the applicant under the ECHR (including the rights enshrined in Article 8 as outlined above) are relevant considerations at common law.

    d. **Subjective fears of harm**. The principle that "it is unfair and wrong that witnesses should avoidably be subjected to fears arising from their giving evidence" is well established (Re Officer L [2007] 1 WLR 2135 at [22]). Unlike the test in Article 2, it is not necessary for these subjective fears of harm and injury to be objectively well-founded. If the Chairman is satisfied the fears are genuinely felt, this may be a powerful factor weighing in favour of granting restrictions. In considering the applicant's subjective fears, the following questions should be addressed (set out in *Re Officer L* at [14], citing the decision of the inquiry that was subject to appeal, which was duly approved at [26] of Lord Carswell's judgment:

        i. How serious is the applicant's fear?

ii. What is the reason for the applicant's fear?

iii. What impact would the granting of anonymity and/or other measures sought have in reducing the applicant's fear?

The weight to be attached to an applicant's subjective fears is influenced by the reasonableness of these subjective fears (see *Application by A and Others (Nelson Witnesses)* [2009] NICA 6, at [41]) and the extent to which the subjective fears are supported by the objective evidence (see *R (A) v Lord Saville of Newdigate* [2002] 1 WLR 1249 at [31]). The Chairman may consider:

e. **The public interest in maximising police resources**. The ability of the applicants or other individual to continue to perform their jobs is an important consideration, particularly where they do specialist work (see *R v Bedfordshire Coroner, ex p Local Sunday Newspapers* [2000] 164 J.P. 283). There is a clear public interest in maintaining valuable police resources and the availability of officers for specialist roles such as covert policing (see *R v Mayers* [2009] 1 Cr.App, R. 30 at [30]).

38. The evaluation of these factors should have regard to the balance of convenience to the respective parties. The grant of anonymity is often of great significance to the witness and his or her family but viewed objectively of "no great significance" to the families of the deceased. In *R v Lord Saville of Newdigate and others* [2000] 1 WLR 1855, in allowing an appeal against the refusal of anonymity in the *Bloody Sunday Inquiry*, the Court of Appeal said, at paragraph 68(4):

> "However, while of course the tribunal had fully in mind the risks to the soldiers, it does not seem to have paid sufficient attention to the fact that to deny the soldiers anonymity would certainly affect their perception of the fairness to the Inquiry. It is here that the importance of the requirement of fairness to the soldiers and their families become significant. From the point of view of the families of the dead and wounded, the harm of concealing the names is objectively of no great significance. To the soldiers and their families it is of great significance."

Jurisprudence specific to Northern Ireland

39. Of course, the law on anonymity and open justice does not differ in the Courts in Northern Ireland, but cases from that jurisdiction demonstrate that the security situation in the country affects how the balancing exercise is applied.

40. The historic threat was described in the opening words of the judgment of Lord Carswell in *Re Officer L*:

> 3. My Lords, police officers in Northern Ireland have suffered great hardships over many years as the result of the civil disturbances and their manifold consequences. Some 300 were murdered by paramilitaries and many others sustained serious injuries. Numbers of them had to move home, sometimes at very short notice because of an immediate threat of attack. They regularly kept secret, even from their neighbours and friends, the fact that they served in the police and concealed their occupation in documents wherever possible. They and their families lived under constant threat, and could never feel free completely from fear.

41. *C's application for Judicial Review* [2012] NIQB 62 provides a worked example of Article 2 being applied in the context of retired police officers giving evidence at an inquest (see [74]):

> Officers D, H and R are all retired. They have been refused anonymity and screening. I have considered whether I should remit their cases to the Coroner for him to conduct an oral interview, as apparently has happened in at least one of the ongoing inquiries in Northern Ireland in which to ascertain the extent of their vulnerability to a violent attack. I note that while such attacks could be by the placing of explosive devices they could also be attacked with gun fire. Even if they have their personal protection weapons it seems to me, as set out above, that they must be more vulnerable to attack than serving officers. Given the security assessments in their case and given the background of a severe risk of terrorist attack in Northern Ireland I think it only requires a modest degree of additional vulnerability to conclude that Article 2 is engaged in their case. I consider anonymity a relatively modest derogation in the circumstances and a step which the State is obliged to take to protect their lives. I have balanced the competing interests. I do not wish to cause further delay. I not only quash the decision of the Coroner, for the reasons above, in regard to those officers but I substitute the grant of anonymity to them.

