

OMAGH BOMBING INQUIRY

OPENING STATEMENT ON BEHALF OF THE POLICE OMBUDSMAN FOR NORTHERN IRELAND

I INTRODUCTION

1. This opening statement is prepared in accordance with the Omagh Bombing Inquiry's Opening Statement Protocol.
2. The terms of reference of the Inquiry understandably focus on whether the car bomb that detonated on 15 August 1998 could have been prevented. Police officer conduct is a theme that traverses many of the issues that the eight chapters forming the oral hearings will touch upon. In particular, the intelligence police received, and how it was handled. The opening statement on behalf of the Police Ombudsman will summarise the role her office has played so far in the examination of police handling of intelligence and, based on the material made available to it during the course of those investigations, the conclusions reached at the time.

II. THE OFFICE OF THE POLICE OMBUDSMAN FOR NORTHERN IRELAND

3. The powerful and moving evidence given during the commemorative hearings often referred to the sense of optimism the Good Friday Agreement signed on 10 April 1998 created within, and across, the communities of Northern Ireland. It is no coincidence that as part of the new era anticipated by the Agreement it was felt that an entirely new independent civilian oversight body was necessary to replace the former Independent Commission for Police Complaints. Indeed, the Agreement stated in terms “[it] provides the opportunity for a new beginning to policing in Northern Ireland with a police service capable of attracting and sustaining support from the community as a whole...”. An intrinsic feature of establishing and maintaining public support was effective accountability. INQ000363, pg26

4. The genesis of a Police Ombudsman can be traced back to a report by Dr Maurice Hayes, a civil servant, commissioned by the then Secretary of State, on the existing mechanisms for dealing with police complaints. Dr Hayes' subsequent report, *A Police Ombudsman for Northern Ireland? A Review of the Police Complaints System in Northern Ireland* was published in January 1997 and accepted by all the political parties of Northern Ireland. Its recommendations were largely reflected in subsequent legislation.

5. An important aspect of the Good Friday Agreement was the establishment of an independent commission to make recommendations for future policing arrangements in Northern Ireland. The Independent Commission for Policing in Northern Ireland was chaired by Chris Patten and published its, *Report of the Independent Commission on Policing for Northern Ireland, A New Beginning: Policing in Northern Ireland*, in September 1999. It made 175 recommendations on future policing in Northern Ireland. A number related to the new office of the Police Ombudsman for Northern Ireland and included, in summary, and insofar as relevant to the Inquiry, that:

“The Police Ombudsman should be, and be seen to be, an important institution in the governance of Northern Ireland, and should be staffed and resourced accordingly. The Ombudsman should take initiatives, not merely react to specific complaints received. He/she should exercise the power to initiate inquiries or investigations even if no specific complaint has been received.

The Ombudsman should exercise the right to investigate and comment on police policies and practices, where these are perceived to give rise to difficulties, even if the conduct of individual officers may not itself be culpable and should draw any such observations to the attention of the Chief Constable and the Policing Board.

The Ombudsman should have access to all past reports on the RUC.” INQ011925, pg 40

6. Amongst the legislation passed following the Good Friday Agreement was the Police (Northern Ireland) Act 1998 (the 1998 Act). Part VII of the 1998 Act made provision for police complaints and discipline, and section 51 of the 1998 Act created and established the statutory parameters of the role of the Police Ombudsman. The relevant part of section 51 provides, that “there shall be a Police Ombudsman for Northern Ireland” and continues, that:

“The Ombudsman shall exercise [her] powers under this Part in such manner and to such extent as appears to [her] to be best calculated to secure—

- (a) the efficiency, effectiveness and independence of the police complaints system; and
- (b) the confidence of the public and of members of the police force in that system.” INQ000319, pg 26

7. This mandatory duty on the Police Ombudsman in how she was required to exercise her powers reflected almost word-for-word, one of Dr Hayes’ key recommendations. The same section of the 1998 Act abolished The Independent Commission for Police Complaints for Northern Ireland.

