A REPORT INTO THE OMAGH BOMBING, 15 AUGUST 1998

MAY 2013

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EXECUTIVE SUMMARY AND REMAINING QUESTIONS

Rights Watch (UK) has produced a report into the Omagh Bombing, 15 August 1998 after being approached by the Omagh Support and Self Help Group who represent a number of the relatives of the victims and some of the survivors. They seek an independent cross-border public inquiry into the attack on their town so soon after the Belfast/Good Friday Agreement making this act of terrorist violence the first after the peace and therefore overshadowing the ensuing evolution of peace in Northern Ireland after bloody internal conflict. The bombing continues to overshadow the town of Omagh. This burden could be relieved in part if there were some answers to some questions about the failure of state mechanisms to prevent the Omagh bombing, and if it was not preventable, the failure to bring the perpetrators to justice. Justice through accountability would then contribute to peace and progress in Northern Ireland and alleviate some of the suffering of this town.

RW (UK) has advised on the available models of investigation available to hold the state to account where there has been a violation of human rights in which the state is implicated either as the direct perpetrator or where the abuse could have been prevented. Additionally, we have attended meetings with the UK government where the members of the Omagh Support and Self Help Group have been in negotiation; we have lobbied in the UK and in the USA regarding the Omagh bombing and its significance as occurring so soon after the brokering of the Belfast/Good Friday Agreement and therefore being a tragedy of the peace and not of the conflict.

The Omagh bombing was specifically exempt from the remit of both the Historical Enquiries Team (part of the Police Service for Northern Ireland) and the Consultation Group on the Past in Northern Ireland because it occurred after the Belfast/GFA Agreement. It is therefore not officially classified as part of the legacy of the conflict in Northern Ireland.

This Report is a supplement to the material already gathered by the Omagh Support and Self-Help Group and the report they commissioned of new evidence which was presented to the UK government in June 2012. The RW (UK) Report describes the events leading up to the bombing of Omagh, the bombing itself and the subsequent investigations. The report concentrates on identifying what was known prior to the Omagh bomb by the state agencies of the UK, the Republic of Ireland the USA.

The RW (UK) Report identifies a number of key questions remaining unanswered regarding what was known by three states before the bombing of Omagh and suggests mechanisms through which the state can be held to account for failing to prevent the Omagh bomb, or to take the necessary steps to avert it even if the actual event could not have realistically been prevented. We are of the opinion that the Omagh bombing could have been prevented through the intelligence which was available and that the subsequent investigations into it were lacklustre, hoodwinked or short resourced to achieve effective answers. In any event, we agree with the many relates of victims and survivors that there now needs to be an independent cross-border inquiry into the Omagh bomb involving the governments of the UK, the Republic of Ireland and the USA. The fourth state with a vested interest in the Omagh bombing is Spain who lost a number of citizens in the bomb attack. An independent cross-border public inquiry would be

mark further progress toward peace in Northern Ireland, still being delivered under the accords introduced with international agreement.

SOME REMAINING QUESTIONS (NOT EXHAUSTIVE)

1. What public interest justification can there be, if any, for the withholding of intelligence, information or evidence from the team of detectives who investigated the Omagh bombing?
2. Can the UK government justify its argument that the public interest is best served by withholding available intercept evidence, rather than by using it to bring perpetrators of the Omagh bomb to justice?
3. Arrests of those suspected of the Omagh bomb could have been made quickly, and forensic evidence obtained, had there been an earlier exchange of information between state agencies at both domestic and international level. If the names of individuals who owned mobile telephones, thought to have been used in the bombing, were known to the intelligence services or the police why were arrests not made?
4. Why did the terms of reference of Sir Peter Gibson, which included how intelligence about the Omagh bomb was shared, not stretch as far as investigating Special Branch's caution in not sharing relevant intelligence?
5. Why was Sir Peter Gibson not able to interview all the witnesses he thought relevant?
6. What findings were made by the Intelligence and Security Committee in relation to the report of Sir Peter Gibson?
7. What measures have been taken in the light of the decision of the Northern Ireland Office (NIO) to recommend legal aid in the civil action brought against the alleged perpetrators of the Omagh bomb, to extend this provision to all victims of terrorist violence where the criminal justice system has failed to bring suspects to account?
8. What further investigation is or will be undertaken into how intelligence provided to Special Branch in August 1998 was used?
9. MI5 and the FBI were jointly handling an informant (David Rupert) in the Republic of Ireland (ROI) who had infiltrated the dissident movement of the Real IRA (RIRA) at a high level. In April 1998 four months before the Omagh Bomb this informant provided information that Londonderry/Derry and Omagh were potential targets for bombing attacks. David Rupert also reported that the dissident republicans had decided to shorten the warning time of bomb attacks. The PSNI Assistant Chief Constable informed the Omagh families of this in February 2006. The PSNI had not learned of this source or the information he provided until January of that year. The Omagh Investigation Team was never provided with the information. Why?
10. In September 2008, the BBC broadcast a current affairs programme entitled *Panorama* "Omagh*:* What the Police Were Never Told". In it was claimed that GCHQ had been monitoring and recording the voices of members of the bomb team as they drove five hundred pounds of explosives towards Omagh on 15 August 1998. What happened to this intelligence?
11. It has emerged that the Irish Government was in secret talks with the Real IRA at the highest level. It has also emerged that An Garda Siochana had well-placed informants close to and at the top of the Real IRA leadership. A member of the Gardaí, Detective Sergeant John White made public claims that he had information passed on from Gardaí informant Paddy Dixon regarding the Real IRA and the Omagh Bomb. The Police Service of Northern Ireland considered Paddy Dixon to be a potentially crucial witness in the

investigation of the Omagh bombing. They made a number of formal requests to interview him without success. The Gardaí denied them access to Dixon who remains on a witness programme scheme. Why the PSNI was denied access?

12. Why did the Nally Report not interview Paddy Dixon, Norman Baxter, the PSNI Senior Investigating Office, and why did it not access John White's telephone records? Why has the Nally Report never been fully published?
13. The Omagh bomb attack was launched from the Republic of Ireland with the bombers spending less than forty minutes in Northern Ireland. However, the Irish Government has repeatedly failed to assist the PSNI in their investigation of the atrocity. Why?
14. The Irish Government has repeatedly refused to hand over DNA profiles of suspects to the PSNI. In addition the Garda investigation has failed to charge a single person with murder at Omagh. Despite a confession from the person who stole the car in Carrickmacross which was used in the Omagh bombing no charges have ever been brought against him why?
15. Throughout the course of the trial of Omagh bomb suspect Sean Hoey, significant failings in forensic processes were revealed including potential forensic contamination. In addition key pieces of evidence including the Timer Power Units of a number of linked bombing incidents had been lost. Why?

POTENTIAL STRATEGIC INTERVENTIONS

1. Can the view of the UK government, expressed by a previous Secretary of State, that Omagh "had its inquiry" be challenged on the grounds of a reasonable expectation having arisen because of the previous Northern Ireland inquiries (Wright, Nelson and Hamill – statutory; Bloody Sunday – non-statutory; Smithwick in the ROI – statutory)?
2. Can a challenge be made either by disclosure or abuse of parliamentary process for the full report of Sir Peter Gibson to be published? Are the Osmotherly Rules (formally unadopted by the House of Commons) enforceable/challengeable?
3. Is there a current investigation (at any level) and is the Human Rights Act 1999 engaged in terms of the liability of a statutory authority (PSNI, PONI, MI5/GCHQ)?
4. Would a new inquest be an appropriate route of investigation?
5. Is there a further civil route (private prosecution) beyond the Omagh civil litigation?
6. Were the failings in the Republic of Ireland prosecution of Colm Murphy challengeable? Was the jurisdiction point between the ROI and UK in terms of the investigation? (*Silih v Slovenia* (2009) 49 E.H.R.R. 37 – investigations before agreement)
7. As Omagh is not part of the Historical Enquiries Team remit what mechanisms continue to exist to discharge the Article 2 procedural obligation in the absence of an inquest?
8. As Spanish nationals were killed what legal form might the Spanish government invoke in terms of an Article 2 investigation of a neighbour COE state?
9. Are there any models of cross-border public inquiries involving two countries (and possibly four in this case?)
10. Would a non-statutory Anglo-Irish investigation suffice?
11. What judicial lessons have been learned from the unique civil litigation (the agreement between the NI LCJ and the ROI Supreme Court?)
12. Can an individual in a state witness programme be forced to give evidence in a third state?
13. If there was to be a criminal prosecution in NIO/ROI would a 'Diplock process' (criminal trial without jury) or equivalent be sufficient in this case?

THE OMAGH BOMBING, 15 AUGUST 1998

CONTENTS

1. INTRODUCTION

1.1 Rights Watch (UK) is an independent non-governmental organisation that has been providing support and services to anyone whose human rights were violated as a result of conflict. Our mission is to promote human rights and to hold governments to account, drawing upon the lessons learned from the conflict in Northern Ireland.

1.2 This report concerns the events which took place in the small town of Omagh, County Tyrone, Northern Ireland on Saturday 15 August 1998. A bomb planted by the Real IRA (who appear to have been working with a bomb made by the Continuity IRA) exploded in the town, killing 29 people and two unborn babies and injuring at least 220 others, leaving permanent and widespread physical and psychological scars.[1] Those who died in the bombing were:

James Barker (12), from Buncrana, County Donegal, Republic of Ireland.

Fernando Blasco Baselga (12), from Madrid, Spain. Fernando was a Spanish student who was one of a group taking part in a student exchange programme to Buncrana, County Donegal, Republic of Ireland.

Geraldine Breslin (43), from Omagh, County Tyrone, Northern Ireland.

Deborah Anne Cartwright (20), from Birchwood, Omagh, County Tyrone, Northern Ireland.

Gareth Conway (18), from Carrickmore, County Tyrone, Northern Ireland.

Breda Devine (20 months), from Donemana, County Tyrone, Northern Ireland.

Oran Doherty (8), from Buncrana, County Donegal, Republic of Ireland.

Aidan Gallagher (21), from Omagh, County Tyrone, Northern Ireland.

Esther Gibson (36), from Beragh, County Tyrone, Northern Ireland.

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1 Information about the Omagh bombing can be found on the CAIN (Conflict Archive on the Internet) website hosted the by University of Ulster
http://cain.ulst.ac.uk/events/omagh/index.html
See also the Omagh Digital Archive at
http://www.omagharchive.co.uk
and for a list of some of those injured see
http://www.wesleyjohnston.com/users/ireland/past/omagh/injured.html

A description of the Omagh bombing and its immediate effect can be found in *Lost Lives: The stories of the men, women and children who died as a result of the Northern Ireland Troubles*, edited by David McKittrick, Seamus Ketters, Brian Feeney, Chris Thornton and David McVeigh, Mainstream Publishing, 2004, pages 1437 – 1444; see also pages 1444 – 1461. See also *Omagh: Voices of Loss*, edited by Graham Spencer, Appletree Press, 2005.

Mary Grimes (65), from Beragh, County Tyrone, Northern Ireland; mother of Avril Monaghan and grandmother of Maura Monaghan, also killed in the explosion.

Olive Hawkes (60), from Omagh, County Tyrone, Northern Ireland.

Julia Hughes (21), from Omagh, County Tyrone, Northern Ireland.

Brenda Logue (17), from Omagh, County Tyrone, Northern Ireland.

Anne McCombe (48), from Omagh, County Tyrone, Northern Ireland

Brian McCrory (54), from Omagh, County Tyrone, Northern Ireland.

Samantha McFarland (17), from Omagh, County Tyrone, Northern Ireland.

Seán McGrath (61), from Omagh, County Tyrone, Northern Ireland (died three weeks after the Omagh bombing).

Sean McLaughlin (12), from Buncrana, County Donegal, Republic of Ireland.

Jolene Marlow (17), from Eskra, Omagh, County Tyrone, Northern Ireland.

Avril Monaghan (30), from Aughadarna, County Tyrone, Northern Ireland. Avril was seven months pregnant with twins. She was also Maura Monaghan's mother and Mary Grimes' daughter.

Maura Monaghan (18 months), from Aughadarna, County Tyrone, Northern Ireland. Maura was Avril Monaghan's daughter and Mary Grimes' grand-daughter.

Alan Radford (16), from Omagh, County Tyrone, Northern Ireland.

Rocio Abad Ramos (23), from Madrid, Spain. Rocio was a Spanish group leader who was taking part in the student exchange programme to Buncrana, County Donegal, Republic of Ireland.

Elizabeth (Libby) Rush (57), from Omagh, County Tyrone, Northern Ireland.
Veda Short (56), from Gortaclare, Omagh, County Tyrone, Northern Ireland.

Philomena Skelton (39), from Dooish, Drumquin, County Tyrone, Northern Ireland.

Frederick White (60), from Omagh, County Tyrone, Northern Ireland. Father of Bryan White.

Bryan White (26), from Omagh, County Tyrone, Northern Ireland. Son of Frederick White.

Lorraine Wilson (15), from Omagh, County Tyrone, Northern Ireland.

1.3 The Omagh Support and Self Help Group (OSSHG) described the bombing of their town in the following terms:

> "On Saturday 15 August 1998 at 3.10pm a car bomb exploded in Omagh, County Tyrone, killing 29 people plus two unborn children, and physically injuring over 200 others. 21 died where they fell while 8 more died on the way to, or in, hospital. Nine children (5 girls and 4 boys; including an 18 month-old baby), two unborn children, 14 women and 6 men died at the scene or in hospital. The powerful blast wave was so powerful that the bodies of several victims were never found. Further from the epicentre, the blast tore limbs off many people. The intense heat of the explosion caused severe burns. As well as the blast, shards of glass and metal sliced through the crowd of civilians. The bomb not only affected those directly injured and bereaved, but impacted significantly on the wider community."[2]

1.4 This was the largest number of people killed in a single terrorist act in the history of the conflict in Northern Ireland. Although they are not all named in this report, it is important to remember the much larger number of victims, up to 220, who are still living with the consequences of their injuries, and who are named in Appendix A of this report. The relatives and of all those who were affected by the Omagh bombing, including police officers, ambulance crew and other medical staff, and those who witnessed the bombing should also be remembered.

1.5 In the immediate days after the Omagh bombing, British Prime Minister Tony Blair condemned the attack as an "appalling act of savagery and evil" and spoke of his "total determination to bring the perpetrators to justice".[3] In the Republic of Ireland (ROI), Taoiseach Bertie Ahern promised that his country would "ruthlessly suppress those responsible for the attack".[4] The British Secretary of State for Northern Ireland Mo Mowlam described the justification given by the perpetrators as "a pathetic attempt at an excuse for mass murder"[5] and vowed, "We will continue to leave no stone unturned to hunt the men down who did this."[6] Gerry Adams of Sinn Féin made an unprecedented statement saying, "I am totally horrified by this action. I condemn it without any equivocation whatsoever." (For years Sinn Féin had refused to be drawn into the politics of condemnation).[7] No-one has yet been held responsible under criminal law for the Omagh bombing.

1.6 In the days immediately following the Omagh bomb there was a civic ceremony to remember the dead. It was attended by then British Deputy Prime Minister John

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2 http://www.omaghbomb.co.uk

3 *Omagh bombing kills 28*, *BBC News*, 16 August 1998

4 http://www.wesleyjohnston.com/users/ireland/past/omagh/responses.html

5 *Lost Lives: The stories of the men, women and children who died as a result of the Northern Ireland Troubles*, edited by David McKittrick, Seamus Ketters, Brian Feeney, Chris Thornton and David McVeigh, Mainstream Publishing, 2004, page 1441

6 *Dublin gets tough with terrorism as 16 more bomb victims buried, Scottish Herald*, 20 August 1998

7 *Lost Lives,* Ibid, page 1442

Prescott and the Irish President Mary McAleese and by Taoiseach Bertie Ahern and senior political and religious figures from both sides of the border. Prince Charles visited the town and met a number of the injured at Tyrone County Hospital. Two weeks after the explosion Omagh was visited by the then President of the USA Bill Clinton and his wife Hillary Clinton. They were accompanied by British Prime Minister Tony Blair and his wife Cherie.[8] Such was the shock on the world political stage so shortly following the historic Belfast/Good Friday Agreement of four months earlier.

