

OMAGH BOMBING INQUIRY

SECRETARY OF STATE FOR NORTHERN IRELAND

OPENING STATEMENT

INTRODUCTION

1. This opening statement is made on behalf of the Secretary of State for Northern Ireland (SOSNI). A number of organisations fall within this core participant, including the UK Intelligence Community (UKIC), the Ministry of Defence (MOD), the Northern Ireland Office (NIO), the Cabinet Office (CO) and the Foreign, Commonwealth and Development Office (FCDO).
2. In opening remarks at the preliminary hearing in July 2024, the Secretary of State offered sincere condolences to all those who have suffered as a result of the Omagh bomb, which was a horrific terrorist atrocity. It is important to reiterate those condolences in this opening statement, and to acknowledge the unfathomable loss inflicted upon so many. The commemorative hearings, which took place across 14 days in January and February of this year, gave us all some insight into the unimaginable scale of human suffering which resulted from the terrorist bombing of this peaceful market town on 15 August 1998. Representatives of SOSNI attended each day of the commemorative hearings, and no one who listened to the evidence could fail to be moved by the bravery of all those who contributed.
3. The work of this Inquiry is important, and the organisations within the SOSNI core participant group have engaged meaningfully with the Inquiry at all stages from its inception, and will continue to do so. Not all of the work being done by SOSNI will be visible to other core participants, especially during these initial stages of the Inquiry. A considerable volume of work has already been undertaken since the commencement of the Inquiry, and that work continues at pace. Engagement with the Inquiry is not limited to matters capable of open disclosure, but also includes closed material. During the course of the

preliminary hearing in July 2024, Senior Counsel to the Inquiry, Mr Greaney KC, explained the disclosure process, which is the process by which the Inquiry is provided with material relevant to its terms of reference. This includes material which is considered to be sensitive under national security or other grounds, and this is often referred to as 'closed material'. As one might expect, organisations within the SOSNI core participant grouping do hold material of this nature. While it is not possible to comment in detail on closed material in this opening statement, some context for the disclosure exercise is set out later in the statement.

4. This Opening Statement will address the following issues:

- (i) The Judicial Review Background
- (ii) Disclosure
- (iii) Consideration of concessions
- (iv) Conclusion

THE JUDICIAL REVIEW BACKGROUND

5. This Inquiry was initiated following a judicial review challenge alleging that the Omagh bomb was preventable. The allegations of preventability made by the Applicant in the judicial review have been described by both Maguire J and Horner J (as they then were) as wide-ranging [*Gallagher's (Michael) Application for Judicial Review* [2021] NIQB 85 at 144]. In a detailed, 102 page, open judgment Horner J considered each of the 10 allegations of preventability. He reviewed both open and closed material, and also produced a closed judgment. He considered whether each individual ground, whether on its own or if taken in conjunction with any other ground, raised a plausible argument that there was a real prospect that the Omagh bomb could have been prevented. He set out detailed reasoning as to why he was not satisfied that any plausible argument had been raised in relation to grounds 1, 3, 4, 5, 8 and 10. In respect of grounds 2, 6, 7 and 9, Horner J found that they gave rise to plausible arguments, and noted at §310:

INQ000281, pg 46

“These grounds involve, inter alia, the consideration of terrorist activity on both sides of the border by prominent dissident terrorist republicans leading up to the Omagh bomb. It will necessarily involve the scrutiny of both OPEN and CLOSED material obtained on both sides of the border”. INQ000281, pg 101

6. At §311, Horner J concluded:

“I am not going to order a public inquiry to look at the arguable grounds of preventability. I do not intend to be prescriptive. However, it is for the government to hold an investigation that is Article 2 compliant and which can receive both OPEN and CLOSED materials on grounds 2, 6, 7 and 9”. INQ000281, pg 101