8. The Police Ombudsman secures these two distinct but inter-related objectives in a number of ways, but her role is primarily investigatory. Investigations are commenced through different mechanisms: a complaint by a member of the public, or referrals from different external bodies, including the Chief Constable. In addition, reflecting the recommendations of Patton, under section 55 of the 1998 Act, an investigation can be commenced at the Police Ombudsman’s “own motion”. She can do this where any matter appears to her to indicate that a member of the police force may have committed a criminal or disciplinary offence and which is not already

the subject of a complaint, if it appears to her that it is desirable in the public interest that she should do so. INQ000319, pg 29

9. At the conclusion of her investigation, the Police Ombudsman may refer her findings to the Director of the Public Prosecution Service, so that criminal charges can be considered. Until a decision is made, or, where criminal proceedings are instituted until these reach a conclusion, she can do no more. However, once any criminal case is over, the Police Ombudsman can recommend disciplinary proceedings are brought against officers if they are still serving. She has no ability to recommend disciplinary proceedings against retired officers, or those who may have resigned.

10. Importantly, once any criminal or disciplinary proceedings, if any are brought, are at an end, the Police Ombudsman can publish a “Public Statement” under section 62 of the 1998 Act. It is a discretionary decision by her “in relation to any exercise of her functions” under Part VII of the 1998 Act. The Public Statement is entitled to set out the Police Ombudsman’s “actions, decisions and determinations”, and the reasons for these. The scope of Public Statements has been frequently challenged in the courts in Northern Ireland and, indeed, continues to be so. INQ000319, pg 34

11. The role of the Police Ombudsman as one of the bodies contributing to the state’s discharge of its Article 2 duties and obligations under the European Convention on Human Rights was recognised by the then Lord Chief Justice in one such case, *Re: Hawthorne’s Application* [2020] NICA 33, which concerned the Public Statement published following the investigation of complaints into police conduct and what is known as the Loughinisland massacre (the murder of five people by Loyalist terrorists in 1994):

“[47] The investigative role of the Ombudsman was expressly relied upon by the United Kingdom Government and referred to in the Joint Committee on Human Rights Seventh Report of Session 2014/15. The relevant passage is set out by the judge at [60]. The procedural obligation under art 2 requires that an effective and independent investigation is conducted and that there is a sufficient element of public scrutiny of the investigation or its results to secure accountability in practice as well as in theory. As the papers show the Ombudsman has

published a PS on a significant number of occasions, some of which have demonstrated by investigation that concerns about the commission of offences or misconduct were misplaced. In other cases, recommendations about future conduct have been highlighted. Many of these are examples of contribution to the satisfaction of the art 2 obligation”.

III THE ROLE OF THE POLICE OMBUDSMAN IN RELATION TO THE OMAGH BOMBING.

12. The Police Ombudsman has published two significant Public Statements in connection with the Omagh bombing. The first, on the 12th of December 2001, published by the then Police Ombudsman Baroness Nuala O’Loan, and the second, on 30 October 2014, by Dr Michael Maguire, who then held the office. Two other investigations were conducted into ancillary issues but were not the subject of Public Statements.
13. As the O’Loan Public Statement records, the Omagh bombing on the 15th of August 1998 was the worst single terrorist incident during what is known as “The Troubles” and took the lives of 29 innocent people and two unborn children. No opening statement can do justice to the compelling and emotive testimony the Inquiry has already heard during the commemorative and personal statements in Chapter 1, from those directly affected as to the impact it had. Successive Police Ombudsmen, including the current Ombudsman Marie Anderson, along with many others, have emphasised that the persons responsible for the Omagh bombing were the terrorists who planned and executed the atrocity, and nothing should ever detract from this cold and unequivocal fact.