1.7 The purpose of this RW(U) report is to establish what is known about the circumstances of the Omagh bombing. The report also highlights the extent of the remaining uncertainties about this incident, and suggests ways to establish how these can and must be resolved. The report demonstrates how, because of these uncertainties, the families of those killed and the surviving victims have been repeatedly betrayed by the criminal justice system. It is imperative that the significant questions surrounding the Omagh bombing are answered in order to secure justice and accountability. These are fundamental principles in building the peace process in Northern Ireland following the Belfast/Good Friday Agreement. RW(UK) supports the demand by the relatives of those killed and victims for an independent cross-border inquiry into all the circumstances surrounding the Omagh bombing.

2 BACKGROUND TO THE OMAGH BOMBING

2.1 The conflict in Northern Ireland was characterised by many violent events. However, by July 1997 the Provisional Irish Republican Army (PIRA) had agreed to decommission its weapons and stated its commitment to a ceasefire process following the introduction of the Mitchell Principles published on January 1996. The Mitchell Principles embodied the values of democracy and non-violence as prerequisites if a peace process in Northern Ireland was going to succeed.[9] On 4 April 1998 a 65-page agreement was drawn up which proposed devolution of some aspects of central government power to a Northern Ireland Assembly. Called the Belfast/Good Friday Agreement (Belfast/GFA), this document was welcomed by the majority of the political parties in Northern Ireland including Sinn Féin.

2.2 Despite these positive developments, this was a period of heightened tension during which various groups on both political sides in Northern Ireland refused to accept the implications of the Belfast/Good Friday Agreement, with Democratic Unionist Party (DUP) leader Ian Paisley MP damning the Agreement as "treacherous".[10] In particular, a splinter group of former PIRA members who now considered themselves betrayed by

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8 Ibid, pages 1442 – 1443

9 *Northern Ireland: 1998–1999*, *BBC News,* 23 October 2003; see also the CAIN website entry http://cain.ulst.ac.uk/events/peace/talks.htm#decomm
The Mitchell Principles recommended: total disarmament of all paramilitary organisations to be verified by an independent commission; the renunciation of the use of force; an agreement to abide by any agreement reached in all-party negotiations and the reliance solely upon democratic methods to resolve disputes and to ensure that all "punishment killings" and "punishment beatings" should cease.

10 *Northern Ireland: 1998–1999*, *BBC News,* 23 October 2003

their organisation's commitment to the peace process formed the Real IRA (RIRA) in October 1997. The RIRA rejected the 1996 Mitchell Principles underpinning the Belfast/GFA to which all parties to the peace process had to subscribe. The RIRA began a campaign based on violence the purpose of which was to destroy the evolving peace.

2.3 The RIRA had commenced its campaign of bombings on 6 January 1998 starting in Banbridge, County Down, Northern Ireland. Throughout 1998 the RIRA was believed to be responsible for more than 15 actual and attempted bomb and mortar attacks. It was strongly suspected by the Royal Ulster Constabulary (RUC) and later established in civil proceedings in the courts in Northern Ireland that this included the Omagh bombing in August of that year. In the aftermath of the Omagh bombing and due to the widespread public revulsion generated by the attack and pressure from the PIRA, the RRA, although ultimately only temporarily, suspended military operations on 18 August 1998 and announced a ceasefire on 7 September 1998.[11]

3 EVENTS LEADING TO THE OMAGH BOMBING

3.1 THE INTELLIGENCE AVAILABLE BEFORE THE OMAGH BOMBING

3.1.1 Since the Omagh bombing, there have been widespread allegations that intelligence was available to both An Garda Síochána and the RUC[12] before the Omagh bombing and during the investigatory process afterwards which may have contributed to preventing the bombing of Omagh.

3.1.2 During the period since the Omagh bombing, there has been a growing series of leaks of parts of the intelligence available to state agencies before the event. The knowledge that intelligence was available has caused particular distress to the families of those who died and those who were injured in the attack as it has eroded confidence in the cross-border police operation which took place immediately following the Omagh bomb and the subsequent reviews of those investigations.

3.1.3 What needs to be established is if the Omagh bombing could have been prevented on the basis of the available intelligence? RW(UK) is not able to this answer this question because much of the material to answer this question is not in the public domain. However, it is clear that the intelligence handling, both before and after the Omagh bombing, had a negative impact on the investigation and thus the ability of the families and victims to obtain justice. It is also important to note that the intelligence relating to the Omagh bombing is contested, particularly in relation to its veracity, its source and the timing of its emergence. It must also be remembered that the Omagh bombing was designed to shatter the fragile peace process in the wake of the Northern Ireland Belfast/GFA and took place during the heightened tension of the 1998 marching season. The policing, security and intelligence operations both before and after the bombing were bound to have been affected by those matters.

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11 See http://cain.ulst.ac.uk/issues/violence/chrondissidents.htm
See also *On This Day: 1998: Dozens Die in Omagh bombing, BBC News*, 15 August 1998

12 An Garda Síochána is the police service of the ROI and the RUC is the former name of what is now called the Police Service of Northern Ireland (PSNI)

3.2 **THE ANONYMOUS TELEPHONE CALL TO OMAGH POLICE STATION**

3.2.1 An anonymous telephone call was received by Detective Constable W at approximately 10:00 am on 4 August 1998 at Omagh RUC station. Detective Constable W said that the telephone caller was a man aged 40-45, who had a County Tyrone accent, telephoning from the ROI, but who refused to be identified. Detective Constable W said that the telephone caller gave information about a possible attack on the RUC in either Omagh or the surrounding two to three mile area to take place on 15 August 1998. The telephone caller named two people (C and D), and provided the address of one of the individuals and the area in which the other resided. He also gave the nickname of a third person, E, who would transfer the weapons to be used in an attack. He gave the address to which the weapons would be taken, and named the family living there as F. Detective Constable W said that at no time did the telephone caller mention a bomb, but rather four AK47 rifles and two rocket launchers. The telephone call lasted roughly ten minutes and Detective Constable W made notes on paper. Detective Constable W said that definite arrangements were made that the anonymous caller would telephone back on 5 August 1998 between 8:00 pm and 9:00 pm.[13]

3.2.2 Detective Constable W telephoned Detective Chief Inspector AB at Enniskillen RUC station and briefed him on the received information (but not in full detail). Detective Constable W was told by Detective Chief Inspector AB to visit the Enniskillen RUC station in person, since there was a RUC Special Branch office there. Detective Constable W then went on a scheduled visit to Omagh Magistrates' Court and arrived at Enniskillen between 12:00 pm and 1:00 pm on 4 August 1998, where he briefed Detective Chief Inspector AB in person on the information received in the telephone call. On relaying the information which had been received, it became clear to Detective Constable W that Detective Chief Inspector AB knew the individuals mentioned in the telephone call. Detective Chief Inspector AB made notes throughout the meeting and Detective Constable W was "satisfied" that "he had been given a fair hearing" by the senior police officer.[14]

3.2.3 AB and W then went immediately to the Special Branch office at Enniskillen RUC station and met Detective Sergeant AG and two other officers, whose names Detective Constable W could not remember. Detective Sergeant AG was informed by Detective Constable W that men C, D and E planned to bring four AK47s and two rocket launchers into Northern Ireland from the ROI. Detective Sergeant AG was also told that these were to be used to carry out an attack on the police three miles outside Omagh on 15 August 1998. Detective Sergeant AG knew men C and D to be fuel smugglers but he did not know man E or family F. Detective Sergeant AG had "considerable knowledge of Republican terrorist suspects" and further checks on man E and family F revealed that although they were new to the area, they had no connections with known terrorist organisations.[15]

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13 *Statement of Detective Constable W*, PSNI Judicial Review Papers, 23 December 2001

14 Ibid

15 *Statement of Detective Sergeant AG,* PSNI Judicial Review Papers, 23 December 2001

3.2.4 As Detective Sergeant AG believed men C and D were known fuel smugglers, he said that he considered that the information that they were to carry out a rocket attack to be inaccurate. Detective Sergeant AG explained that this was because republican terrorists did not use fuel smugglers to carry out serious and planned attacks because of their tendency to "talk" to the police in order to cover up their own illegal activities. The information which had been received in relation to a possible attack on Omagh was therefore graded as F4 (source 'unknown', reliability 'doubtful'). Arrangements were made for a Special Branch Officer to be present for the arranged telephone call to Omagh RUC station on 5 August 1998 but the man never rang back.

3.2.5 Detective Sergeant AG said that checks, namely telephone inquiries with the Omagh and Clogher RUC stations and with An Garda Síochána in the ROI, were then carried out on man E and family F but that the enquiries had "drawn a blank". Detective Sergeant AG said that initial surveillance was then organised to cover the F family home.[16]

3.2.6 On 5 August 1998, the RUC sought technical assistance to trace the origin of the anonymous telephone call made to the Omagh RUC station on 4 August 1998, without success.[17] On 6 August 1998, Detective Inspector BJ was given a written debriefing of the information from the anonymous telephone call received on 4 August. On receipt of this information, Detective Inspector BJ helped to co-ordinate an initial reconnaissance of the area of the house of family F using the Close Observation Platoon (COP) of the British army. The COP reported back that no camera or observation post could cover the area.[18]

3.2.7 By 10 August 1998 no further information had been received following the telephone call of 4 August 1998, so the RUC operation was suspended pending a further review.[19] On 12 August 1998, during a Sub-Divisional Action Committee meeting, Detective Inspector AC and other attendees determined that the anonymous call on 4 August 1998 carried insufficient weight to constitute a threat. During this meeting, Detective Inspector AC said that he believed that if those named in the anonymous telephone call belonged to a republican terrorist organisation at all, then they would certainly have been low in the hierarchy. This was because of their known connections to fuel smuggling and the republican policy of only allowing senior members to carry out major terrorist operations. Detective Inspector AC considered that it would be "unheard of" to give weapons and responsibility to lower members of an organisation. [20]

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16 *Statement of Detective Inspector AC,* PSNI Judicial Review Papers, undated

17 *PSNI Review of the Police Ombudsman for Northern Ireland final report in respect of the Investigation of Matters Relating to the Omagh Bomb on 15th August 1998*, in response to paragraphs 16. 9 (1) and 21.29 of the (unpublished) Final Report by the Police Ombudsman

18 *Statement of Detective Inspector BJ*, PSNI Judicial Review Papers, 30 December 2001

19 *PSNI Review of the Police Ombudsman for Northern Ireland final report in respect of the Investigation of Matters Relating to the Omagh Bomb on 15th August 1998*, in response to paragraphs 16. 9 (1) and 21.29 of the (unpublished) Final Report by the Police Ombudsman

20 *Statement of Detective Inspector AC,* PSNI Judicial Review Papers, undated

3.2.8 Furthermore, Detective Inspector AC stated that "several threats", in the form of pieces of intelligence, had been received in the days prior to the Omagh bombing, and that these were all considered to be more reliable than the anonymous call. Detective Inspector AC additionally considered that arresting the individuals named in the telephone call, due to the fact the evidence was uncorroborated, would not have been lawful.[21] He did not elaborate on what other pieces of intelligence were available.

3.2.9 At 3:30 pm on the 15th of August 1998, Detective Constable W was told of the bombing at Omagh and upon arriving at the site of the explosion told the Deputy Senior Investigating Officer (SIO) about the information he had received on 4 August 1998. He was told to go immediately to the Omagh RUC station. Detective Constable W relayed this to Detective inspector AC again at the station, but was again told that the information was not relevant to the Omagh bombing but rather related to cross-border fuel smuggling.[22] This was confirmed by the Deputy SIO, former Detective Chief Inspector David McWilliams, who told the Northern Ireland Affairs Committee:

> "I was made aware of the details of this anonymous telephone call by the detective who received the call. This was at the scene of the atrocity shortly after the explosion occurred. I along with the detective briefed ex-D/Superintendent McArthur as to the details and he directed the detective to speak to Special Branch in Omagh and ask for a reassessment of the information. We were subsequently informed that the information received from the anonymous call on 4th August 1998 had been reassessed and deemed not to have any connection to the bombing in Omagh. In a letter dated March 2009 the office of the Police Ombudsman expressed the view that the August 4th call was a coincidence."[23]

3.2.10 RUC Chief Superintendent EG, who led the RUC investigation into the Omagh bombing outlined for Nuala O'Loan the then Police Ombudsman for Northern Ireland ("Police Ombudsman") the procedures he would have followed upon receiving, assessing and disseminating intelligence if he had been in the position to do so prior to the bombing. Chief Superintendent EG explained that he would have asked RUC Special Branch to "enhance the information" received in the anonymous calls and "ask for their assessment on [sic] it". If this information proved to be credible, Chief Superintendent EG would have expected RUC Special Branch to use this information and prepare plans to prevent the terrorist operation, such as intercepting weapons and arresting suspects. Chief Superintendent EG would then have informed the CID officers and the military of Special Branch's assessment of the threat, which may have led to a period of heightened vigilance. RUC Chief Superintendent EG believed that these measures to be standard practice in any counter-terrorism operation; he did not comment upon whether he considered that these procedures were in fact followed.[24]

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21 Ibid

22 *Statement of Detective Constable W*, PSNI Judicial Review Papers, 23 December 2001

23 *The Omagh bombing: Some remaining questions,* House of Commons Northern Ireland Affairs Committee, *Fourth Report of Session 2009 – 2010,* 10 February 2010, HC 374, Ev 48, addendum of David McWilliams

24 *Statement of Chief Superintendent EG,* PSNI Judicial Review Papers, 16 January 2002

3.2.11 The Police Ombudsman was "firmly of the view that this significant information was not handled correctly". [25] She later suggested the police should have stationed more officers near Omagh or used deterrent road blocks, noting that such measures had been successful deterrents in the past.[26] No explanation was ever given as to why these measures were not in place.

3.3 THE ALLEGATIONS OF KEVIN FULTON

3.3.1 The man who calls himself Kevin Fulton first came into contact with the RUC Special Branch in March of 1992.[27] Detective Constable T said that Kevin Fulton telephoned the Lisburn RUC station to volunteer his services and to provide information, meeting with Detective Sergeant BP soon after.[28]

3.3.2 Detective Sergeant BP said that Kevin Fulton's information led to the arrest and conviction of two members of the PIRA in Newry, County Armagh, Northern Ireland in April 1992. Detective Constable T also said that initially Kevin Fulton's information proved "useful" and led to arrests being made.[29]

3.3.3 Following this, however, Detective Constable T said that there were growing "concerns about the truthfulness" of the information provided by Kevin Fulton after "numerous items of intelligence" proved to be "inaccurate and fabricated".[30] Detective Sergeant BP also said that Kevin Fulton's information became "unverifiable". For example, Kevin Fulton is alleged to have made false claims that bombs were being made on specific farms; this error led to the farm owners bringing a civil action against the police.[31] Kevin Fulton is a key figure in the allegations surrounding the Omagh bombing but his reliability must also be tested and corroborated. Following up each piece of information provided by Kevin Fulton was an "astronomical expense" in terms of both financial and human resources. In 1994 Kevin Fulton's handlers questioned him on the veracity of his information and he is alleged to have "admitted to telling lies" in order "to boost his own standing".[32] Kevin Fulton was thereafter considered to be "an intelligence nuisance" despite his earlier usefulness.[33] In 1994 all RUC Special Branch links with Kevin Fulton were severed.[34]

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25 *Statement by the Police Ombudsman for Northern Ireland on her Investigation of matters relating to the Omagh Bomb on August 15, 1998*, 12 December 2001, paragraph 6.6

26 *Ombudsman details Omagh Report, BBC News,* 12 December 2001 http://news.bbc.co.uk/1/hi/northern_ireland/1706745.stm

27 *Statement of Detective Constable T,* PSNI Judicial Review Papers, 28 December 2001

28 *Statement of Detective Constable T,* PSNI Judicial Review Papers, 28 December 2001

29 *Statement of Detective Constable T*, PSNI Judicial Review Papers, 28 December 2001

30 Ibid

31 *Statement of Detective Sergeant BP*, PSNI Judicial Review Papers, undated

32 *Statement of Detective Constable T*, PSNI Judicial Review Papers, 28 December 2001

33 Ibid

34 Chief Constable's Statement in response to the Police Ombudsman's Report, 24 January 2002, paragraph 4.5 at http://www.irishtimes.com/newspaper/special/2002/flanagan/index.htm

3.3.4 However, a more successful relationship began in June 1996 after Kevin Fulton initiated contact with the RUC Drugs Squad in Northern Ireland. Detective Sergeant Z said that Kevin Fulton was able to give useful information on specific illegal drug activities in Newry and corroborated intelligence regarding the potential robbery of computer microchips. This information led to Kevin Fulton being officially recruited as a police source on 18 June 1996. Although Detective Sergeant Z was given warnings from other intelligence agencies about the reliability of information provided by Kevin Fulton, Z remained in contact with Kevin Fulton until 8 June 2001 and always considered the intelligence provided by Kevin Fulton to be "A1" (meaning a reliable source supplying confirmed information). [35]

3.3.5 The records of intelligence reports submitted by Kevin Fulton's RUC handlers showed that he continued to provide information throughout 1998, in the period leading up to the Omagh bombing. His RUC CID handlers submitted information to the RUC's Force Intelligence Bureau on 6 June 1998, 8 June 1998, 23 July 1998, 4 August 1998 and 12 August 1998.[36] This last occasion was three days before the Omagh bombing.

