

Al Sweady Inquiry

Protocol re applications for protective measures

The procedure outlined is not intended to cover every eventuality and may be subject to amendment following the Directions Hearing on 21 June 2010

The Inquiry's general approach

1. As the Chairman stated in the course of his Preliminary Statement [1:8-1-13], as this is a public inquiry and having regard to s18 of the Inquiries Act 2005, its proceedings will be conducted in public and in an open and transparent manner as is possible. Accordingly, as a general rule, all witness statements and other documents considered relevant by the Inquiry will be distributed to Core Participants and other persons concerned in the Inquiry, referred to in the Inquiry's public hearings and thereafter published on the Inquiry's website.
2. Personal information, other than the name and designation of a witness, such as their private address, telephone numbers, fax number, e-mail address, or other information that may identify where a witness currently resides, will not be disclosed and will instead be redacted for witness statements and other documents *unless* such information is – exceptionally – relevant to the discharge by the Inquiry of its Terms of Reference. In relation to such information, Core Participants and other persons concerned in the Inquiry need not make any application for anonymity or other protective measures. Where, exceptionally, the information is relevant to the discharge of the Terms of Reference the individual concerned will be informed and given the opportunity to make representations.
3. Should a Core Participant or other person concerned in the Inquiry seek the non-disclosure of any information beyond that identified in the preceding paragraph of this Protocol, he or she should make an application to the Inquiry. The procedure in relation to making such applications is set out below.

Procedure in relation to making applications for anonymity and other protective measures

4. The procedure in relation to the making and determination of such applications is as follows:
 - (1) *Stage1* 1: The Inquiry will identify in the course of its investigative work a list of people that it considers may be sources of information relevant to the work of the Inquiry. This list will, of necessity, be a provisional list of such people and will doubtless be amended as the Inquiry progresses. In the case of people who were at the material time serving military personnel, the Inquiry will distribute that list to both the MoD and to TSol. In the case of other people, where the Inquiry understands that they may be

represented by PIL, then the Inquiry will distribute that list to PIL. The distribution of such a list shall act as a trigger to legal representatives that they need to take instructions (if they have not done so already) and inform the Inquiry whether their client wishes to make an application for anonymity or other protective measures. Where a person is understood to be without legal representation they will be provided with a letter explaining what they need to do if they are concerned about being publicly identified through the Inquiry process and will be provided with assistance by the Inquiry.

- (2) *Stage 2:* The legal representatives shall provide the Inquiry, within 14 days of the receipt of the list referred to in paragraph (1) above, with lists:
 - (i) Identifying which of their clients wish to make an application for anonymity or other protective measures;
 - (ii) Identifying which of their clients do not wish to make such an application;
 - (iii) Identifying which of their clients they have been unable to contact.
- (3) *Stage 3:* Upon receipt of the lists referred to in paragraph (2) above, where appropriate, the Inquiry will commission threat assessments in relation to those people who have indicated an intention to apply for anonymity or other protective measure.
- (4) *Stage 4:* Within 28 days of the receipt of the list referred to in paragraph (1) above, any person who wishes to apply for anonymity or other protective measure must make that application. There will be three aspects to an application: (i) a statement setting out the protective measures sought, (ii) an open aspect, and (iii) a closed aspect. The closed aspect of the application will be that part of the application which consists of material upon which the applicant wishes to rely in support of their application but which cannot be disclosed to other participants in the Inquiry or to the public at large without undermining the purpose of the application. Accordingly, applications should consist of three parts:
 - (i) A simple statement, if possible on a single sheet of paper, of the protective measures which the person seeks.
 - (ii) Closed submissions and evidence. This material will be viewed by the Chairman and the Inquiry Legal Team, may be used in the course of obtaining a threat assessment, and will not be distributed to other participants in the Inquiry. The evidence should consist of a witness statement from the applicant and any other factual material relied on. The closed submissions and evidence will contain information relating to the personal and professional circumstances of the applicant which it is said support the application for protective measures but which cannot, without

defeating the purpose of the application, be revealed to other participants in the Inquiry or to the public at large.

- (iii) Open submissions and evidence. This material will be distributed to other participants in the Inquiry, for them to consider and (if appropriate) to make submissions on (see below). The evidence should consist of a witness statement from the applicant and any other factual material relied on. This should contain as much material as is possible without, of course, undermining the purpose of the application itself.

Collectively, the material submitted should set out each and every ground relied on by the applicant; should set out the personal and professional circumstances which it is submitted warrant the making of an order granting the protective measures sought; and should address the extent to which the identity of the applicant has – in connection with the matters under consideration by the Inquiry – already been disclosed (either to other participants in the Inquiry or to the public at large).

- (5) *Stage 5:* The Inquiry will distribute the open parts of the applications to other persons concerned in the Inquiry and invite short written submissions on them. If, exceptionally, it is necessary to hold an oral hearing (whether closed or open), the Inquiry will notify persons concerned in the Inquiry of that fact.
- (6) *Stage 6:* The Chairman will consider all of the material generated in relation to each application and determine each application. A closed and draft open ruling will be distributed to the applicant. The applicant will be given 14 days within which to issue proceedings for judicial review of the decision (*cf* s38(1) of the Inquiries Act 2005). The applicant will be requested to provide confirmation that the open ruling can be distributed to other persons in the Inquiry. After 14 days have elapsed, an open ruling setting out the result of the application will be distributed to the applicant, to persons concerned in the Inquiry, and to the public by way of the Inquiry's website. Where the Chairman has granted some form of protective measure, the precise terms of the protection given will be recorded in an order which will be published on the Inquiry's website.

Generic legal issues

- 5. The Chairman of the Inquiry will issue a ruling, determining general legal issues relevant to applications for anonymity and other protective measures. This ruling will be issued after the Chairman has received written (and, if necessary, oral) submissions in relation to such issues.