The O’Loan Public Statement

14. The investigation commenced during Baroness O’Loan’s tenure as Police Ombudsman was prompted by media reporting of claims by a British state agent known as Kevin Fulton. On 29 July 2001, the Sunday People published an article under the headline “I told cops about Omagh”

and reported Fulton's claims that he had provided evidence to the police which could have prevented the Omagh bombing. Fulton claimed he had passed information to the Royal Ulster Constabulary on the 12 August 1998, three days before the bombing, which he claimed, if acted upon, could have prevented the atrocity. **INQ000265**

15. The Police Ombudsman used her "own motion" powers to investigate the allegations raised in the newspaper article. Baroness O'Loan determined that the test in section 55 of the 1998 Act, referred to in the introduction to this Opening Statement, was satisfied for obvious and understandable reasons:
- (i) If Fulton's allegations were true, the failure to act on the intelligence would amount to serious police misconduct.
 - (ii) In addition, the bombing itself was one of the most grave and exceptional crimes in the history of Northern Ireland; and
 - (iii) The allegations, which had attracted national and international media attention, could only cause continuing distress and pain to victims and families.

In the Police Ombudsman's view, it was clearly in the public interest to investigate the matter fully.

16. The original scope of the investigation was to determine whether any information relevant to the bombing was available to the RUC prior to its detonation and, if such information did exist, whether it had been responded to appropriately by the police. However, after reviewing some of the information received from the police, which identified the existence of intelligence prior to the date of the bombing, the Police Ombudsman decided subsequently to expand her investigation to include examining whether any intelligence held by the RUC was correctly revealed to, and exploited subsequently by, the bomb investigation team and whether evidential opportunities contained within a murder review document – commissioned by the Assistant Chief Constable in March 2000, and known as the Omagh Bomb Review Report - had been investigated.

17. The harrowing evidence the Inquiry has heard from first responders during the commemorative and personal statements in Chapter 1 is explanation enough as to why it was not part of the O'Loan investigation to examine the conduct or operational response to the bombing on 15 August 1998.
18. At the conclusion of the investigation, the Public Statement sought to deal with four areas:
- (i) Information received by the RUC from Fulton
 - (ii) An anonymous telephone call received by the RUC on the 4th of August 1998
 - (iii) The Omagh Bomb Investigation and the Omagh Bomb Review Report; and
 - (iv) Issues in relation to Special Branch and the police reaction to the Police Ombudsman's investigation
- *Fulton's information*
19. The Police Ombudsman was satisfied that there had been contact between Fulton and the RUC on five occasions between June and August 1998. There were no contact sheets in respect of two of the most important meetings on 23 July and 12 August 1998.
20. Although Fulton's reliability as a State agent had previously been questioned, by 1997 he was granted "participating informant status" (that is to say it was recognised he would be engaging in criminal acts during the period he also provided intelligence to the State as a paid human source) and he was subsequently recruited by another State agency. Fulton was paid significant sums of money by the police during his time as an informant. As a result of these facts, the Police Ombudsman was of the view that the information that Fulton provided between June and August 1998 should have been treated seriously and further action, based on the information provided, considered.
21. However, the information Fulton provided to the police did not claim a bomb was destined for Omagh, nor did he say he had taken police officers to the location where the bomb was made,

as claimed in the newspaper article. Fulton did identify an individual, known as “Person A”, as an active dissident republican terrorist, and Person A should have been treated as a firm suspect as part of the investigation that followed the bomb but was not. The overall conclusion of the Police Ombudsman was carefully worded and to the effect that even if reasonable action had been taken in respect of the intelligence Fulton provided, it was unlikely the bomb could have been prevented, based on this information alone.

- *The anonymous call*

22. The Police Ombudsman was satisfied that an anonymous telephone call was made to the police on 4 August 1998, which stated that an unspecified attack would be made on police in Omagh on 15 August 1998. Different individuals were named by the anonymous caller as being involved.
23. Details of the call were passed to Special Branch as quickly as possible, but they dismissed the call as a response to a fallout between “smugglers”. Special Branch also failed to identify available intelligence held in respect to some of the persons named by the anonymous caller. There was a failure to follow relevant force orders in respect of the threat.
24. The Police Ombudsman reached the conclusion that the information provided by the anonymous caller was mishandled. She was not able to say what impact other action between the date the call was received, and the day of the bombing would have had, or whether action other than that taken by Special Branch, could have avoided, or prevented, the Omagh bombing

- *The Omagh Bomb Investigation and the Omagh Bomb Review*

25. The police’s own Omagh Bomb Review Report identified a number of significant and fundamental errors, including the failure to link earlier incidents (some of which will be examined by the Inquiry), that important evidential opportunities were missed and a failure in

leadership and management in the investigation itself. During the twelve months or so the review itself took place, the investigation, “effectively stood still”.