3.3.6 In the Police Ombudsman report on 12 December 2001 it was stated that Kevin Fulton had told his RUC police handler between 6 and 8 June 1998 that Man A (later alleged to be former PIRA bomb-maker Patrick Joseph "Mooch" Blair[37]) had sought to obtain coffee grinders. Coffee grinders are sometimes used in the making of bombs in order to grind down fertiliser (which is commonly used in bomb-making). The Police Ombudsman's report also found that Kevin Fulton's handler had recorded, on 23 July 1998 that Kevin Fulton had said that Man A had at one time smelt of fertiliser, suggesting that he had been making bombs.[38]

3.3.7 Kevin Fulton also said that he had meeting in a car park of the Claret Bar in Dundalk, County Louth, ROI, on 13 August 1998 with a known RIRA called leader Mike (again alleged to be Patrick Joseph "Mooch" Blair). Kevin Fulton said that Mike had pink dust on his pullover, an indication of grinding fertiliser. Mike said to Kevin Fulton that "there's something big on" and that the Real IRA "was about to move something North over the next few days", although Mike did not say where the planned attack was to take place. Kevin Fulton believed that his RUC handler entered the report of this meeting on the RUC computer system. [39]

3.3.8 In July 2001, Greg Harkin, writing in the *Sunday People* newspaper, alleged that Kevin Fulton had told the RUC that a "huge bomb" was bound for Northern Ireland three days before the Omagh bombing. In the article, Kevin Fulton also named the farm that he

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35 *Statement of Detective Sergeant Z,* PSNI judicial review papers, 27 December 2001

36 Chief Constable's Statement in response to the Police Ombudsman's report, 24 January 2002, paragraph 4.7

37 *Omagh accused flee as the police move in*, by Henry McDonald, *The Observer,* 27 January 2002

38 *Press Statement by the Police Ombudsman for Northern Ireland on her Investigation of matters relating to the Omagh Bomb on August 15, 1998*, 12 December 2001, paragraph 6

39 *He had been making a bomb. I told my RUC handler an attack was imminent*, by Nick Hopkins, *The Guardian*, 17 August 2001; see also *Smithwick Tribunal: Patrick "Mooch" Blair denies Omagh role, BBC News*, 29 November 2011 available at http://www.bbc.co.uk/news/uk-northern-ireland-15939053?print=true

claimed was used to make bombs for the RIRA. The article further alleged that despite receiving this information no action was taken by the RUC prior to the Omagh bombing either in relation to relevant information already available or on the basis of telephone warnings.[40] On 17 August 2001 RUC Chief Constable Sir Ronnie Flanagan called the claims made by the *Sunday People* "preposterous".[41]

3.3.9 In his response to the Police Ombudsman's report, the Chief Constable of the RUC, Sir Ronnie Flanagan, did not provide any details of the intelligence submitted to Special Branch by Kevin Fulton's RUC handlers, although the response did outline what Kevin Fulton had told his handlers, albeit characterising that information as being fill of "distortions and inaccuracies". [42] The Chief Constable conceded that due to an "unacceptable breakdown in procedure" and "an administrative error", two of the five intelligence reports based on information from Kevin Fulton during the period from June to August 1998 were never passed by the RUC Force Intelligence Bureau to Special Branch.[43] However, the Chief Constable contended that as a result of the successes of various on-going RUC operations, other intelligence had become available that meant that he could say "with a high degree of confidence" that Kevin Fulton's "information was either inaccurate or irrelevant to Omagh".[44]

3.3.10 Despite the conflicting nature of these accounts and the uncertainty that still remains, Kevin Fulton has revealed that no police or other investigatory team has ever spoken to him or sought to clarify any of his allegations[45]. He later gave evidence before the Smithwick Tribunal in the Republic of Ireland in 2011.[46] The serious nature of Kevin Fulton's allegations and their veracity must be tested and resolved.

3.4 **THE ALLEGATIONS OF DAVID RUPERT**

3.4.1 Another key figure in the matrix of the intelligence that might have been available before the Omagh bombing is US citizen David Rupert. After his arrest for fraud in 1974, David Rupert became a part-time police informer in America. Over the following years, he occasionally supplied information, and this led to the arrest of several people connected with drug offences. This relationship with the US authorities lasted until

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40 *The shocking revelation that the police were told about Omagh three days before it happened,* by Greg Harkin, *The Sunday People,* 29 July 2001

41 *Interview with Sir Ronnie Flanagan, BBC Newsnight programme*, 17 August 2001

42 Chief Constable's Statement in response to the Police Ombudsman's Report, 24 January 2002, paragraphs 4.1 – 4.8

43 Ibid, paragraph 4.9

44 Ibid, paragraph 4.10

45 *The Omagh bombing: Some remaining questions,* House of Commons Northern Ireland Affairs Committee, *Fourth Report of Session 2009 – 2010,* 10 February 2010, HC 374, letter to the Clerk of the Committee by Kevin Fulton, Ev 54

48 *Revealed: the face of Omagh IRA bomber; IRA gunman Patrick Blair*, by Neil Mackay, *Sunday Herald,* 13 January 2002; on the Smithwick Tribunal see *Smithwick Tribunal: Patrick "Mooch" Blair denies Omagh role,* by Jennifer O'Leary, *BBC News,* 29 November 2011. The Smithwick Tribunal of Inquiry into suggestions that members of An Garda Síochána or other employees of the Irish state colluded in the fatal shootings on 20 March 1989 of RUC Chief Superintendent Harry Breen and RUC Superintendent Robert Buchanan has a website where transcripts of evidence are available: http://www.smithwicktribunal.ie/smithwick/HOMEPAGE.html

1984. It ended when David Rupert filed for bankruptcy, after a $50 million legal claim was lodged against his trucking company for causing multiple fatalities in a road traffic accident.[47]

3.4.2 David Rupert first visited ROI in early 1992 with his then girlfriend, Deborah Murphy. He returned in to ROI in August 1992 with another girlfriend, Linda Vaughan, who had a keen interest in Irish republican politics. On this visit, Linda Vaughan introduced David Rupert to many prominent republicans in Bundoran and Sligo in the ROI during a series of events ceremony commemorating the 1981 IRA prison hunger strikes. Following this, David Rupert became closely associated with republicans in the Bundoran area, including Joe O'Neill and Vincent Murray. David Rupert became well trusted and was became responsible for republican fundraising activities in the USA.[48]

3.4.3 By 1994, David Rupert had come to the attention of the Gardaí, who responded by contacting the Federal Bureau of Investigation (FBI) in America. David Rupert and FBI Agent Patrick Buckley then came to an agreement whereby David Rupert provided information about his republican contacts in Ireland (on both sides of the border) in exchange for the FBI's payment of his travel costs to and from ROI. David Rupert went on to visit ROI over 25 times in this dual capacity as a trusted fundraiser for the RIRA and as an FBI/Gardaí informer. His information over the following years led directly to the conviction of republican leader Michael McKevitt for directing acts of terrorism charges on 6 August 2003.[49]

3.4.4 In February 1997, David Rupert was given a formal informant employment contract by the FBI. In exchange for $2,500 per month and reasonable living expenses in ROI, David Rupert agreed to provide information about republican operatives, most commonly via encrypted e-mail.[50] This email correspondence became evidence in the trial of Michael McKevitt.[51]

3.4.5 In June 1997, at the request of FBI Agent Patrick Buckley, David Rupert met and developed contacts with Detective Superintendent Dermot Jennings of the Garda Crime and Security Branch (CSB) (formerly C3), who had a working relationship with both British military intelligence service (MI5) (the Security Service) and RUC Special Branch. As a result of a meeting in a car park in June 1996, David Rupert also became a paid informant of MI5. From 1997 David Rupert sent 2,293 e-mails to the FBI and MI5.[52]

3.4.6 On 11 April 1998 David Rupert sent an e-mail to MI5 which stated that RIRA was planning a car bomb attack in either Londonderry/Derry or Omagh in Northern Ireland using a Vauxhall Cavalier motor car. This information was passed on to the Garda and

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47 *Director of Public Prosecutions v Michael McKevitt* [2005] IE CCA 139, page 2

48 Ibid

49 Ibid, page14; *Real IRA chief 'to go free in MI5 deal'*, by Henry McDonald, *The Guardian,* 6 October 2002

50 *Director of Public Prosecutions v Michael McKevitt* [2005] IE CCA 139, page 2

51 See section 9.5 below

52 *Director of Public Prosecutions v Michael McKevitt* [2005] IE CCA 139, page 4; *Cross Border co-operation was a myth*, by John Ware, *BBC News,*15 September 2008

the attack was prevented. However, MI5 were aware that there was a continued threat from RIRA and told David Rupert in an e-mail that they had "disrupted the intention to use the car bomb, but maybe not for long". There is no evidence that this intelligence was ever passed to the RUC by MI5.

3.4.7 On 11 August 1998, four days before the Omagh bombing, David Rupert sent an e-mail informing his handlers in MI5 that RIRA was planning to attack Londonderry/Derry or Omagh. In this e-mail David Rupert also made reference to what he thought was a "scouting mission".[53] It is not known whether this information was provided to RUC Special Branch.

3.5 BBC *PANORAMA*: "OMAGH: WHAT THE POLICE WERE NEVER TOLD"

3.5.1 A BBC *Panorama* documentary programme entitled "Omagh: What the police were never told" was broadcast on 15 September 2008. In this documentary, a number of allegations were made against the Gardaí, the RUC and the UK Government Communications Headquarters (GCHQ) (an agency key to the gathering of intelligence by the UK).

3.5.2 The BBC documentary claimed that on the day of the Omagh bombing, GCHQ intercepted and recorded nine mobile telephone exchanges between those allegedly responsible for the bombing. It was alleged by well-placed sources[54] that GCHQ had picked up the words, "we're crossing the line", coinciding with one of the cars crossing the border into Northern Ireland, and at 2:20 pm, "the bricks are in the wall", the phrase used to declare that the bomb car was in position. This phrase had been used in the Banbridge bombing on 1 August 1998. It was also alleged that this information was never passed on to any RUC CID investigation team. Instead, GCHQ only passed to RUC Special Branch the names of individuals who had made the telephone calls. This was done outside the "golden hours" (the hours when the investigative opportunity was at its height) of the police investigation, and as a consequence (fill in the blank..[55]

3.5.3 The BBC journalist John Ware, who reported for the BBC *Panorama* programme, elaborated on these allegations in an article published in the *Daily Telegraph*. He alleged that GCHQ were monitoring the conversations of the Omagh bombers in the 90 minutes prior to the bombing, and that for weeks prior to the bombing they had been monitoring one of the mobile telephones which was used in the Banbridge bombing on 1 August 1998.[56]

3.5.4 It was further claimed by BBC journalist John Ware that MI5 and/or RUC Special Branch had a recording of transmissions from the Vauxhall Cavalier car used in the Omagh bombing. The recordings were made after a covert listening device was placed in the

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53 *Rupert: 'McKevitt was No 1',* by Maeve Sheehan, *The Sunday Times*, 29 June 2003; see also *DPP v Michael McKevitt [*2005] IE CCA 139 and *Justice at last for the 29 victims of Omagh bomb?* by Lesley-Anne Henry*, Belfast Telegraph*, 8 June 2009

54 In particular Ray White: see further below paragraphs 3.5.5 to 3.5.6

55 *GCHQ 'monitored Omagh bomb calls', BBC News,* 9 September 2008

56 *The words that might have saved Omagh,* by John Ware*, The Daily Telegraph*, 13 September 2008

car. John Ware said that he was told that these recordings existed but declined to reveal the source, invoking his professions Code of Practice.[57]

3.5.5 In an interview for the BBC *Panorama* programme, the former Assistant Chief Constable of RUC Special Branch in Northern Ireland, Ray White, made a number of claims against GCHQ. He alleged that it was common for GCHQ to compile a matrix of information relating to telephone callers and specific telephones and that these were closely monitored.[58] Ray White's understanding from RUC Special Branch officers of the events prior to the Omagh bombing was that RUC Special Branch had asked GCHQ to monitor specific mobile telephones as they were outside RUC Special Branch's jurisdiction in the ROI. Ray White said that GCHQ were monitoring at least one mobile telephone from July 1998 onwards and that they were monitoring this telephone on 15 August 1998.[59]

3.5.6 Ray White was unsure whether GCHQ were monitoring the telephone phones "live" or by making recordings, but he would "expect" that the telephone calls were monitored "live". He also believed that even if GCHQ had been monitoring the information "live" on the day of the Omagh bombing, it was unlikely that the attack could have been prevented. Ray White gave two reasons for this. First, he considered that it would have been "very, very difficult" to understand that the phraseology being used by the bombers was indicating a "real time" bombing run. Second, he also doubted whether, even if this information had been understood, the police could have acted within the necessary time to stop the Omagh bombing. It is notable that White was only referring to the information available to GCHQ, not to the additional information provided by informers or that resulting from the anonymous telephone call of the 4 August 1998.[60]

3.6 THE ALLEGATIONS OF GARDA DETECTIVE SERGEANT JOHN WHITE

3.6.1 Garda Detective Sergeant John White said that he had been in contact with an informant called Paddy Dixon since 1984. John White said that in early 1998, Paddy Dixon began providing information on matters relating to the recently formed Real IRA. Although Paddy Dixon was not a member of the Real IRA himself he had close connections to its members and was regularly used by the organisation as a car thief.[61]

3.6.2 John White explained to Nally Committee (see further at Section 8) that prior to the bombing Paddy Dixon had provided intelligence that suggested that a number of senior members of RIRA were planning a bombing run into Northern Ireland.[62] On 24 July 1998, three weeks prior to the Omagh bombing, John White said that the informer Paddy Dixon had met with an individual known as RIRA Subversive X. In this meeting,

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57 Ibid

58 *BBC Panorama* interview between John Ware and former Assistant Chief Constable of Special Branch Northern Ireland, Ray White, BBC *Panorama,* 15 September 2009

59 Ibid

60 Ibid

61 *Irish police accused on Omagh*, by Rosie Cowan and Nick Hopkins, *The Guardian,* 26 October 2002; *Communication 'muddle' blamed for Omagh*, by Jim Cusack, *The Independent,* 23 December 2007

62 *The Nally Committee Report, in response to the Report raising concerns of the activity of An Garda Síochána Officers during 1998,* 22 March 2002, page 40 paragraph 2.47