42. Recently in *Fryers and Hogg v Secretary of State for Northern Ireland* [2024] UKUT 48 (AAC), the Upper Tribunal heard evidence about the risk to informants in Northern Ireland, and the risk to national security of their identification (see [18]):

> 18. The SOSNI reasoned in particular that it was essential to national security that those who supply information to the police do so in confidence and that any departure from that would be likely to be damaging to the security capabilities and operations of the United Kingdom now and in the future. Disclosure might assist in the identification of individuals who supply information and give a risk of serious harm to that person, their family, and associates. While acknowledging that the majority of terrorist organisations in Northern Ireland are now observing ceasefires, she observed that the threat of violence remains. She reasoned in the particular context of Northern Ireland that disclosure would damage the capabilities for countering terrorism and preventing loss of life.

43. The Upper Tribunal in that case recognised that it was to give due weight to the assessment and conclusions of SOSNI because whether something is necessary for safeguarding national security is not a question of law but a matter of judgment policy (at [70]).

Part 2: process for anonymity applications

44. The process set out below allows the Chairman to test and rule on a representative set of all anonymity applications at a hearing in the week commencing 16 March 2026, whilst having in mind a list and description of all reasonably foreseeable applications which will fall to be made later.

45. The following timetable does not allow for slippage and the dates should be treated as fixed.

46. By **4pm on Friday 27 February 2026** any applicant wishing to do so shall file with the ILT:

    a. A document listing all anonymity applications which it anticipates making during the course of the Inquiry. An important purpose of this process is to facilitate the prompt disclosure of documents to CPs, with provisional redactions being avoided so far as possible. Accordingly, this list should

include individuals both whom the applicant anticipates may be called as a witnesses and individuals who are named in documents which are within scope. In respect of each anonymity application, the document shall:

i. Give a brief summary of the nature of the application which should enable the Chairman to understand who the individual is and, in broad terms, why it will be said they should have anonymity.

ii. State, and explain, when the applicant considers the application can be made, taking into account any specific factors (such as pre-booked holidays or fixed work commitments) which relate to that individual.

b. One or more applications for anonymity which shall, at least, include the following parts:

i. Written submissions which explain why anonymity should be granted, by reference to the law in this Note as far as possible;

ii. A damage or risk assessment prepared and/or approved by a suitably senior individual and verified by a statement of truth; and

iii. Witness evidence from the person whose anonymity is sought.

47. The anonymity application(s) which an applicant files by 27 February 2026 shall be selected by the applicant as representative of the other applications which will be made later, insofar as this is possible. The purpose of this requirement is so that the rulings which the Chairman gives can determine any issues of principle or fact which are common across an applicant's cohort of applications.

48. Each of the above documents should be an open document as far as possible. The only information in a closed annex of each document should be that information which cannot be disclosed more widely for one or more reasons in s19 of the 2005 Act.

49. For the avoidance of doubt, arrangements must be made for the ILT to have any closed documents by 4pm on that day, rather than those documents being to follow.

50. We repeat paragraphs 20 – 23 of our Note on CMROs. The duty of candour which we identified in those paragraphs applies equally in the context of applications for anonymity. Where, for example, a police officer seeking anonymity has previously given evidence in their real name in a similar context, has a public profile as a result of their policing career or an open profile on social media, it is incumbent on the applicant to identify this to the Inquiry at the time of the application.

51. The ILT will consider whether any parts of the closed documents should be opened up, and inform applicants of the same as appropriate.

52. All open documents will be circulated by the ILT to CPs and the Press Association, for onward circulation to media organisations, on **Monday 2 March 2026.**

53. By **4pm on Tuesday 10 March 2026** CPs and the media may file responsive written submissions and, insofar as appropriate, evidence.

54. Insofar as the applicants consider they are required, a further round of documents in reply may be filed by **4pm on Friday 13 March 2026.**

55. A hearing will be listed in the **week commencing 16 March 2026** to determine the applications.

    a. The dates and time estimate of that listing will be set when written applications have been made and when responsive documents have been filed.

    b. There will, at least, be the following stages to the hearing:

        i. An open session in which applicants will address the law and make their applications as far as possible in that forum;

ii. Open responsive submissions from CPs and the media, including submissions on matters which those parties wish the Chairman and ILT to explore in closed;

iii. Closed sessions in which the applicants will address such matters as demand to be heard in that forum. This may be divided into multiple closed sessions, depending on the identity of the applicants and the evidence on which they rely; and

iv. Insofar as the Chairman considers it appropriate, a further open session to address any issues which arose in closed.

c. It is likely that the Chairman will make open and closed rulings on anonymity insofar as there are general issues of law and fact (including threat and risk) which are common to many or all applications, in writing to follow the hearings.

d. The Chairman will give directions for determining all other anonymity applications.

INQUIRY LEGAL TEAM

23 January 2026