7. Grounds 2, 6, 7, and 9 are now reflected in the Inquiry’s terms of reference:

Kevin Fulton, named in ground 2, appears at 2(e) of the terms of reference; GCHQ, referred to in ground 6, is named in 2(f) & (g); tracking telephone usage, mentioned in ground 7, is referenced at 2(h); and Norman Baxter, mentioned in ground 9, is referred to at 2(d) of the terms of reference. The Inquiry’s terms of reference also pose some contextual questions around threat assessments, adequacy of disruption measures, adequacy of intelligence sharing policies and practices, including making reference to information sharing and investigations with and by state authorities in the Republic of Ireland. There is also a Provisional List of Issues (updated 31 March 2025), which is described as a guide to the topics the Chairman will investigate when he examines each aspect of the Terms of Reference. This is a provisional document. It has been made clear that it does not replace the Terms of Reference, is not intended to be exhaustive or prescriptive, and while some topics will come into greater focus as the investigation develops, others may fall away.

8. As the Inquiry is aware, substantial disclosure was produced as part of the judicial review proceedings. That included both open and closed material. The entirety of that material has been made available to the Inquiry team. The judicial review is mentioned in these submissions as it provides some context to the disclosure work that the organisations within the SOSNI core participant group had already done prior to the commencement of the Inquiry, i.e. for the purposes of discharging the duty of candour in the judicial review proceedings.

The broader scope of the Inquiry has significant practical implications in terms of the breadth of the disclosure exercise, in which the organisations within the SOSNI core participant group are engaged on an ongoing basis. SOSNI has been grateful for the helpful meetings and interactions which have taken place with the Inquiry Legal Team, as we work to assist the Inquiry by the provision of documents and information.

DISCLOSURE

9. A significant volume of work has been undertaken in relation to Inquiry disclosure. To explain the scope of the efforts, it is crucial to understand the extent of the materials involved. There is a vast volume of material which must be collated, carefully reviewed and provided to the Inquiry. This process is not simply a matter of gathering readily available paperwork—it is an immense logistical undertaking, requiring meticulous attention to detail, thorough analysis, and a strategic, organised approach. There are teams of counsel, based in both London and Belfast, working together to progress disclosure as efficiently as possible. The Government Legal Department (GLD) has also devoted considerable resource to ensuring that the disclosure process is conducted effectively and that relevant documents are provided to the inquiry as soon as possible.
10. The Provisional List of Issues asks what was or should have been known by the UK State about the involvement of dissident republican organisations and individuals in a list of 31 attacks and attempted attacks, which occurred between July 1997 and August 1998. The scale of the work involved in seeking and providing materials related to these 31 historic incidents cannot be overstated. This is an extraordinary effort that requires significant resources and expertise. The passage of time means that individuals in post at the time may no longer be available. Locating and identifying documentation which is relevant to 31 separate incidents, as well as the Omagh bombing itself, inevitably has a significant impact on the scope of the discovery exercise.
11. The Omagh bombing itself occurred over 25 years ago. Documents were generated and stored differently 25 years ago, compared to our modern

systems today. Relevant documents have been stored in a variety of ways, often across multiple systems and repositories. We cannot apply modern metrics when considering how this work can be performed. While these are issues for the organisations within the SOSNI core participant group to grapple with, and they are doing so, it is important to be realistic about the impact this has on the complexity of the disclosure process and the speed at which it can be completed. It is important that searches for relevant material are thorough and comprehensive. These explanations of the challenges inherent in the work required are intended to assist those core participants who necessarily do not have visibility of SOSNI's work to date, to understand some of the factors relevant to the disclosure exercise.

12. As previously indicated, there will inevitably be material which is not capable of being disclosed in open despite the passage of time. In the judicial review proceedings, a rigorous Closed Material Procedure was engaged in, to determine what could and could not be released into open. The Inquiry has always recognised the potential necessity for closed evidence and closed hearings, as is apparent from the terms of reference.
13. Disclosure exercises involving closed material have their own challenges and that adds further logistical complexity.
14. It should be stressed that the Chairman will have sight of the totality of the material identified as potentially relevant by HMG. Core participants who do not have access to closed material have the benefit of knowing that the Chairman will see the material, and will be able to analyse and assess it, and its implications for the Inquiry. As a matter of principle, there is certain material that is required to be treated very carefully for national security or other legal or public policy reasons. The fact that it is kept in closed however, does not mean that it is not the subject of intense scrutiny by the Chairman and his legal team.
15. The organisations within the SOSNI core participant grouping will continue to engage with the Inquiry Team in relation to disclosure, and we welcome the opportunity to continue those productive interactions, to assist the Inquiry in its important work.