Subversive X had said to Paddy Dixon that he wanted to prove, after numerous failed attempts, that the Real IRA "could carry out a big bombing".[63]

3.6.3 On 10 August 1998, John White claimed that Paddy Dixon had reported that he had been asked to steal a Vauxhall Cavalier car on the night of the 12 August 1998. In March 2002 John White said that the date was in fact the 13 August 1998.[64] It was established that a stolen red/maroon Vauxhall Cavalier was used in the Omagh bombing.[65]

3.6.4 John White said that he had a meeting on 12 August 1998, three days before the Omagh bombing, in a public house in Castleknock, Dublin with Detective Garda Chief Superintendent Dermot Jennings of the Garda CSB (ROI equivalent of RUC Special Branch) and an officer known as Garda B. At this meeting, John White claimed that the they had discussed the intelligence received from Paddy Dixon regarding a planned bombing run and the request to steal a red/maroon Vauxhall Cavalier. John White understood from Detective Chief Superintendent Dermot Jennings that after receiving this information Jennings had decided "I think we will let this one [a bomb] go through" (meaning into Northern Ireland). John White claimed that DCS Dermot Jennings had various reasons for this, which included:

- previous RIRA bombs in 1998 had, in the main, only caused property damage;
- protecting the informer Paddy Dixon against RIRA suspicion; and
- the expectation that Paddy Dixon would provide information in the future.[66]

3.6.5 John White claimed that on 14 August 1998 Paddy Dixon had told him that Subversive X had obtained a stolen car.[67]

4 INTELLIGENCE RELATING TO MOBILE TELEPHONES AND THE BOMB VEHICLE

4.1 As was noted by Mr Justice Weir in the criminal trial of Sean Hoey in Belfast in 2007, RIRA was suspected of involvement in various bomb and mortar attacks throughout early 1998 following its split from PIRA after the Belfast/GFA. These incidents included explosions at Banbridge on 6 January, Crossmaglen 24 March, Forkhill Army Base 24 March, Newry 3 April, Lisburn 30 April, Belleek 9 May, Armagh 16 May, Finaghy 24 May, Blackwatertown Road 9 July, Newry 13 July and Newry RUC station 21 July.[68]

4.2 In 2002 a number of the relatives of the victims of the Omagh bombing lodged an application to take a civil action against a number of individuals alleged to be the

63 Ibid, page 22, paragraph 2.9

64 Ibid, page 27 paragraph 2.19

65 *Breslin and Others (Plaintiffs) v Seamus McKenna and Others (Defendants)* [2009] NIQB 50, paragraph 23

66 *Irish police accused on Omagh*, by Rosie Cowan, *The Guardian,* 26 October 2002

67 *The Nally Committee Report, in response to the 'Report raising concerns of the activity of An Garda Síochána Officers during 1998',* 22 March 2002, page 30, paragraph 2.26

68 *R v Sean Hoey* [2007] NICC 49, paragraphs 2 and 24

perpetrators of the Omagh bombing.[69] During the hearing of this application by Mr Justice Morgan (later Lord Chief Justice of Northern Ireland) in the High Court in Belfast in 2009, it emerged that mobile telephones were regularly used by RIRA in bomb attacks.[70] Significantly, it became apparent that the journey of the bomb to Omagh could be traced through the use of several mobile telephones. This process of tracking and its importance is outlined further below in this section. The use of mobile telephones became an important evidential element in this civil litigation.

4.3 On 31 July 1998 Colm Murphy, a builder who was based in Dundalk in County Louth in the Republic of Ireland and who was described in Special Criminal Court in Dublin as "a Republican terrorist of long-standing"[71] with significant PIRA connections and various terrorist-related convictions, borrowed a mobile telephone from his employee, Terence Morgan, who was his foreman in his construction business. This mobile telephone was in fact the property of Terence Morgan's father in law, Michael McDermott, but was being used by Terence Morgan. Colm Murphy lent both this mobile telephone and his own to Joseph Fee. These mobile telephones were used in a car bomb attack in Banbridge the following day.[72]

4.4 At 11:00pm on 12 August 1998, a red/maroon Vauxhall Cavalier car was parked by its owner outside a house in Carrickmacross, County Monaghan in the Republic of Ireland. Sometime between then and 3:30am this vehicle was stolen. The perpetrators replaced its Republic of Ireland number plates with false Northern Ireland plates (MDZ 5211). This car was used in the Omagh bombing.[73] We have discussed the intelligence known about this vehicle by the Garda CBS (and therefore presumably by RUC Special Branch/MI5) at paragraphs 3.6.3 - 3.6.4.

4.5 On 14 August Colm Murphy again borrowed a mobile telephone from the foreman he employed, Terence Morgan, after claiming that his own telephone "was on the blink". On the same day Colm Murphy lent both of these telephones to Seamus Daly.[74]

4.6 At 12:40pm on 15 August 1998, the maroon/red Vauxhall Cavalier car carrying the Omagh bomb left the Dundalk area in ROI and arrived in Omagh at 2:00pm. The car had travelled from Dundalk via Castleblayney and Aughnacloy to Omagh. A scout vehicle also travelled with the bomb car.[75] We have noted above the intelligence provided by David Rupert as to his knowledge of a possible scout vehicle being used in preparation

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69 *Breslin and Others (Plaintiffs) v Seamus McKenna and Others (Defendants)* [2009] NIQB 50

70 Ibid, paragraphs 36 and 67, where Mr Justice Morgan examines the mobile telephone evidence in the Omagh bombing; the mobile telephone evidence was reviewed again in the challenge to the civil application reported as *Breslin and Others (Plaintiffs) v Michael Colm Murphy and Seamus Daly (Defendants)*[2013] NIQB 35 heard by Mr Justice Gillen. His analysis of the mobile telephone evidence is between paragraphs 21-35 and 63- 81.

71 *DPP v Colm Murphy* [2005] IE CCA 1, page 3

72 Ibid, page 2; *Who bombed Omagh?* BBC *Panorama*, 9 October 2000

73 *Breslin and Others (Plaintiffs) v Seamus McKenna and Others (Defendants)* [2009] NIQB 50, paragraph 23

74 *DPP v Colm Murphy* [2005] IE CCA 1, page 3

75 Ibid

for the Omagh bombing at paragraph 3.4.7 above; this information was known to MI5 and the FBI but appears not have been shared with either the RUC or An Garda Síochána. Similarly, information held by MI5 about calls made from mobile telephones was not shared with the RUC.

4.7 In the subsequent RUC investigation into the Omagh bombing, an analysis was carried out by Vodafone of the telephone calls between 13 mobile telephones operating on cell sites in Northern Ireland during the period 12 – 15 August 1998. The results of that analysis were made available by Vodaphone to the RUC on 11 November 1998. Further requests for information were made to Vodaphone and BT Cellnet in the UK and Eircell in ROI. An analysis of this material was made by the RUC. This indicated that the four telephones were used frequently on that day, and that two mobile telephones were traced travelling from Castleblayney, in County Monaghan, Republic of Ireland to Omagh and back.[76] The mobile telephones were registered to the following people:

- a -585 number was registered to Colm Murphy
- a -980 number was registered to Michael McDermott, the father –in-law of Colm Murphy's foreman, Terence Morgan, but used by Terence Morgan and lent by Terence Morgan to Colm Murphy
- a -430 number was registered to Oliver Traynor
- a -076 number was a pay-as-you-go mobile telephone which the plaintiffs in the 2009 civil action argued was attributable to Seamus Daly.

4.8 The mobile telephones were lent to other people to use in the Omagh bombing attack. This fact was established in the 2009 civil action when Liam Campbell and Seamus Daly were named in evidence as those who had borrowed the mobile telephones.[77]

4.9 At 12:41pm a telephone call was made from the mobile telephone number -585 (registered to Colm Murphy) to the -980 (registered to Terence Morgan's father-in-law Michael McDermott but used by Terence Morgan and borrowed by Colm Murphy) mobile telephone. Both mobile telephones were subsequently traced to Castleblayney in ROI.[78] The registration of a mobile telephone to a named individual is not sufficient evidence of itself to place that person with the mobile telephone at a particular point when the mobile telephone is in use; that is supposition and would undermine the principle of being assumed innocent until proven guilty. As we have noted no one has yet been found responsible in criminal law for the offence of the Omagh bombing.

4.10 At 1:13pm a call was made from the mobile telephone number -585 (registered to Colm Murphy) to the -980 mobile telephone. Both telephones were subsequently traced to Emyvale in County Monaghan, just over the border in ROI.[79]

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76 *Breslin and Others (Plaintiffs) v Seamus McKenna and Others (Defendants)* [2009] NIQB 50, paragraph 36; see also *Breslin and Others (Plaintiffs) v Michael Colm Murphy and Seamus Daly (Defendants)* [2013] NIQB 35 at paragraphs 63 -81

77 Ibid, paragraph 45

78 Ibid, paragraph 48

79 Ibid, paragraph 49

4.11 At 1:29pm a call was made from the mobile telephone number -585 to the -980 mobile telephone. Both telephones were subsequently traced to the Aughnacloy, County Tyrone, Northern Ireland.[80]

4.12 At 1:57pm a telephone call was made from the mobile telephone number -585 to the -980 mobile telephone. Both mobile telephones were subsequently traced to the Omagh area.[81]

4.13 It was established during the 2009 civil litigation that the times of travel and the route taken indicated that both of these mobile telephones were used in the Omagh bombing. It was the **"**irresistible inference" drawn by Mr Justice Morgan in his judgment that the --585 (registered to Colm Murphy) mobile telephone was travelling ahead in the scout car and the -980 (registered to Terence Morgan's father-in-law Michael McDermott but used by Terence Morgan and lent to Colm Murphy) mobile telephone was travelling behind in the bomb car, based on the pattern, location and content of the contact between the two mobile telephones.[82]

4.14 At 2:10pm, a 59-second telephone call was made from the -980 mobile telephone in the Omagh area to the -430 mobile telephone (registered to Oliver Traynor) mobile telephone in the County Armagh area of Northern Ireland. The -430 number was traced to the Clermont Carn cell site in the Republic of Ireland but on the border with Northern Ireland. The warning telephone calls to Ulster Television (UTV) and then to the Samaritans indicating a bomb had been planted in Omagh, timed at 2:29pm, were traced to a telephone box in the same area.[83]

4.15 At 2:14pm a telephone call was made from the -980 mobile telephone in the bomb car to a person using a mobile telephone with a -259 number in South Armagh. The -980 mobile telephone was later traced to the Omagh district.[84]

4.16 At 2:19 pm, a final call was made from the -980 mobile telephone in the bomb car to the -585 (registered to Colm Murphy) mobile telephone in the scout car. Both mobile telephones were subsequently traced to Omagh. This was the last communication between the two mobile telephones. It could be inferred that those in the bomb car had joined those in the scout car, before travelling back to ROI.[85]

4.17 While useful as investigative tools, telephone intercept evidence has limited value in criminal trials unless prior authorisation was given for the interception.

5 15 AUGUST 1998: THE OMAGH BOMBING

5.1 According to *Lost Lives*, at 2:20pm on 15 August 1998, the car carrying the Omagh bomb was moved into its final position in Market Street, Omagh having entered the

80 Ibid, paragraph 49
81 Ibid, paragraph 50
82 Ibid, paragraph 67
83 Ibid, paragraph 52
84 Ibid, paragraph 36
85 Ibid, paragraph 50

town by the Campsie Road.[86] The two men in the bomb car left the vehicle and joined the scout vehicle which was located on or near the Dublin Road. The car was later measured by the police as being 365 yards from the Omagh courthouse, which may therefore have been the intended target of the explosion. However, it was more probably intended for the general public as it was a busy market day on a Saturday in high summer.[87]

5.2 Several people later remembered seeing the Vauxhall Cavalier car either being driven towards or parking on Lower Market Street. One proprietor of commercial premises[88] on Lower Market Street and his son drove onto Lower Market Street at approximately 2.20pm and the father remembered a maroon vehicle which the son noted was a Vauxhall Cavalier car being driven slowly in front of them. The father noticed that the driver was a male aged 20 to 24, with short, dirty fair[89] hair.[90]

5.3 A young woman was sitting in a car outside the S. D. Kells clothes shop on Lower Market Street and remembered that two men got out of the car in front of her. The passenger in the car made eye contact with her and grinned. She observed them from a short distance and described that both were very neat in appearance and "looked like soldiers". The passenger was in his mid-twenties, six feet tall and of slim build with dark hair which was neatly cut. The driver was also in his mid-twenties, of slightly heavier build and of similar height. He had fair coloured hair which was similarly neatly cut.[91] Two men were later seen walking toward the Campsie Road, away from Omagh town centre.[92]

5.4 A man walking down Lower Market Street at approximately 2:20pm noticed a male in his mid-twenties standing beside a Vauxhall Cavalier car. He described the man as having short, dirty fair hair, of light medium or stocky build and was 5'8" to 5'10" tall.[93] The Guardian newspaper reported that on 5 November 2002 RUC detectives believed that the bombers were accompanied by three young children on the operation in order to deflect possible security force suspicion.[94] This has not been otherwise verified.

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86 *Lost Lives: The stories of the men, women and children who died as a result of the Northern Ireland Troubles*, edited by David McKittrick, Seamus Ketters, Brian Feeney, Chris Thornton and David McVeigh, Mainstream Publishing, 2004, page 1437

87 *R v Sean Hoey* [2007] NICC 49, paragraph 26; *Black Operations: the Secret War Against the Real IRA*, by John Mooney and Michael O'Toole, Maverick House Publishing, 2004, page 33

88 The exact nature of these premises is not known

89 "Dirty fair" means "dull blond"

90 *Breslin and Others (Plaintiffs) and Seamus McKenna and Others (Defendants)* [2009] NIQB 50, paragraph 24

91 Ibid

92 *Lost Lives: The stories of the men, women and children who died as a result of the Northern Ireland Troubles*, edited by David McKittrick, Seamus Ketters, Brian Feeney, Chris Thornton and David McVeigh, Mainstream Publishing, 2004, page 1437

93 *Breslin and Others (Plaintiffs) and Seamus McKenna and Others (Defendants)* [2009] NIQB 50, paragraph 24; see also Breslin and Others (Plaintiffs) v Michael Colm Murphy and Seamus Daly (Defendants) [2013] NIQB 35 at paragraph 12

94 *Timeline: Omagh bombing, The Guardian*, 8 June 2009

5.5 At approximately 2:30pm the first warning telephone call concerning a bomb was made to a Production Assistant at Ulster Television (UTV). The telephone call was traced to a telephone box in Forkhill, County Armagh, Northern Ireland. This was the same area to which the -430 mobile telephone (registered to Oliver Traynor) was later traced as having been at 2:10pm. The message received by UTV was:

> "Bomb Courthouse Omagh, Main Street. 500lbs explosion, 30 minutes. Martha Pope[95]. IRA Oglanahan [sic[96]]."[97]

5.6 There is no Main Street in Omagh. This was a warning similar to that given before the Banbridge bomb on 1 August 1998. The UTV production assistant immediately called the police in Belfast, who in turn passed the message on to police communications in Omagh. This message was received there at 2:34pm.[98]

5.7 At 2:32pm a second warning was sent to the same UTV newsroom and this telephone call was traced to another telephone box, this time at Newtownhamilton, County Armagh:

> "Martha Pope. 15 minutes, bomb Omagh Town."[99]

5.8 This warning was again passed on to Belfast police and then to police communications in Omagh. This message was received in Omagh at approximately the same time as the first, at 2:34pm.[100]

5.9 At around the same time a third warning call was made from the telephone box in Forkhill, County Armagh. This telephone call was made to the Samaritans in Coleraine, and it appears to have been diverted from the Samaritan Centre in Omagh:

> "Am I through to Omagh? This is a bomb warning. It is going to go off in the centre of Omagh in 30 minutes time. Martha Pope. Main Street about 200 yards from the Courthouse."[101]

5.10 This warning was received by police communications in Omagh some four minutes after the first two warnings at 2:38pm.[102] According to *Lost Lives* the RUC later said that the three warnings from telephone boxes in South Armagh were inaccurate.[103] It is unclear what *Lost Lives* means by inaccurate in this context.

