Press Summary

17 December 2025

In the matter of an application by the Secretary of State for Northern Ireland for Judicial Review (Appellant)

[2025] UKSC 47

On appeal from: [2024] NICA 39

Justices: Lord Reed (President), Lord Hodge (Deputy President), Lord Lloyd-Jones, Lord Sales and Lord Stephens

Background to the Appeal

This appeal concerns the test to be applied when a court judicially reviews a decision by a coroner to disclose gists of information over which Public Interest Immunity ("**PII**") is asserted by a Minister on behalf of the Crown. PII comes into play where a relevant aspect of the public interest indicates that evidence which would otherwise be relevant and admissible in legal proceedings should not be disclosed or placed in the public domain and therefore should be treated as inadmissible or as admissible only in the form of a gist of the information contained in the evidence.

The appeal involves a challenge to two decisions made by Louisa Fee ("**the Coroner**") to disclose gists of evidence over which PII was asserted by the Secretary of State for Northern Ireland, acting by the Minister of State for Northern Ireland (together, the "**Secretary of State**"). The decisions were made in the context of the inquest into the death of Liam Paul Thompson ("**the deceased**"), who was shot and killed in 1994 near a gap in a peace line separating nationalist and unionist neighbourhoods in Belfast. No one has ever been held accountable for his death. The inquest was opened in August 1995 but has been the subject of long and profoundly disturbing delays. Hearings commenced before the Coroner on 3 April 2023. The inquest moved forward in 'modules' of evidence. The third and final module of evidence was due to commence on 26 February 2024 and was scheduled to last for 3 weeks.

As a result of the Northern Ireland Troubles (Legacy and Reconciliation) Act 2023 ("**the 2023 Act**"), unless the Coroner had heard all the evidence in the inquest by 1 May 2024, she would be unable to make a final determination, verdict or findings.

One of the issues for consideration in the third module was whether the security forces had received information from a covert human intelligence source (an informer) or other sensitive and secret information in connection with the deceased's death. The Ministry of Defence and the Police Service of Northern Ireland held documents which were relevant or potentially

relevant to that question. However, the Secretary of State considered that disclosing those documents would be contrary to the public interest in protecting national security, in particular because it would be contrary to the policy of neither confirming nor denying the use of informers or other secret sources of information. The Secretary of State therefore claimed that PII attached to the relevant documents. The Chief Constable of the Police Service of Northern Ireland ("**the Chief Constable**") supported that claim. Together, the documents were referred to as 'Folders 1-7.'

Consequently, before she could hear the evidence in module three, the Coroner had to decide whether she should uphold the PII claim in relation to Folders 1-7, and if so whether it was nevertheless in the public interest to disclose some of the material contained in those documents by way of a gist (a summary drafted in such a way as to protect any secret information). The Coroner held hearings in February 2024 with a view to making that decision.

The Coroner decided to uphold the PII claim in relation to Folders 1-7. However, she also decided that a gist of the information in Folder 7 should be disclosed and admitted as evidence in the inquest ("**gist 1**"). The Secretary of State and the Chief Constable challenged this decision by judicial review in the High Court. The High Court applied ordinary public law review standards, asking whether the Coroner's decision was within a range of reasonable responses, and upheld the decision. After debate with the Chief Constable, the Coroner then issued a new judgment that a revised gist of Folder 7 ("**gist 2**") should be disclosed, superseding gist 1. The Chief Constable accepted the Coroner's decision to issue gist 2, but the Secretary of State challenged this decision by judicial review in the High Court. The High Court again applied ordinary public law standards and upheld the Coroner's decision.

The Secretary of State appealed to the Court of Appeal. By a majority, the Court of Appeal (Keegan LCJ and Horner LJ; McCloskey LJ dissenting) dismissed the appeal. The majority agreed with the High Court that the applicable standards were ordinary public law review standards, properly informed by context. Accordingly, it was not for the court to determine for itself the merits of the decision to disclose the gists. McCloskey LJ in dissent held that, in considering the balancing exercise conducted by a lower court, the role of an appellate court is one of reconsideration and not merely supervision, so that it must determine the question of disclosure for itself. He would have allowed the appeal.

The Secretary of State appeals to the Supreme Court.

Judgment

The Supreme Court unanimously allows the appeal. Lord Sales and Lord Stephens give the judgment, with which Lord Reed, Lord Hodge, and Lord Lloyd-Jones agree. It holds that neither of the two gists should be disclosed.

Reasons for the Judgment

The question of whether a piece of evidence is covered by PII is a substantive question of the law of evidence**.** Neither the public authority claiming PII, nor the court determining whether PII attaches, has any discretion in the matter. It is an objective question whether the public interest requires that the evidence not be disclosed. An appellate or reviewing court therefore has to determine whether the first instance court has identified the relevant rule of substantive law in light of a proper assessment of the public interest and applied it correctly **[124]**.