CONSIDERATION OF CONCESSIONS

16. The Opening Statement Protocol drafted by the Inquiry indicates that Opening Statements will be subject to subsequent scrutiny by the Inquiry, as part of an analysis as to whether early concessions could have been made. The Protocol notes that the Inquiry is a search for the truth, and that it will achieve that aim most effectively and efficiently if State Core Participants engage meaningfully and fully at this stage, respecting the inquisitorial nature of the proceedings.

17. The organisations within the SOSNI core participant group have engaged meaningfully throughout, and will continue to do so, while respecting the inquisitorial nature of the proceedings. However, this Inquiry is at a very early stage. No evidence has been heard beyond the commemorative hearings, which had an important purpose but (entirely appropriately) did not seek to address the matters in the terms of reference. As of the date of writing, only witness evidence on specific and relatively limited matters has been elicited from SOSNI. That is, again, entirely appropriate to the stage which this Inquiry has presently reached. While a substantial amount of work has been done on disclosure, as outlined above, a very significant volume of work still remains to be done. The passage of time means that contemporaneous documents, for example, may be of particular assistance in any analysis of what happened and why, in relation to any particular incident or event. Any early analysis of the material before the disclosure exercise has been completed risks being incomplete and could be misleading. Accordingly, it is important that anything said by the SOSNI core participant group is done at a time when all relevant documents have been identified and analysed with care.

18. In relation to those organisations which were involved in the judicial review, the material gathered for that litigation was, of course, subject to careful analysis. As outlined earlier, a highly experienced judge, having heard submissions from Open representatives, Special Advocates and Respondent counsel, and having considered, “hundreds of exhibits, thousands of pages of evidence and submissions and countless authorities” [at §19], found that the relatively low bar of plausible argument was made out in relation to 4 out of 10 grounds. There

INQ000281, pg 7

was no plausible argument in relation to the remaining 6 grounds. In relation to the 4 grounds which the judge considered reached the threshold of plausible argument, he made clear (including at §§265, 269, 270, 271, 274 & 310) the importance which he placed on information from the Republic of Ireland, in terms of answering outstanding queries. SOSNI has welcomed the Memorandum of Understanding between the Inquiry and the Irish Government that was signed in April 2025. SOSNI looks forward to material, of the sort envisaged by the judge in the judicial review proceedings, being made available. At that stage, it will be possible to more meaningfully advance the analysis of this issue. INQ000281, pg 86-89 & 101

19. Similarly, other participants may have relevant information, not yet in the possession of SOSNI, which may have an impact on these considerations. Accordingly, matters are at an early stage in terms of the evidential picture.

20. At this stage in the disclosure process, SOSNI is simply not in any position to make an assessment of whether the making of any concession is appropriate. The available information would result in an incomplete picture, and the risk of error is significant.

CONCLUSION

21. The organisations within the SOSNI core participant group are perhaps in a different position from some of the other core participants in relation to closed disclosure, although it is acknowledged that the issue is not unique to SOSNI. A significant volume of work, and productive engagement with the Inquiry Legal Team, has been ongoing, but there are necessary restrictions on what can be said in open about any work on closed disclosure. The Inquiry has received a number of updates from the SOSNI core participant group about the progress of closed disclosure, and SOSNI is grateful to the Inquiry Legal Team for these helpful meetings.

22. The work of the Inquiry is important. SOSNI's role is to assist the inquiry by disclosing relevant documents and providing relevant information, so that the

Inquiry can address its terms of reference. SOSNI continues its disclosure and evidence gathering work, which deserves to be done with care.

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