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95 "Martha Pope" was a recognised code word used by the Real IRA (Martha Pope having been an assistant to the US Envoy to Northern Ireland Senator George Mitchell)

96 Óglaigh na hÉireann, which was at that time used as a nom de guerre by the Real IRA; it has since become a distinct paramilitary organisation

97 *Breslin and Others (Plaintiffs) v Seamus McKenna and Others (Defendants)* [2009] NIQB 50, paragraph 25

98 Ibid

99 Ibid

100 Ibid

101 *R v Sean Hoey* [2007] NICC 49, paragraph 2

102 *Breslin and Others (Plaintiffs) v Seamus McKenna and Others (Defendants)* [2009] NIQB 50, paragraph 25

107 *Lost Lives: The stories of the men, women and children who died as a result of the Northern Ireland Troubles*, edited by David McKittrick, Seamus Ketters, Brian Feeney, Chris Thornton and David McVeigh, Mainstream Publishing, 2004, page 1441

5.11 The three warnings did not give a description of the car which contained the bomb nor the actual location of the car. Mr Justice Morgan in civil litigation reasoned that the "primary objective" of these conflicting and misleading messages was to ensure "that the bomb exploded without detection" near the court house. It was the last Saturday before the end of the school summer holidays so the city centre was busy with people and parked vehicles.[104] In his judgment in the appeal from the civil application Lord Justice Gillen noted "Because of the long history of explosions in Northern Ireland up to 1998 these effects were well known by those who would carry them out."[105]

5.12 By 2:35pm, RUC mobile patrols were in Omagh. RUC police officers began moving people away from the courthouse and established a cordoned-off area across the junction of High Street and Market Street's Scarfe's Entry, around 300 yards from the courthouse. Other police directed people out of shops and into the cordoned-off area. Just before 3:00pm the police decided to move the cordoned-off area further away (to 440 yards) from the courthouse at Dublin Road, therefore nearer to the bomb.[106] The bomb car was parked 365 yards from the courthouse at the junction of High Street and the Dublin Road.[107]

5.13 At 2:37pm the -430 (registered to Oliver Traynor) mobile telephone made a call to a -971 number. The -430 number was still being traced to the same area from which the bomb warning calls were made.[108]

5.14 At 3:10pm the bomb exploded in the centre of Omagh. 29 people and two unborn children were killed. 220 people were injured, many of them seriously. Structural damage occurred over an area of 125 metres and blast damage occurred over an area of 500 metres. Vehicle fragments were recovered over 300 metres from the explosion. Within 20 metres of the blast area people were exposed to temperatures exceeding 1000˚C.[109] The bomb was believed to have been constructed from Semtex explosive, fertiliser and fuel oil.[110]

5.15 *Lost Lives* described the carnage in the following terms:

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104 *Breslin and Others (Plaintiffs) and Seamus McKenna and Others (Defendants) [*2009] NIQB 50, paragraphs 34 and 35

105 *Breslin and Others (Plaintiffs) v Michael Colm Murphy and Seamus Daly (Defendants)* [2013] NIQB 35 at paragraph 19.

106 Ibid, paragraph 26

107 *R v Sean Hoey* [2007] NICC 49, paragraph 26. *BBC News* stated that police were clearing an area near the local courthouse 40 minutes after receiving a telephone warning when the bomb detonated, but the warning was unclear and the wrong area was evacuated: *Who bombed Omagh?* BBC *Panorama*,9 October 2000.

108 *Breslin and Others (Plaintiffs) and Seamus McKenna and Others (Defendants)* [2009] NIQB 50, paragraph 52

109 Ibid, paragraph 31

110 *Lost Lives: The stories of the men, women and children who died as a result of the Northern Ireland Troubles*, edited by David McKittrick, Seamus Ketters, Brian Feeney, Chris Thornton and David McVeigh, Mainstream Publishing, 2004, page 1437

> "Those first on the scene gave grim details of battered prams, of the blackened bodies of children, of detached legs, arms and hands. A policeman said 'There were horrific injuries. I tended to a couple of people who had badly gashed abdomens. We were literally using Pampers disposable nappies from the chemist's shop to try and curtail the bleeding, and, to be blunt, to keep them all alive… "There were just bodies everywhere; it was like a war zone, a killing field." [111]

5.16 According to the Chief Constable (insert details, name) by 3:30pm the scout car had returned to County Monaghan in the Republic of Ireland.[112]

5.17 At 3:41 pm the -980 mobile telephone (registered to the father-in-law of Colm Murphy's foreman, Terence Morgan) was used to make a call to Seamus McKenna's ex-wife's house in Silverbridge, County Armagh.[113]

5.18 On 17 August 1998, a man rang a news desk at RTÉ (the national broadcaster in ROI) and gave a statement from Óglaigh na hÉireann (Soldiers of Ireland), at that time a *nom de guerre* for the RIRA. This man said that three 45 minute warnings were given prior to the bombing and that it was made clear that the bomb was three to four hundred yards from the courthouse. The telephone caller said that it was not their intention to cause loss of life and injuries.[114]

5.19 On 18 August 1998 , a person claiming to represent Óglaigh na hÉireann telephoned Ireland International, a news agency based in Dublin. The telephone caller said that three warnings within 40 minutes of the explosion had been given and that the location of the bomb was 300 yards from the courthouse.[115]

5.20 As the Omagh Support and Self-Help Group said, as we noted at paragraph 1.3 above, the bombing was unimaginably horrific. It affected not only the dead, the injured and the bereaved, but the many eyewitnesses and those who came to the aid of those who were hurt. To this day, the whole community remains affected by the Omagh bombing. Despite many acts of courage and resilience, it will be many generations before Omagh becomes the same bustling small town it was before the bombing.

6 INTELLIGENCE AVAILABLE AFTER THE OMAGH BOMBING

6.1 In the days immediately after the Omagh bombing, on 17 August 1998, Detective Sergeant Z received a telephone call from Kevin Fulton. Kevin Fulton told Detective Sergeant Z that the vehicle used in the Omagh bombing had been stolen from the Carrickmacross, County Monaghan, ROI. Detective Sergeant Z believed that Kevin Fulton had only obtained this information from a newspaper.[116] This claim by Detective

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111 Ibid, pages 1437 – 1438

112 Chief Constable's Statement in response to the Police Ombudsman's Report, January 2002, paragraph 3.3

113 *Breslin and Others (Plaintiffs) v Seamus McKenna and Others (Defendants)* [2009] NIQB 50, paragraph 69

114 Ibid, paragraph 32

115 Ibid

116 *Statement of Detective Sergeant Z,* PSNI judicial review papers, 27 December 2001

Sergeant Z cannot be substantiated which would therefore infer that the intelligence Kevin Fulton had received and passed on could otherwise have been reliable

6.2 In both December 1997 and December 1998 David Rupert had attended the annual Republican Sinn Féin Ard Fheis[117] at the Four Seasons Hotel in Monaghan. At the 1998 meeting David Rupert met with prominent republicans Michael Donnelly, Phil Kent, Seamus McGrane, Joe O'Neill and Michael McKevitt.[118]

6.3 At the December 1998 meeting (almost five months after the Omagh bombing), David Rupert said that Michael McKevitt described how the Omagh bombing had been a joint operation between the RIRA and CIRA (both splinter groups of PIRA). Michael McKevitt said that the role of the RIRA was to build the bombs while the role of CIRA was to select the targets and put the bombs in place. Despite CIRA's public condemnation of the Omagh bombing, Michael McKevitt said that the latter organisation was 80% responsible for the attack.[119]

6.4 David Rupert said that at this meeting it was also clear that Michael McKevitt "was in charge" of RIRA; RIRA's command structure was Michael McKevitt as No. 1, Liam Campbell as No. 2 and Bernadette Sands McKevitt, Michael McKevitt's wife, as No. 3. According to David Rupert, Michael McKevitt also declared that the RIRA's involvement in the ceasefire process was only a tactical move designed to give the organisation more time to reorganise prior to a renewed terrorism campaign, most likely to begin with an attack in London.[120]

6.5 On 7 November 1999 David Rupert met Michael McKevitt at the McKevitts' house in Dundalk in the ROI. During this meeting, Michael McKevitt discussed his involvement in a Libyan arms deal. David Rupert also said Michael McKevitt discussed how he had purchased a number of weapons from Eastern Europe and that he had detailed road maps of France and the former Yugoslavia in one of his rooms. At the same meeting, Michael McKevitt reiterated his desire for RIRA to carry out "a spectacular (sic.) that would overshadow Omagh".[121]

6.6 On another occasion in a car in 1999, David Rupert described how he met Michael McKevitt and his son Stephen and discussed bomb-making equipment, timers and laptop computers. There was an agreement that David Rupert would buy these items in the USA. It was also agreed that David Rupert would act as a fundraiser for the RIRA in the USA.[122]

6.7 On 13 November 1999 David Rupert said that he was introduced to Colm Murphy and a number of other people at on a housing estate in Dundalk. At this meeting, David

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117 The party's annual conference or convention

118 *DPP v Michael McKevitt* [2005] IE CCA 139, page 2

119 *McKevitt 'upset' by Omagh bomb, BBC News*, 24 June 2003 http://news.bbc.co.uk/1/hi/northern_ireland/3017422.stm

120 *DPP v Michael McKevitt* [2005] IE CCA 139, page 1

121 Ibid

122 Ibid, page 3; see also *Keeping the dissidents at bay*, *The Economist*, 8 August 2003

Rupert claimed that Colm Murphy was introduced as an "engineer" who constructed bombs.[123]

6.8 At a further meeting with David Rupert on 30 June 2000, Michael McKevitt admitted that he had helped to organise the Hammersmith bombing in London on 1 June 2000.[124] The bomb exploded at 4:30am on the Hammersmith Bridge but caused no injuries.[125]

6.9 It is clear that David Rupert's allegations are serious and potentially reveal a great deal about the activities of RIRA at this time. However, although David Rupert's accusations were used by the prosecution against Michael McKevitt[126] and in the 2009 civil litigation[127] they have never been detailed in any official intelligence report within the public domain. The serious nature of the allegations and the fact that they have been contested[128] makes it important that their veracity and reliability is established.

6.10 On 17 August 1998 Garda Detective John White said that Garda Detective Chief Superintendent Dermot Jennings had asked him to create a written intelligence report "which seriously distorted what had happened" in the meetings with Paddy Dixon in the days before the bombing. John White said that Dermot Jennings asked him to remove any record of the meetings with Paddy Dixon (in July and August 1998) and any references to the information obtained from him.[129]

6.11 Furthermore, John White also alleged that he had gone to another police officer, known as Garda C's house on 19 August 1998 to tell Garda C of the information he had received prior to the bombing and of Dermot Jennings' decision to "let this one go through". John White said that he had done this in order for Garda C to pass this information on to Garda Assistant Commissioner Kevin Carty. John White said Kevin Carty confronted Dermot Jennings with the allegations against him, but Dermot Jennings publicly denied them before privately admitting to John White that they were true.[130]

6.12 John White also alleged that in a meeting with Paddy Dixon early in September 1998, a few weeks following the Omagh bombing, John White was told that Subversive X had said to Paddy Dixon that an agreement had been reached between ministers of the Irish government and the RIRA. The terms of this agreement, brokered by the Irish government advisor Dr Martin Mansergh, were that criminal charges against eight members of the RIRA were to be dropped in exchange for a RIRA commitment to the peace process in Northern Ireland. John White also said that a similar agreement was

123 Ibid
124 Ibid
125 *Police fear more bombings, BBC News*, 2 June 2000
126 *DPP v Michael McKevitt* [2005] IE CCA 139, pages 1 – 2 and 4
127 *Breslin and Others (Plaintiffs) v Seamus McKenna and Others (Defendants)* [2009] NIQB 50, paragraphs 87–187
128 *Breslin and Others (Plaintiffs) and Seamus McKenna and Others (Defendants)* [2009] NIQB 50, paragraphs 133–153
129 *The Nally Committee Report, in response to the Report raising concerns of the activity of An Garda Síochána Officers during 1998,* 22 March 2002, page 38, paragraph 2.43
130 Ibid, page 41, paragraph 2.48

reached in March 1999, whereby charges were also dropped against five other members of the RIRA.[131]

6.13 John White made these allegations public after being suspended from the Garda Síochána in March 2002. He faced serious allegations including that he had encouraged a civilian, Bernard Conlon, to make false statements against others; that he made six false statements; that he had planted a sawn-off shotgun as evidence on a campsite in Burnfoot, County Donegal, ROI on 23 May 1998. John White was later acquitted of these charges by the Letterkenny Court in County Donegal, ROI on 18 January 2005.[132]

6.14 After his suspension from the police in March 2002, John White contacted the Police Ombudsman for Northern Ireland and made a number of allegations against the Garda Síochána. The Police Ombudsman was so concerned by these allegations that she immediately referred them to the ROI's Foreign Affairs Minister, Brian Cowen, who in turn referred them to the ROI Minister of Justice, Equality and Law Reform, John O'Donoghue, who set up a review team, the Nally Committee.[133] The Nally Committee delivered its findings on 17 December 2003; its findings exonerated the Garda Síochána of any wrongdoing.[134] However, according to journalist Liam Clarke in *The Sunday Times,* on 22 February 2005, an Assistant Chief Constable of the Police Service for Northern Ireland (PSNI), Sam Kinkaid, revealed that the PSNI had carried out its own review of John White's accusations and had concluded that the findings made by the Nally Committee were wrong. [135] Additionally, in a private meeting between the then PSNI Chief Constable Hugh Orde and the families of the victims in March 2006, Hugh Orde had said that a substantial part of the testimony of Garda Detective Sergeant John White had been researched by the PSNI and that it had been found to be credible.[136]

6.15 The allegations of Kevin Fulton, David Rupert, BBC *Panorama* and John White, in addition to the information received in the anonymous telephone call of the 4 August 1998 and what may have been known by GCHQ, MI5, RUC Special Branch and the Garda CBS and the USA FBI, are all of a serious nature if true. Each accusation, when considered both individually and cumulatively, carries significant weight. Although partial reviews of these allegations have previously been carried out, including the reviews conducted by Sir Peter Gibson (see section 12.5)and by the Nally Committee (see section 12.6) we argue that essentially they have achieved very little (see paragraphs 12.1 – 12.3. below) and that a number of significant issues remain unresolved. RW(UK) suggest that this uncertainty, when combined with the serious

131 Ibid, page 47, paragraph 3.12

132 *Jury reluctant to convict Gardaí, says Ombudsman Commission Report*, *Breakingnews.ie*, 25 August 2006 http://www.breakingnews.ie/entertainment/cwqlmhsnkfql/

133 *Garda quizzed on Omagh 'tip-off'*, by Maeve Sheehan, *The Sunday Times,* 16 June 2002; please see section 8.5 below

134 *The Nally Committee Report, in response to the 'Report raising concerns of the activity of An Garda Siochana Officers during 1998',* 22 March 2002, page 63, paragraph 4.27

135 *Focus: Four months before a car blew up in Omagh, the Gardaí and MI5 were told it would be there. Why did they do nothing?* by Liam Clarke, *The Sunday Times, 26* February 2006; see also paragraph 11.1 below

136 *Omagh families meet police chief*, *BBC News,* 3 April 2006

nature of the crimes and length of time since the Omagh bombing, clearly makes a compelling case for a full, transparent and independent cross-border public inquiry.