26. The Police Ombudsman found that not all the intelligence which may have been relevant to the bombing had not been disclosed to the investigation team. The evidential opportunities this presented had not been exploited. There was also a failure to implement many of the recommendations of the Omagh Bomb Review Report. This was likely to have reduced the possibilities of bringing those responsible to justice.
27. The Chief Constable had failed to make good on his assurances after the bombing that “no stone would be left unturned”.

- *Special Branch*

28. The Police Ombudsman found that significant intelligence held by Special Branch was not shared with the investigation of the Omagh Bomb reviewing officer. When this intelligence was analysed by the Police Ombudsman’s own investigators, it presented:

“...a compelling picture from which the Senior Investigating Officer of the Omagh Bomb Investigation could have made informed judgments as to the possible involvement of individuals and which would have allowed for the better direction of resources. This would have had the potential to make a difference to the outcome of the investigation into the Omagh Bomb”

29. Special Branch had failed to pass the details of the anonymous call, received on 4 August 1998, to the Police Ombudsman and it, and the Chief Constable, were reluctant to grant the Police Ombudsman access to their material, contrary to the one of Patten’s key recommendations. A number of systemic failures relating to the management and dissemination of intelligence were

also found. These were summarised by Horner J, as he then was, in Gallagher at paragraph [216]:

“[216] Detective Constable Ruddy on receipt of this information drove to the RUC station in Enniskillen to brief the Detective Chief Inspector and then the Special Branch officers who were on duty. He subsequently prepared a handwritten report. The Senior Divisional Commander (“SDC”) was not informed about the telephone call until 15 August 1998. Neither was CID. It is claimed that the Force Order 99/91 required the SDC to be informed when a general threat was received so that appropriate action could be taken. It is also asserted that the warning should have been reported in the “Threat Book”, but when PONI tried to locate this during her first investigation in 2001 the book could not be found. To date no satisfactory explanation has been given for the book’s loss”. INQ000281, pg 72

30. In her final conclusions, Baroness O’Loan expressed the view, “with great sadness”:

“... that the judgment and leadership of the Chief Constable and ACC Crime have been seriously flawed. As a result of that, the chances of detaining and convicting the Omagh Bombers have been significantly reduced. The victims, their families, the people of Omagh and officers of the RUC have been let down by defective leadership, poor judgment and a lack of urgency. This should not have been the response to an incident which resulted in the death of twenty-nine people and two unborn children” INQ001258, pg 89

31. Mr Gallagher referred in his evidence to the stand-off between the Police Ombudsman and the Chief Constable caused by publication of this Public Statement. I do not intend to dwell on this for the reasons he eloquently set out. However, the practical consequences of the division, through the intervention of the Policing Board, were:

- (i) The appointment of Deputy Chief Constable Michael Tonge and Detective Chief Superintendent Phillip Jones, of the Merseyside Police, to act as an independent External Senior Officers of the Omagh bomb investigation. They presented a final report to the Northern Ireland Policing Board on 4 April 2003.
- (ii) There was a review of Special Branch took place by Mr Dan Crompton and was commissioned through Her Majesty’s Inspectorate of Constabulary (“HMIC”). The terms of

reference included the relationship between CID and Special Branch, intelligence flows, sharing intelligence with senior investigating officers, use of intelligence generated as management. Work commenced in February 2002 and the final report was published on 29 October 2002.