For these purposes there is a single overall public interest, albeit that the single interest is assessed by taking account of various aspects of that interest, including aspects in favour of disclosure and aspects pointing against disclosure. The task of the first instance court in determining whether PII attaches to a piece of evidence is to identify where the overall public

interest lies **[126].** The court makes that determination by conducting a balancing exercise which involves weighing the competing aspects of the public interest, as explained in *R v Chief Constable of the West Midlands, ex p Wiley* [1995] 1 AC 274 ("***Wiley***") **[125]-[127].**

If the first instance court misidentifies the public interest, then it has gone wrong in law and an appellate or reviewing court is required to correct the error **[126].** This approach is supported by the leading authorities (*Conway v Rimmer* [1968] AC 910; *R v Lewes Justices, ex p Secretary of State for the Home Department* [1973] AC 388; and *Wiley*) **[127]-[128].**

In judging the existence and extent of prejudice to the aspect of the public interest which is put forward by the public authority which asserts PII, the court will work on the basis of the assessment by that authority, subject to its compliance with normal public law principles (with the court checking, in particular, that the public authority's view about that aspect of the public interest is not irrational) **[35]-[39]; [129]-[130].** In the circumstances of this case, it is the view of the Secretary of State regarding the public interest which takes precedence over that of the Chief Constable **[36]-[39].**

A first instance court (and particularly a coroner conducting an inquest) has to take great care that it is fully and accurately informed about the competing aspects of the public interest before reaching an overall conclusion as to whether the information should be disclosed or not. Since an inquest is an inquisitorial (rather than adversarial) investigation into the circumstances of a death, the option for a litigant in adversarial proceedings of not adducing evidence in order to avoid the detrimental impact on the public interest of disclosure where the litigant thinks that this is important is not available **[133]-[144].**

Where a court decides that a gist of sensitive information should be disclosed, that gist becomes the relevant evidence in place of the underlying materials. The basic question for the court when determining whether or not a gist should be disclosed remains the same: is the overall public interest in favour of disclosure of the gist? This question is again to be determined by conducting the *Wiley* balancing exercise **[135].**

Applying those principles, the Supreme Court finds six errors in the Coroner's decisions to disclose the gists **[137]-[157]**. First, the Coroner failed to apply the correct test before departing from the assessment by the Secretary of State as to the nature and extent of damage to national security which would flow from disclosure **[138]-[139].** Secondly, the Coroner incorrectly concluded that there was no need for her to carry out a balancing exercise **[140]-[141].** Thirdly, the Coroner (when, in an alternative part of her reasoning, she carried out a balancing exercise) failed to weigh in the balance the Secretary of State's assessment of the nature and extent of damage to national security **[142]-[143].** Fourthly, the Coroner wrongly failed to obtain the views of the Secretary of State before making any decision to disclose the gist of the information contained in Folder 7 **[144]-[145].** Fifthly, in relation to the PII claim the Coroner ought to have identified the applicant as being the Secretary of State, rather than the Chief Constable. This failure caused the Coroner to fall into the error of failing to take steps to obtain and consider the reasoned views of the Secretary of State prior to deciding to disclose the gists **[146]-[147]**. Sixthly, the Coroner failed to take into account that there was no prospect of the evidence in the inquest being completed prior to the 1 May 2024 deadline. This was clearly a material consideration in the balancing exercise **[148]-[157].**

The High Court and the majority of the Court of Appeal fell into error by failing to recognise those errors. In addition, the High Court and the majority of the Court of Appeal erred by considering that they were restricted to reviewing the Coroner's decision on ordinary public law grounds, and by not recognising that as the reviewing court they ought to have formed their own view as to whether the Coroner was right or wrong on the merits and as to where the overall public interest lies **[123]-[128]; [158]-[160].**

Conducting the *Wiley* balancing exercise itself, the Supreme Court holds that the balance of the public interest clearly lies against the disclosure of the two gists **[164].** Of particular relevance to the balancing exercise in this case is that the statutory deadline means that the inquest cannot be completed, and that in any event the PII decisions in relation to Folders 1-7 mean that it was not possible for the Coroner to fulfil her statutory function since the restrictions in relation to the evidence which could be admitted in the inquest meant that she could not inquire into and make findings about all the relevant facts **[164].** A full investigation into the deceased's death could instead be achieved by a statutory inquiry employing a special closed procedure as appropriate to allow it to examine and make findings about any sensitive secret information. Alternatively, consideration could be given to a review undertaken by the Independent Commission for Reconciliation and Information Recovery **[166].** The appeal is allowed **[165].**

References in square brackets are to paragraphs in the judgment.