7 THE CROSS-BORDER POLICING INVESTIGATION

7.1 INITIAL REACTIONS

7.1.1 In the aftermath of the Omagh bombing, a number of public figures spoke of the positive developments in the cross-border police investigation. In the House of Commons, Prime Minister Tony Blair told Parliament that, "… amid what I believe to be unprecedented co-operation between governments and police forces, the investigation is being pursued with the utmost intensity and with complete unity of purpose between the British and Irish authorities."[137] Garda Assistant Commissioner Kevin Carty said that "never before in the history of the two organisations (the Gardaí and the RUC) has there been closer co-operation on an investigation"[138] and RUC Chief Constable Sir Ronnie Flanagan also said, "from the outset the PSNI has worked in the closest co-operation with, and is deeply indebted to, colleagues in An Garda Síochána, who share its determination to make those responsible amenable for their crimes."[139]

7.1.2 The RUC Omagh Bomb Investigation Team was headed by the Chief Constable Sir Ronnie Flanagan. By June 1999, 16 "firm suspects" had been arrested and the investigation team had raised 4,513 actions[140] and recorded 2,671 statements of evidence. The Investigation Team had also analysed 237 videos from security force locations and over 970 police and forensic personnel and 350 soldiers had been involved in the investigation to some extent.[141] According to the *Lost Lives*, by December 1998 the bombers had been identified and evidence was being gathered to charge them. Forensic scientists were said to have fibres from the bomb-maker in the glue used to hold the device together and to insulate the wiring. Various "trademarks" linked the bomb-maker to five previous devices including the fact that the bomb-maker had worn Marigold rubber gloves whilst assembling the device and used a hot knife to remove markings from the plastic lunchbox which contained the bomb's wiring.[142]

7.1.3 Despite this apparently impressive amount of work, the Police Ombudsman for Northern Ireland in her later review was of a different opinion and found that the cross-border police investigation was "seriously flawed" and was harmed by "defective leadership, poor judgement and a lack of urgency".[143] The investigation suffered from

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137 *Ten years on, and Omagh is far from over for us*, by Tracy McVeigh, *The Observer,* 13 July 2008

138 *Cross-border co-operation was a myth*, by John Ware, *BBC News,* 15 September 2008

139 Chief Constable's Statement in response to the Police Ombudsman's Report, January 2002, paragraph 7.2

140 An action is an umbrella term used by the police to cover interviews of witnesses, searches and forensic examinations

141 Chief Constable's Statement in response to the Police Ombudsman's report, January 2002, paragraphs 7.11 – 7.12; *Cross border co-operation was a myth*, by John Ware, *BBC News Onlin*e, 15 September 2009

142 *Lost Lives: The stories of the men, women and children who died as a result of the Northern Ireland Troubles*, edited by David McKittrick, Seamus Ketters, Brian Feeney, Chris Thornton and David McVeigh, Mainstream Publishing, 2004, page 1443

143 *Statement by the Police Ombudsman for Northern Ireland on her Investigation of matters relating to the Omagh Bomb on August 15, 1998*, 12 December 2001,

"significant and fundamental errors" and sources revealed that the relationship between the RUC and the Garda was "so bad that at an early stage the Garda threatened to withdraw from the joint investigation".[144] As RUC Chief Superintendent Eric Anderson noted, "The way it worked with the Gardaí generally was that if they liked you, you got stuff. If they didn't, well, you didn't." Another RUC officer commented that formally asking for things was "slow and cumbersome" with all requests going through Dublin. [145]

7.1.4 This section of the RW(UK)report into the Omagh bombing explores the ensuing investigation and examines how the families of the victims and those who were injured and maimed have been continually let down by the police and other aspects of the criminal justice system, due in part to the inadequacies of the investigation and in part to failings in the intelligence gathering and dissemination system.

7.2 **IDENTIFYING FAILINGS**

7.2.1 The apparent failure of both GCHQ and RUC Special Branch to adequately disseminate the available intelligence in the days immediately after the Omagh bombing to the police investigations teams on both sides of the border was compounded by further errors in the cross-border policing investigation in the following months. Mr Justice Weir in his judgment in the criminal trial of Omagh bombing suspect Sean Hoey set out a section of his judgment called "Examples of Problems with police storage arrangements and at Northern Ireland Forensic Science".[146] For example, the RUC investigators did not ensure that the red/maroon Vauxhall Cavalier motor car used in the Omagh bombing was adequately protected after being recovered from the site. It remained uncovered in an exposed RUC police compound for nearly two years. Those who were responsible for recovering, storing and moving potential forensic evidence did not take the necessary protective measures, such as wearing gloves, masks or overshoes. This made effective DNA analysis difficult, a situation exacerbated by the failure to take DNA samples from any of the arrested suspects.[147] Mr Justice Weir was critical of the "cavalier disregard for the integrity" of evidence and the "thoughtless and slapdash" approach to its collection.[148]

7.2.3 Further important evidential opportunities were also lost during the investigation. For example, 150 people who had used a nearby cash point were identified but were never traced and interviewed.[149] Additionally, 154 witness statements were never followed up and over 600 documents were either lost or destroyed and had to be "recreated

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paragraph 7.4

144 *Police review of Omagh 'found errors' - UTV,* by Dan Keenan, *The Irish Times,* 18 January 2002

145 *Cross-border co-operation was a myth*, by John Ware, *BBC News*, 15 September 2008

146 *R v Sean Hoey* [2007] NICC 49, paragraphs 51 – 58

147 In addition to the remarks of Mr Justice Weir see also V*erdict raises DNA evidence doubt,* by Michael Buchanan, *BBC News,* 20 December 2007

148 *R v Sean Hoey* [2007] NICC 49, paragraph 49; see also *Hoey cleared of Omagh bombing charges,* by Haroon Siddique*, The Guardian*, 20 December 2007

149 *Omagh warnings unheeded*, blog by Alex Thomson of Chanel 4 News, 29 October 2002 http://wizardnet.com/forums/Forum16/HTML/000407.html

retroactively."[150] More than 75% of all the documents, such as witness statements, were not passed to the relevant departments[151].

7.2.4 On 20 August 1998 the Omagh bombing investigation Major Incident Room received an anonymous message stating that Man A was responsible for the bombing. Man A was then researched and assessed, but was then rejected as a firm suspect. The Police Ombudsman's report stated that because Man A was a known criminal, this assessment should have been more rigorous.[152]

7.2.5 The UK government's Intelligence Services Commissioner, Sir Peter Gibson, said that on the same day, 20 August 1998, an intelligence meeting took place between Special Branch RUC and RUC CID. Sir Peter Gibson said that in this meeting all the relevant intelligence was discussed, including the names of the suspects and the telephone calls between them.[153] However, one of the people present at the first intelligence meeting, RUC Senior Investigating Officer Hamilton Houston, is reported to have said that said that he believed that "there was a greater [time] gap between the Omagh incident and the meeting".

7.2.6 On 22 September 1998 the RUC and Gardaí arrested twelve men in connection with the Omagh bombing, although all were released without charge because of a lack of evidence. These included Seamus Daly and Colm Murphy.[154] According to sources including RUC Senior Investigating Officer Hamilton Houston and RUC Detective Chief Superintendent Eric Anderson and the BBC *Panorama* documentary programme *"*Omagh: What the police were never told", RUC Special Branch and RUC CID had not had an intelligence meeting prior to this.[155]

7.2.7 According to former Assistant Chief Constable of RUC Special Branch, Raymond White, GCHQ did not pass on the intelligence received, such as the names of the suspects possessing registered mobile telephones, to the RUC CID until mid-September.[156]

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150 *Omagh police in bomb papers scandal*, by Rosie Cowan and Nick Hopkins, *The Guardian,* 19 January 2002

151 Press *Statement by the Police Ombudsman for Northern Ireland on her Investigation of matters relating to the Omagh Bomb on August 15, 1998*, 12 December 2001, paragraph 17

152 *PSNI Review of the Police Ombudsman for Northern Ireland final report in respect of the Investigation of Matters Relating to the Omagh Bomb on 15th August 1998*, quoting paragraphs 20.1 (1) and 20.12 of the (unpublished) Final Report by the Police Ombudsman

153 *Review of intercepted intelligence in relation to the Omagh bombing,* by Sir Peter Gibson, T*he Intelligence Services Commissioner,*16 January 2009 page 15, paragraph 33

154 See *The Omagh Bombing: Timeline* http://www.crimeandinvestigation.co.uk/crime-files/omagh-bombing/timeline.html

155 *BBC Panorama response to the Review of intercepted intelligence in relation to the Omagh bombing by Sir Peter Gibson, the Intelligence Services Commissioner, arising from transmission of Panorama, Omagh – what the police were never told,* 12 February 2009

156 *Transcript of Panorama interview between BBC's John Ware and former Assistant Chief Constable of Special Branch,* Ray White, *BBC Panorama,* 15 September 2008; see paragraph 7.2.5 above.

7.2.8 RUC Detective Chief Superintendent Eric Anderson said that the first intelligence meeting between Special Branch and RUC CID, in contrast to Sir Peter Gibson's findings,[157] took place on 29 October 1998. Detective Chief Superintendent Eric Anderson believed that this first meeting "was of little or no value as it produced no context from an investigation perspective". This was over two months after the Omagh bombing. The names of the suspects and the telephone calls made between them were not discussed at this meeting.[158]

7.2.9 By November 1998, there was no full-time RUC detective leading the Omagh bombing investigation. This was less than three months after the Omagh bombing. The Police Ombudsman believed that inadequate resources were allocated to the investigation as staffing had been reduced by 42%. This severely restricted the investigation during a particularly critical time.[159]

7.3 THE ARRESTS

7.3.1 On 21 February 1999 Colm Murphy was arrested and detained at Monaghan Garda station in ROI and was charged under anti-terrorism legislation in connection with the Omagh bombing. He was convicted in the Special Criminal Court in Dublin and sentenced to 14 years imprisonment on 22 January 2002. However, his conviction was quashed on 21 January 2005 after an investigation revealed that the interviewing officers, Detective Garda Sergeant McGrath and Detective Garda Hanley, had fabricated the notes of their interviews with him, making the conviction unsafe.[160]

7.3.2 On 2 March 1999 Seamus McKenna's wife Catherine McKenna was arrested and interviewed at RUC Strand Road Station in Derry/Londonderry. She was questioned in relation to the telephone call made to her house from the -980 mobile telephone (registered to Terence Morgan's father-in-law) allegedly used in the Omagh bombing at 3:41pm on 15 August 1998. During the civil action bought by the families of some of the Omagh bombing victims in June 2009, it was claimed that this telephone call was in fact taken by Seamus McKenna, who was alleged to have been in charge of the Omagh bombing operation.[161] Seamus McKenna was joined as party in the civil action.

7.3.3 Catherine McKenna was questioned 17 times during her four day detention.[162] Throughout her questioning, she gave differing accounts of the telephone call on 15 August 1998, including that she had no recollection of the telephone call, that she had taken a telephone call from Michael McKevitt and that she was in fact away on holiday

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157 See section 8 below

158 *BBC Panorama response to the Review of intercepted intelligence in relation to the Omagh bombing, Sir Peter Gibson the Intelligence Services Commissioner, arising from transmission of BBC Panorama, Omagh: What the police were never told,* 12 February 2009

159 *Press statement by the Police Ombudsman for Northern Ireland on her Investigation of matters relating to the Omagh Bomb on August 15, 1998*, 12 December 2001, paragraph 13

160 *DPP v Colm Murphy* [2005] IE CCA 1, pages 1 and 8

161 Seamus McKenna's alleged connection to the Omagh bombing led to him being joined as a co-defendant in the civil action

162 *Breslin and Others (Plaintiffs) and Seamus McKenna and Others (Defendants*) [2009] NIQB 50, paragraph 70

on the weekend of the 15 August 1998. Her varied and unreliable accounts prevented her testimony from being used against either Seamus McKenna or Michael McKevitt.

7.3.4 On 18 October 2000, at the inquest on those who died in the Omagh bombing, an RUC officer revealed that 81 arrests had been made of people suspected of involvement in the Omagh bombing. Of these, the Gardaí had made 58 arrests and the RUC had made 23. In total, the police interviewed more than 7,700 people and took 3,250 statements.[163] Despite this, at the time of writing,[164] only Colm Murphy and Sean Hoey have ever faced criminal charges in connection with the Omagh bombing.[165]

7.3.5 On 14 November 2001, Colm Murphy's foreman, Terence Morgan, was arrested in connection with the Omagh bombing. Terence Morgan's father-in-law, Michael McDermott's - 980 mobile telephone had been found to have been used in both the Banbridge and Omagh bombings.[166] Terence Morgan has been using his father-in-law's mobile telephone but he was released without charge claiming that he had mislaid his mobile telephone.

7.3.6 According to BBC journalist John Ware, Seamus Daly was never questioned about his possible role in the Omagh bombing by the Gardaí. This was despite the fact that mobile telephone analysis suggested his involvement in other recent bombings by the RIRA in Lisburn and Banbridge and that a receipt for the bomb car used in Banbridge had been recovered from a scrap yard in Crossmaglen with the name "Daly" crossed out. Seamus Daly was later arrested by the Gardaí (without informing the authorities in Northern Ireland) and prosecuted for membership of the RIRA and sentenced to two-and-a-half years in prison.[167]

8. THE REVIEWS OF THE CROSS-BORDER POLICING INVESTIGATION

8.1 THE REVIEWS: AN INTRODUCTION

The investigation into the Omagh bombing was problematic from the outset. It was beset by failings, tensions and unprofessionalism. Despite the assurances of the politicians and the senior police officers at the time that the Omagh bombing investigation was progressing well[168], other senior figures have suggested that the investigation was disorganised and inadequate from the start. The problems with the investigation into the Omagh bombing are highlighted by the findings of the internal and external reviews of the police investigation that took place. These reviews are examined in detail below. Some of them, especially those which have not been published in full, have raised more questions than they have answered. The responses

163 *Omagh: the beginning of the end*, by Lorna Martin, *Scottish Herald*, 23 January 2002

164 November 2012

165 *Irish police arrest three men over Omagh bomb atrocity*, by David McKittrick, *The Independent,* 18 October 2000

166 *DPP v Colm Murphy* [2005] IE CCA , page 2

167 *Cross-border co-operation was myth*, by John Ware*, BBC News,* 15 September 2008

168 On 5 February 1999, Garda Commissioner Pat Byrne said that the force was "satisfied we know some of them" [the bombers] and that "I am confident that, at the end of the day, prosecutions will be brought in this case" - *Garda 'closing in' on bombers*, *Irish Times,* 5 February 1999

to them which are also considered below, have frequently served to muddy the waters. All of this has added to the victims' and survivors' anguish and frustration, bearing in mind that none of the perpetrators has ever successfully been brought fully to justice.

8.2 THE McVICKER REVIEW

8.2.1 The RUC Omagh Bomb Investigation Team was initially headed by Detective Chief Superintendent Hamilton Houston.[169] By 28 August 1999, just over a year after the bombing, he was considering closing the RUC investigation down.[170] However on 24 March 2000 the Assistant Chief Constable (Crime) commissioned an internal review of the RUC investigation into the Omagh bombing. It was the first formal murder review the RUC had ever conducted.[171] The review team contained members of both the Greater Manchester Police and London Metropolitan Police and was led by RUC Chief Superintendent Brian McVicker.[172]

8.2.2 The report was finalised on 17th November 2000. It has not been published, but the Police Ombudsman has revealed some of its findings, as follows:

> "The Review Officer [McVicker] made a total of 274 recommendations, including 134 recommendations relating to evidential opportunities. It records some areas of good practice but also raised areas of concern."
>
> Many evidential opportunities had been missed:
>
> - The information provided between 4 and 15 August 1998 had not been made available to the Reviewing Team. On 14 July 2001 the Reviewing Officer discovered the existence of the anonymous telephone call of 4 August 1998, in while examining documentation held by the Omagh Bomb Investigation Team. The Review Report states that, when found, the anonymous information was marked as 'Intelligence does not refer to Omagh'. No lines of enquiry had been undertaken by the Omagh Bomb Investigation Team relating to the information. The Review Report recommended that this information should be thoroughly researched with a view to assessing its possible implication in the Omagh Bomb atrocity.
> - The Report states that, when finally located by the Review Team, the 'bomb car' (the murder weapon) was deposited in a car park with a tarpaulin over it and that it had rusted.
> - The Reviewing Officer identified delays of a year before follow up actions were initiated on statements obtained.
> - The Senior Investigation Officer was refused access to some Army and Special Branch videos from South Armagh which hampered lines of enquiry.