(iii) A report was commissioned via Her Majesty's Inspector of Constabularies ("HMI") to examine policy, practices and procedures in relation to murder enquiries in Northern Ireland. This was carried out by Mr David Blakely of HMI and was not specific to Omagh but did relate to murder investigations generally. He provided a comprehensive report in May 2003 with 10 recommendations on future practices. HMI oversaw the implementation of the recommendations contained in the report.

The Maguire Public Statement

32. The investigation by Dr Maguire was as a result of a referral from the Chief Constable on 4 May 2010. This concerned a number of specific matters relating to the manner in which the RUC Special Branch handled both intelligence, and its relationship with Government Communications Headquarters (GCHQ).
33. The investigation had obvious limitations. The 1998 Act did not permit the Police Ombudsman to investigate the role of the intelligence services, either within the United Kingdom, or outside of it. Dr Maguire was quite clear that, "there are dimensions to the preventability and investigation of this atrocity which have yet to be the subject of examination by the State". His Public Statement was necessarily circumspect in terms of what information it could place in the public domain due to the nature of the issues it had to examine. INQ000275, pg 3
34. The background to the Chief Constable referral was again media reporting on 14 and 15 September 2008 about available intelligence prior to the bombing on 15 August 1998. The nature of the intelligence was, however, markedly different from a human source – the subject of an aspect of the O'Loan investigation - and was said to derive from technical surveillance carried out by the intelligence services, which included, it was reported, "live monitoring of

[the] telephones [of the bombers] on the day of the atrocity which would have indicated their activities and assisted in their early arrest”.

35. As a result of the reporting, the then Prime Minister, Gordon Brown, invited the Intelligence Services Commissioner, as the role was then known, Sir Peter Gibson, “to review any intercepted intelligence material available to the security and intelligence agencies in relation to the Omagh bombing and how this intelligence was shared”. He reported extracts of his findings on 16 January 2009. The review by Sir Peter Gibson is likely to be examined in detail by the Inquiry in due course, so this Opening Statement will only summarise his conclusions insofar as they were relevant to the Police Ombudsman’s later Public Statement.

36. Sir Peter Gibson explained the position in relation to the handling of intercept received by Special Branch from GCHQ at paragraph [23] of his report:

“Once intercept material reached RUC HQ and Special Branch South any further publication and release of that material, even to another part, or other members of Special Branch, was subject to strict conditions imposed by GCHQ designed to achieve a balance between providing support to customers like Special Branch and protecting GCHQ’s capabilities, sources and methods. GCHQ also sought to ensure compliance with its legal obligations, in particular that required of the Director of GCHQ by section 4(2)(a) of the Intelligence Services Act 1994, viz to ensure that no information was disclosed by GCHQ except so far as necessary for the proper discharge of its functions or for the purpose of any criminal proceedings. If those persons within the RUC HQ and Special Branch South who received intelligence from GCHQ wanted to disseminate it within the RUC or even within Special Branch a set procedure had to be followed. GCHQ’s permission had to be sought for the use of intelligence in a ‘sanitised’ form, that is without revealing its source to carry out some authorised action. Thus, the release of intelligence intended to be acted upon by other officers had to be requested of GCHQ and a form of words cleared with GCHQ” INQ000277, pg 12

37. No such requests were made by Special Branch. Although it was not part of his terms of reference to investigate this, Sir Peter characterised Special Branch’s approach as “cautious”.

38. On 16 March 2010, the Northern Ireland Affairs Committee published a report, The Omagh Bombing: some remaining questions. The report considered Sir Peter Gibson's findings and observed at paragraph [56]:

"...whatever's Sir Peter's reasons for not investigating why Special Branch acted cautiously and the soundness of its reasons for doing so, we believe that further investigation is required into what Special Branch gave to the investigation team, when it was given, and what information was withheld and why. We believe that the public interest would be served by revealing to the greatest possible extent why information that might have led to arrests in a mass murder case was not used". INQ000278, pg 22

39. These events informed Dr Maguire's investigative approach. He identified seven issues that he sought to address in the context of certain intelligence obtained between 15 August 1998 and 9 September 1998:

- (i) Could action have been taken in respect of the earlier bomb attacks?
- (ii) Could arrests have been made earlier?
- (iii) Why did Special Branch act in a cautious way?
- (iv) Why were investigators not past the details of relevant telephone numbers?
- (v) Why was intelligence withheld by Special Branch?
- (vi) What was given to the investigation by Special Branch
- (vii) Assurances that police practice has changed

40. In summary, the findings in respect of these issues were as follows.

41. The Police Ombudsman's investigation did not identify intelligence held by the police in relation to the previous bomb attacks, which if acted on, would have prevented the Omagh Bombing.