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169 *The Omagh bombing: Some remaining questions,* House of Commons Northern Ireland Affairs Committee, *Fourth Report of Session 2009 – 2010,* 10 February 2010, HC 374, evidence of Norman Baxter, 11 November 2009, Ev 41, question 295

170 *Press Statement by the Police Ombudsman for Northern Ireland on her Investigation of matters relating to the Omagh Bomb on August 15, 1998*, 12 December 2001, paragraph 14 http://www.policeombudsman.org/publicationsuploads/Omagh-press-statement.pdf

171 Ibid, paragraph 13

172 *Omagh bomb probe review in bid to find perpetrators*, by Derek Henderson, *The Independent*, 22 April 2000

- The Reviewing Officer recommended that the circumstances of the handling of the 4 August anonymous intelligence be investigated by a senior officer and the suspects identified be investigated. These recommendations have not been acted upon.

The RUC Review Report also pointed to problems with management of the Omagh Bomb Investigation, some of which were as follows:

- From very soon after the bombing, neither the Senior Investigating Officer nor Deputy Senior Investigating Officer were on the enquiry full-time.
- Around two months after the bombing substantial resources were removed from the Investigation and further cuts in staff were to follow.
- There were many failures in the management and leadership of the Omagh Bomb investigation.
- There were considerable errors in the management of the investigative computer database.
- The Reviewing Officer recommended the priority which should be applied to his team recommendations and was ignored."[173]

8.2.3 Something else that the McVicker report apparently disclosed, but which was not mentioned in the Police Ombudsman's report, was that 357 documents, possibly including witness statements, were lost or inadvertently destroyed during the first 18 months of the murder investigation. These documents had to be "recreated", potentially robbing them of any evidential value.[174]

8.2.4 According to the Omagh Support and Self-Help Group (OSSHG), when Brian McVicker went looking for the serious threat book in Omagh police station for the month of August 1998, it was missing.[175]

8.3 **THE PONI REPORT**

8.3.1 On 27 July 2001 the *Sunday People* published Kevin Fulton's allegations that he had supplied intelligence about a RIRA bomb plot which had been ignored.[176]

8.3.2 On 14 August 2001 the Police Ombudsman started to investigate the police investigation into the Omagh bombing.[177] On 19 September 2001, presumably having

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173 *Statement by the Police Ombudsman for Northern Ireland on her Investigation of matters relating to the Omagh Bomb on August 15, 1998*, 12 December 2001, paragraph 5.3 http://www.policeombudsman.org/publicationsuploads/omaghreport2.pdf

174 *Omagh police in bomb papers scandal*, by Rosie Cowan and Nick Hopkins*, The Guardian*, 19 January 2002

175 *The Omagh bombing: Some remaining questions,* House of Commons Northern Ireland Affairs Committee, *Fourth Report of Session 2009 – 2010,* 10 February 2010, HC 374, oral evidence of the Omagh Support and Self-Help Group, 16 March 2010 2009, Ev 5, question 13

181 See paragraph 3.3.8 above

177 *Press Statement by the Police Ombudsman for Northern Ireland on her investigation of matters relating to the Omagh Bomb on August 15, 1998*, 12 December 2001, page 2 http://www.policeombudsman.org/publicationsuploads/Omagh-press-statement.pdf

become aware of the McVicker report, she extended the terms of her investigation of the RUC Omagh bombing investigation. The Police Ombudsman now posed the following questions:

- was information of relevance to the Omagh bombing made available to the RUC prior to the Omagh Bomb?
- if such information did exist and was available, had it been responded to appropriately by the RUC?
- was intelligence held by the RUC was correctly revealed to and exploited by the Omagh Bomb Investigation Team?
- were evidential opportunities contained in the murder review document ever investigated (this is the document referred to as the Omagh Bomb Review Report)?[178]

8.3.3 On 6 December 2001 sections of the Police Ombudsman's report were leaked to the press. The leaks centred on the use of the information provided by the informer Kevin Fulton. This was used by the media to suggest that the report was concentrating on the use of unreliable information, rather than on the actual substance of the report, which was the criticism of the RUC investigation. The leaks were seen by some in the media as a move to discredit the Police Ombudsman's report before it was published.[179]

8.3.4 Reaction in certain quarters was undoubtedly ferocious. Lord Maginnis, a former Ulster Unionist MP, called the Police Ombudsman a "suicide bomber" who had "outlived her usefulness". Sam Pollock, the then Chief Executive of the Officer of the Police Ombudsman's office, later wrote to Lord Maginnis and described his remarks as "slanderous" and said the comments put the Police Ombudsman in immediate personal danger from the very "terrorists and thugs who can so easily legitimise their murderous obsession". Lord Maginnis, who published this correspondence, expressed his "contempt for the superficial way in which the Police Ombudsman had sought to weave unrelated facts into a fantasy that brings grief to the victim's families".[180]

8.3.5 On 12 December 2001, the Police Ombudsman's report was published. It was highly critical of the RUC's Omagh bombing investigation and stated that "The victims, their families, the people of Omagh and officers of the RUC have been let down by defective leadership, poor judgement and a lack of the urgency."[181] The criticisms principally concerned confusion at leadership level, the inadequate allocation of resources to the investigation, and the insufficient exchange of and poor use of information between police forces and agencies. In particular, the Ombudsman criticised the failure of Special Branch to pass on intelligence to officers investigating the bombing:

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183 Ibid

184 *Special Branch resistance to Patten may be reason for leaked report*, by Ed Moloney, *Sunday Tribune,* 11 December 2001

185 *Maginnis defends 'suicide bomber' remarks*, by Ian Graham, Press Association, 17 December 2001

186 *Statement by Police Ombudsman for Northern Ireland on her Investigation of matters relating to the Omagh Bomb on August 15, 1998,* 12 December 2001, paragraph 7.4 at http://www.policeombudsman.org/publicationsuploads/omaghreport2.pdf

> "The Police Ombudsman's Office has identified 360 intelligence documents within Special Branch which may have been of varying degrees of relevance to the Omagh Bomb investigation. 78% of these intelligence documents held by Special Branch have not been passed to the Omagh Bomb Investigation Team. The specific intelligence documents which relate to 1998 were recovered from only a sample of the intelligence examined, a wider analysis could identify more."[182]

Crucially, she found that Special Branch had no record of meetings they had with Kevin Fulton on 23 July and 12 August 1998 and that credible intelligence supplied by him was not passed on to the CID officers investigating the bombing or the McVicker Review.[183] She also found that the anonymous telephone call made on 4 August 1998[184] was not acted upon.[185]

8.3.6 The Police Ombudsman found that many of the 274 recommendations made in the internal RUC McVicker report in 2000 had not been implemented expeditiously and that inadequate staffing resources were given to the Omagh bomb investigation[186]. The Police Ombudsman also commented that some police officers were "defensive and un co-operative".[187]

8.3.7 The Police Ombudsman concluded that she did not consider that there had not been sufficient intelligence information available to the RUC to prevent the Omagh bombing.[188] However, she identified a catalogue of errors that were identified in the aftermath of the Omagh bombing that had all weakened the police investigation, many of which had contributed to the fact that no-one had been convicted.[189]

8.3.8 The Police Ombudsman made the following recommendations:

> "1. That an Investigation Team lead by a Senior Investigation Officer independent of the Police Service of Northern Ireland, should be asked to conduct the Omagh Bomb Investigation;
> 2. That an Officer in Overall Command from an outside police force be appointed to carry out the investigation of the potentially linked terrorist incidents identified in the Omagh Bomb Review Report;
> 3. That Senior Investigation Officers in the Omagh Bomb Investigation, and all other investigations must be given appropriate access to all relevant intelligence (The 'relevance' test being determined the Senior Investigator Officer);

182 Press *Statement by the Police Ombudsman for Northern Ireland on her Investigation of matters relating to the Omagh Bomb on August 15, 1998*, 12 December 2001, paragraph 17
183 *Statement by the Police Ombudsman for Northern Ireland on her Investigation of matters relating to the Omagh Bomb on August 15, 1998*, 12 December 2001, paragraph 6.3
184 See 3.2 above
185 *Statement by the Police Ombudsman for Northern Ireland on her Investigation of matters relating to the Omagh Bomb on August 15, 1998*, 12 December 2001, paragraph 6.4
186 Ibid, paragraph 6.20
187 Ibid, paragraph 7.2
188 Ibid, paragraph 6.4
189 Ibid, paragraph 7.4

4. That Her Majesty's Inspector of Constabulary be invited to carry out a review of terrorist linked murder enquiries, with a view to reporting on structure, resources, strategies, policies, practices and processes; This should include lines of communication and sharing of intelligence between Special Branch and CID generally and also with the Senior investigating Officer in charge of any murder inquiry.
5. That a Review takes place into the role and function of Special Branch with a view to ensuring that in future there are clear structures and procedures for the management and dissemination of intelligence between Special Branch and other parts of the Police Service of Northern Ireland and that Special Branch will be fully and professionally integrated into the Police service of Northern Ireland;
6. That the Police Service of Northern Ireland adopt the policy of the Association of Chief Police Officers with regard to murder reviews."[190]

8.4 **REACTION TO THE PONI REPORT**

8.4.1 On 13 December 2001 the PONI[191] Chief Constable Sir Ronnie Flanagan responded to the report by declaring that if the criticisms of his leadership were proven, then "I would not only resign, I would publicly commit suicide"[192]. His reaction to the report began an acrimonious war of words with the Police Ombudsman, during which numerous public figures attempted to discredit the PONI findings.

8.4.2 On 14 December 2001, in spite of the findings in the PONI Report, a spokesman said that Sir Ronnie Flanagan had the "full support" of Tony Blair, the Prime Minister.[193] The Secretary of State for Northern Ireland, John Reid MP, accused PONI of producing a "politically charged report" and of "displaying a certain lack of experience and possibly some gullibility".[194]

8.4.3 On 21 January 2002 PSNI Chief Constable Sir Ronnie Flanagan issued an 87-page statement and a 103-page response to the PONI report, rejecting many of its findings.[195] Rather than accept the Police Ombudsman's recommendation that an external senior police officer be appointed to investigate the potentially linked terrorist incidents identified in the RUC Omagh Bomb Review Report, the Chief Constable said that he would seek advice from "the Senior Merseyside Detective" (Chief Superintendent Phil Jones).[196]

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190 *Press Statement by the Police Ombudsman for Northern Ireland on her Investigation of matters relating to the Omagh Bomb on August 15, 1998*, 12 December 2001, page 12

191 The RUC had been renamed the Police Service for Northern Ireland (PSNI) on 4 November 2001.

192 *Omagh bomb report 'grossly unfair'*, *BBC News*, 21 December 2001
http://news.bbc.co.uk/1/hi/northern_ireland/1707299.stm;
see also BBC *Breakfast with Frost intervie*w: *Sir Ronnie Flanagan, A*pril 7 2002
http://news.bbc.co.uk/1/hi/programmes/breakfast_with_frost/1917565.stm

193 *PM backs Ulster Police Chief, The Guardian*,14 December 2001

194 *Secrets of Omagh,* Nick Hopkins, *The Guardian*, 20 January 2003

195 *Chief Constable's Statement in response to the Police Ombudsman's report*, 24 January 2002
http://www.irishtimes.com/newspaper/special/2002/flanagan/index.htm
Ulster police dismiss Omagh bomb findings, by Rosie Cowan, *The Guardian*, 24 January 2002

196 *Merseyside officer to 'quality assure' Omagh investigation*, *Northern Ireland News,*
17 May 2002

8.4.4 On 14 February 2002 the Police Federation announced that they were seeking to judicially review the PONI Report[197]. The Police Federation claimed that the PONI Report was unlawful because it contained factual errors; it had not given the RUC Chief Constable and other officers a fair opportunity to respond to criticism; and constituted a misuse of her powers. The RUC Chief Constable, the former head of RUC Special Branch, and the associate chairman of the Police Association, Jimmy Spratt, had filed affidavits. However, Assistant Chief Constable's Sam Kinkaid and Alan McQuillan had both provided affidavits to PONI which supported its case.[198] Sir Ronnie Flanagan had continually said that both Alan McQuillan and Sam Kinkaid had played a key role in the Omagh bomb investigation and that there had been regular progress meetings. However, in the sworn affidavits of Alan McQuillan and Sam Kinkaid, both claimed that they only played a peripheral role in the investigation; they explained they had never been invited to the investigation progress meetings and that they were never asked for information by the RUC Chief Constable. Having been marginalised by Sir Ronnie Flanagan, they both therefore strongly rejected the accusation that they were in any way responsible for the failures of the investigation. Their affidavits described an investigation that was disorganised, lacking in leadership and where key figures were un-cooperative with one another.[199] The Association subsequently dropped its legal action a year later on 23 February 2003.[200]

8.4.5 On 5 and 7 February 2002 the Northern Ireland Policing Board met separately with the Chief Constable and the Police Ombudsman to discuss the PONI Report and the PSNI's response, in what they described as "full and frank discussions".[201] The Northern Ireland Policing Board essentially hammered out a compromise response to the Police Ombudsman's recommendations[202], as follows:

- Rather than call in a non-PSNI officer to act as the Senior Investigating Officer (SIO) from now onwards, as the Ombudsman had recommended, the Board would appoint a senior police officer from another police force to take an overview of the investigation.[203] This officer turned out to be the Deputy Chief Constable of Merseyside, Mike Tonge.[204]
- The PSNI would appoint an SIO to take operational control of the investigation.[205]

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197 *Flanagan appears to back legal bid*, *UTV News*, 9 February 2002

198 *Fresh conflict over Omagh bomb report, BBC News,* 22 May 2002

199 *Affidavits by top officers differ from Flanagan over Omagh,* by Dan Keenan, *The Irish Times,* 23 May 2000

200 *Delight at the vindication of Omagh report,* by Sharon O'Neill, *Irish News*, 24 January 2003

201 *Specially Convened Meeting Of The Policing Board to Discuss the Omagh Reports*, 5 and 7 February 2002
http://cain.ulst.ac.uk/issues/police/policingboard/nipb050202omagh.htm

202 See paragraph 8.3.8 above

207 *Specially Convened Meeting Of The Policing Board to Discuss the Omagh Reports*, 5 and 7 February 2002, Paragraph A

204 *'New momentum' in Omagh probe*, *BBC News*, 3 April 2003

205 *Specially Convened Meeting Of The Policing Board to Discuss the Omagh Reports*, 5 and 7 February 2002, Paragraph B

- Phil Jones, also from Merseyside, already appointed as an adviser by the PSNI, would continue to play an oversight role (which to some extent overlapped with that of the officer appointed by the Policing Board), and would have equal status with the SIO appointed by the PSNI.[206]
- The PSNI should invite Her Majesty's Inspector of Constabulary (HMIC) to conduct a review of all terrorist-related murder enquiries. The Policing Board also approved the Ombudsman's recommendation that the PSNI should adopt the Association of Chief Police Officers' policy on murder reviews. The Board had also asked HMIC to carry out a review of arrangements for the management and dissemination of intelligence between Special Branch and other parts of the PSNI.[207]

8.4.6 On 31 March 2002 Sir Ronnie Flanagan left the PSNI to take up his new role at Her Majesty's Inspectorate of Constabulary (HMIC). The Omagh victims were reported to be furious. Michael Gallagher was quoted as asking:

> "How can a police chief who has been so severely criticised in an independent report be put in charge of raising standards in other police forces?"[208]

8.4.7 In May 2002 the Northern Ireland Policing Board appointed Mike Tonge to have oversight of the PSNI investigation. They also secured the services of David Blakey of HMIC to carry out the review of terrorist-related murder investigations.[209]

8.4.8 At around the same time, Detective Superintendent Norman Baxter replaced Detective Superintendent Brian McArthur as SIO for the Omagh bomb investigation.[210]