42. Arrests of some suspects could have been made earlier. There was an absence of records concerning the decision-making around not making these arrests so no evidence of what, if any, rationale existed. This failure may have had an adverse impact on the investigation into the Omagh Bombing.

43. Special Branch acted cautiously because of perceived restrictions on disclosure of intelligence received from GCHQ, a fear that stepping outside of this regime might be an offence, contrary to the Official Secrets Act 1989, and the need to maintain a good relationship with the intelligence services. As Sir Peter Gibson made clear, there was a mechanism in place to facilitate dissemination of intelligence received from GCHQ to others within Special Branch and other officers, but it was less clear whether individual officers within Special Branch were aware of this. The Police Ombudsman found that their cautiousness was reasonable in the circumstances but expressed concerns that there remained conflicting legal interpretations about the sharing of intelligence derived from the interception of communications. In *Re Gallagher* [2021] NIQB 85, Horner J, as he then was, observed at paragraphs [39]- [40] that:

“[39] This approach, which was adopted by SB, was described as being “cautious” by Sir Peter Gibson and was the subject of detailed consideration by the Police Ombudsman for Northern Ireland (“PONI”) in the report which followed referrals in 2010 and 2013. PONI considered that SB acted lawfully in its interpretation of the governing legislative framework at the time and that consequently the “cautious” approach it had adopted was a lawful one.

[40] There is nothing which has been brought to my attention to suggest either that Sir Peter Gibson or PONI erred in their understanding of what was a reasonable and lawful approach to the handling of GCHQ’s Sigint”. INQ000281, pg 13

44. The failure to disclose relevant telephone numbers and withhold intelligence was largely for the same reason other intelligence was not disseminated. The failure to provide the telephone numbers diverted resources that could have been better utilised at an earlier stage of the investigation.

45. Special Branch did disclose the public telephone kiosks from where the bomb warning calls were made shortly before the explosion on 16 August 1998. Intelligence relating to suspect identities was also disclosed on 17 August and 9 September 1998.
46. The Northern Ireland Affairs Committee received assurances that lessons had been learned and that the same difficulties in sharing intelligence would be unlikely to arise today.
47. This summarises the key findings of the Police Ombudsman in the two relevant Public Statements published in connection with police conduct in the investigation of the Omagh Bombing.

IV CONCLUSION

48. It is important to emphasise that the findings reached by the Police Ombudsman in the two Public Statements referred to in this Opening Statement are restricted to police officer conduct and not the wider compass of the Inquiry's terms of reference. The findings reached, in particular, in relation to preventability, need to be seen in that limited but important context.
49. Mr Gallagher in his evidence said his objective was to find out the "truth as to how and why the Omagh Bomb happened, and why 31 innocent lives had been lost that day". The arguments his legal team put before now Lord Justice Horner persuaded him that they "give rise to plausible arguments that there was a real prospect of preventing the Omagh bombing". That judgment forms the foundations for the Inquiry's terms of reference. No apology is I hope necessary for the repetition of these:

To investigate whether the car bomb detonated in Omagh, County Tyrone on 15th August 1998 in which 29 people and two unborn children were killed could have been prevented by UK state authorities

50. The current Police Ombudsman is a Core Participant in the Inquiry, and, in this role, the terms of reference are at the forefront of her and her staff's work to assist the Inquiry in every way. She assures the families, and the Inquiry, of her unwavering determination and that of her office, to discharge this role fully and conscientiously throughout the Inquiry's duration.

SIMON MCKAY

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