8.4.9 At the time, the appointment of Mike Tonge and Norman Baxter were hailed as the start of a new police investigation.[211]

8.4.10 The PSNI formally adopted the Association of Chief Police Officers (ACPO) policy on murder reviews in June 2002. However, over a year later, the Northern Ireland Policing Board said that "shortages of skilled, experienced investigators have prevented full implementation of the ACPO policy". [212]

8.4.11 Dan Crompton of HMIC delivered his report on RUC Special Branch to the Northern Ireland Policing Board in November 2002. His 11 recommendations for improving the sharing of intelligence were approved by the Board and accepted by the new Chief Constable, Hugh Orde.[213]

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206 Ibid, Paragraph C

207 Ibid

208 *Omagh anger at Flanagan Job*, by Rosie Cowan, *The Guardian*, 20 February 2002

209 *Annual Report 2002/2003*, Northern Ireland Policing Board, page 21

210 *The Omagh bombing: Some remaining questions,* House of Commons Northern Ireland Affairs Committee, *Fourth Report of Session 2009 – 2010,* 10 February 2010, HC 374, evidence of Norman Baxter, 11 November 2009, Ev 41, question 296

211 *New Man Leads Omagh Probe*, *Sky News*, 17 May 2002; *Chief appointed to new Omagh investigation*, *RTÉ News*, 17 May 2002

212 *Annual Report 2002/2003*, Northern Ireland Policing Board, page 22

217 Ibid, page 22

8.4.12 On 4 April 2003 Mike Tonge delivered his report to the Northern Ireland Policing Board:

> "The Board was satisfied that significant progress had been made in moving forward the investigation and the wider community should be assured that issues of concern previously identified have now been fully addressed."[214]
>
> Dan Blakey of HMIC also delivered his report on terrorist-related murder enquiries to the Chief Constable. He also made a number of recommendations, and the Chief Constable undertook to bring such murder investigations into line with those in the rest of the UK. [215]

8.5 **THE NALLY REVIEW**

8.5.1 On 22 March 2002 the Police Ombudsman delivered a report to the Irish government entitled *Report raising concerns of the activity of An Garda Síochána Officers during 1998*[216]*,* concerning the allegations made by Garda Detective Sergeant John White.[217]

8.5.2 In April 2002 the Irish Minister for Justice, Equality and Law Reform, John O'Donoghue TD, appointed a working group, consisting of Dermot Nally, former Secretary to the Irish government, Eamonn Barnes, former Director of Public Prosecutions, and Joseph Brosnan, former Secretary to the Department of Justice, to consider the Police Ombudsman's report.

8.5.3 In the process of compiling their report, the Nally Committee interviewed 25 people, including Garda Detective Sergeant John White, whom they met four times. The Committee reported that John White had made a 300-page statement to the PSNI in August 2002 and had followed this up with an additional 59-page statement. However, the Committee regretted that they were unable to interview the informant central to John White's allegations, Paddy Dixon,[218] who was now living overseas under an Irish witness protection programme in fear of reprisals from the Real IRA.[219]

8.5.4 The Nally Report was delivered in June 2003. Its findings were as follows:

> "The Group has concluded that there is no foundation for the allegations made by Detective Sergeant White to the Police Ombudsman for Northern Ireland or for the additional allegations which he made more recently to the senior investigating officer of the PSNI Omagh bomb investigation team and that those allegations were a direct consequence of and were motivated solely by concerns arising from the difficulties in which he found himself with his superiors in the Garda Síochána and with the criminal law."[220]

8.5.5 The conclusions reached by the Nally Committee were highly critical of John White's allegations, to which they responded as follows:

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214 *Annual Report 2003/2004*, Northern Ireland Policing Board, page 19
215 Ibid, page 20
216 The full report has never been published
217 See section 3.6 above
218 Ibid
223 *Omagh bomb families back whistle-blower, by* Henry McDonald, *The Observer*, 6 August 2006
220 *Nally Report*, paragraph 4.27 at http://cain.ulst.ac.uk/events/omagh/docs/nally0603.pdf

- There was no truth in the allegation that the informer Paddy Dixon had provided intelligence regarding either an intended attack or a request to steal a red/maroon Vauxhall Cavalier car. The report found that it was the strict policy of the Gardaí to provide written reports of intelligence meetings with informers and that although there was a prolific rate of exchange between Paddy Dixon and John White between February and May 1998, only one further report was submitted on 4 June 1998. The Committee believed that this was because Paddy Dixon had effectively been "frozen out" of the RIRA.
- Neither was there any truth in the allegation that Detective Chief Superintendent Dermot Jennings had been given intelligence from Paddy Dixon and John White, regarding the planned Omagh bombing or the request to steal a red/maroon Vauxhall Cavalier, nor that in response Detective Chief Superintendent Jennings had said "I think we will let this one go through". Detective Chief Superintendent Jennings said that "this never was or never would be a consideration or an item for discussion".[221] In support of his version of events, he also stated that John White's account of the meeting was a "totally concocted story".[222]
- The Nally Committee found no evidence supporting John White's accusation that Detective Chief Superintendent Dermot Jennings had asked him to create a written intelligence report on 17 August 1998 "which seriously distorted what had happened", such as excluding the information that Subversive X had asked for a specific car to be stolen on 10 August 1998 and then that Subversive X had obtained the car on 14 August 1998. The report said that, "It is difficult to imagine what possible motivation Dermot Jennings, who was in daily contact with the RUC at the time, could have had for not passing such a piece of intelligence to the RUC if he had received it."[223]
- The Nally Committee further found no truth in John White's allegation that Subversive X had told Paddy Dixon in early September 1998 and again in March 1999 that an agreement had been reached between Irish government ministers and the RIRA, whereby significant figures in RIRA would escape prosecution in exchange for commitment to the peace process. In support of this conclusion, the report cited Garda Assistant Commissioner Kevin Carty who had said that "there was never any attempt to interfere or influence any aspect of the investigation by anyone, including politicians or any government ministers", and "to suggest otherwise is totally false". Likewise, the Taoiseach Bertie Ahern confirmed this in his own statement to the Dáil on 5 November 2002 where he described the allegation as being "as outrageous as it is offensive".[224]

8.5.6 At first, the Irish government was extremely reluctant to publish the Nally Report. On 16 December 2003 the next Minister for Justice, Michael McDowell said that "it would be the height of irresponsibility for me to put in the public domain information that would be of use only to paramilitary terrorists in waging their campaign".[225]

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221 *The Nally Committee Report, in response to the 'Report raising concerns of the activity of An Garda Síochána Officers during 1998',* 22 March 2002, page 24, paragraph 2.13

222 Ibid, page 24, paragraph 2.14

223 Ibid, page 40, paragraph 2.46

224 Ibid, page 45, paragraph 3.8

225 http://cain.ulst.ac.uk/issues/politics/docs/dott/mmcd161203.htm

8.5.7 On 18 January 2005 John White was acquitted of perverting the course of justice and making false statements.[226] In July 2006 he was also acquitted of planting a shotgun in a Traveller's camp in Burnfoot in County Donegal, ROI. Two weeks later, parts of the Nally report which questioned John White's reputation, were leaked to the media.[227]

8.5.8 Almost three years after it was completed, on 28 November 2006 the same Minister, Michael McDowell,[228] published an edited version of the Nally report on the internet.[229]

8.5.9 The Nally Committee Report was criticised for a number of reasons.

These included:

- That the report lacked independence because the inquiry was carried out by three former senior civil servants in the Irish Republic.[230]
- That these ex-civil servants did not have the necessary criminal investigative skills for the task.[231]
- That the committee did not interview the people who were central to John White's allegations, such as the informant Paddy Dixon and the PSNI's Senior Investigation Officer, Norman Baxter.[232]
- That the Omagh victims and survivors had no input to the review.[233]
- That the Committee met former Police Ombudsman for Northern Ireland, Nuala O'Loan just once.
- That the report was not published in full. Michael Gallagher, of the OSSHG, called for full public disclosure of the document.[234]
- That at a meeting between the RUC and the Gardaí in Omagh in August 1999, Dermot Jennings refused to review the Garda investigation into the Omagh bombing and refused to supply the RUC with detail about suspects saying "Look, a lot of these people are our sources. We don't discuss this. In these files there are things we would not want you to see. We will tell you everything we think is relevant on a need to know basis. We do not have disclosure in the South like you do in the North."[235]

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226 *Relatives renew pressure over Omagh report*, *BreakingNews.ie*, 18 January 2005

227 *Garda lied over bomb claim*, by Tom Brady**,** *Irish Independent*, *5 August 2006; Omagh relative's open mind on Real IRA claim by Garda*, by Anton McCabe *Daily Ireland, 8 July 2006.*

228 Now also Tánaiste, or deputy Prime Minister

229 http://www.justice.ie/en/JELR/Pages/PR07000358

230 *Omagh report clears police, Mail Online*, November 2006

231 *Omagh families meet Irish PM*, *BBC News*, 11 March 2004

232 *Omagh bomb: new Garda probe needed*, by Michael McHugh*, Belfast Telegraph*, 17 July 2004

233 *Omagh victims' families call for full inquiry*, *Irish Independent*, 30 November 2006

234 *Relatives renew pressure over Omagh report*, *BreakingNews.ie*, 18 January 2005

235 *Cross-border co-operation was a myth*, by John Ware, *BBC News,* 15 September 2008

8.5.10 It is clear that significant issues remain unresolved and that important questions remain unanswered. As Michael Gallagher has said, the best solution would be to establish an independent cross-border public inquiry.[236]

8.6 THE TRIAL OF SEAN HOEY AND THE SECOND PONI INVESTIGATION

8.6.1 The trial of Sean Hoey began on 26 September 2006. The trial judge, Mr Justice Weir, expressed concern about what he later described in his judgement as a "cavalier" and "slapdash" approach to forensic evidence.[237]

8.6.2 On 23 November 2006 the Chief Constable of the PSNI, Hugh Orde, referred policing issues arising out of the trial of Sean Hoey to the Police Ombudsman.

8.6.3 The Police Ombudsman's investigation addressed two issues:

a) why two police officers had each made two statements, and
b) why the evidence was, in the term used by defence counsel, 'beefed up.'[238]

8.6.4 Sean Hoey's trial ended in January 2007, but judgment was not delivered until 20 December that year. Sean Hoey was acquitted. After reading the judgment, PONI extended the remit of its investigation to include consideration of whether any the officers were involved in 'a deliberate and calculated deception'.[239]

8.6.5 The new Police Ombudsman for Northern Ireland, Al Hutchinson (appointed in 2007), did not report until 10 February 2009, when he found no deliberate and calculated deception, but did find issues relating to case preparation, documentation and disclosure (to be subject of a further report).[240]

8.7 THE GIBSON REVIEW

8.7.1 After the Sean Hoey trial there was rather a long hiatus in the Omagh bombing investigation until BBC *Panorama* broadcast their documentary "Omagh: What the police were never told", which alleged that GCHQ had been intercepting mobile telephone calls between the bombers, on 15 September 2008.[241]

8.7.2 On the basis of the BBC Panorama broadcast and the serious of the allegations it made, Prime Minister Gordon Brown, having succeeded Tony Blair, invited the government's Intelligence Services Commissioner, Sir Peter Gibson, to "review any intercepted intelligence material available to the security intelligence agencies in relation to the

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236 *The Omagh bombing: Some remaining questions,* House of Commons Northern Ireland Affairs Committee, *Fourth Report of Session 2009 – 2010,* 10 February 2010, HC 374, evidence of Michael Gallagher and Godfrey Wilson,16 March 2009, Ev 1, question 12

237 See paragraph 7.2.2 above

238 *Statement of the Police Ombudsman's investigation into Sean Hoey trial,* 19th February 2009, paragraph 1.5 http://www.policeombudsman.org/publicationsuploads/OMAGH-TRIAL-FULL-STATEMENT.pdf

239 Ibid, paragraph 1.8

240 Ibid, paragraph 4.0 – no second report appears to have been published

241 Please see section 3.5 above

Omagh bombing and how this intelligence was shared".[242] Sir Peter Gibson reported to the Prime Minister in January 2009. It has been argued that his review was inadequate for a number of reasons. The principal criticism was that Sir Peter Gibson's report provoked as many new questions as it sought to answer in part due to the fact that only 16 pages of the report were made available to the public, including the victims and the families and the Northern Ireland Affairs Committee (NIAC) of the House of Commons. The 16 pages of Sir Peter Gibson's report that were made available raised more questions than answered. Sir Peter Gibson's full report has never been made available to the public on the grounds of national security. The failure to reveal further information raised many questions for the victims and families. This was a view shared by members of NIAC, as examined below at Section 8.8.[243]

8.7.3 There are opposing views on the full nature of intelligence information that was available to investigators. The official government position described by Sir Peter Gibson in his 16 page summary and in his given to evidence to NIAC was that the intelligence services were not tracking the movements of the cars involved in the Omagh bombing and neither was GCHQ monitoring specific mobile telephones during the bombing run to Omagh.[244] However, the contents of Sir Peter Gibson's full 60-page review have been classified as secret under Section 2 (2) of the Security Services Act 1989 and only a 16-page summary version is available.[245] It is clear from the civil claim that mobile telephones played a crucial role in the Omagh bombing: Mr Justice Morgan in the civil action was quite insistent on this.[246]

8.7.4 The available content of Sir Peter Gibson's review has been contested. For example, BBC *Panorama* has alleged that at the request of RUC Special Branch in Northern Ireland, GCHQ were monitoring the mobile telephones of those responsible for the Omagh bombing on the day of the attack.[247] In support of this, Michael Gallagher, of the OSSHG, who lost his son Aidan in the bombing, has said that he has been told by various high level sources that the intelligence agencies were tracking the movements of specific vehicles and were monitoring particular telephones, but that these agencies had failed to pass this information to one another, both before and after the bombing. Michael Gallagher believed that "if the intelligence services had co-operated, police, let

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242 *Review of intercepted intelligence in relation to the Omagh bombing [Extracts from the Report], Sir Peter Gibson, Intelligence Services Commissioner*, 16 January 2009 http://cain.ulst.ac.uk/victims/docs/british_gov/nio/gibson_160109.pdf see also *Q & A: Omagh intelligence report*, by John Ware, *BBC New,* 21 January 2009

243 See section 8.8 below

244 *Review of intercepted intelligence in relation to the Omagh bombing [Extracts from the Report], Sir Peter Gibson, Intelligence Services Commissioner*, 16 January 2009, paragraphs 27 – 32

245 Ibid, paragraph 3

246 *Breslin and Others (Plaintiffs) v Seamus McKenna and Others (Defendants) [*2009] NIQB 50, paragraphs 36 – 67. Lord Justice Gillen in the appeal in the civil claim also spent time analysis the mobile telephone evidence; See *Breslin and Others (Plaintiffs) v Michael Colm Murphy and Seamus Daly (Defendants)* [2013] NIQB 35 at paragraphs 21-35 and 63-81.

247 Transcript of *Panorama* interview between BBC's John Ware and former Assistant Chief Constable of Special Branch Northern Ireland, Ray White, *BBC Panorama,* 15 September 2008

it be RUC or Gardaí, could have put their hand on the shoulder of the people [who carried out the bombing] on that very evening".[248]

8.7.5 Sir Peter Gibson's review was also problematic in its description of the ways in which intelligence was shared between relevant agencies in the days immediately after the Omagh bombing. For example, his review rejected the possibility that GCHQ were monitoring the bombers, yet he confused the matter by stating that "to the extent that any relevant intelligence was derived from interception, it was shared with RUC HQ and RUC Special Branch South promptly and fully"[249], therefore appearing to acknowledge that the intelligence services were monitoring specific communications. This contradiction undermines the credibility of the report in its edited form. Its veracity cannot be checked because the full report cannot be examined, even by members of the legislature, restricted as it is to the Intelligence and Security Committee[250] of the executive branch of the UK government.

8.7.6 Sir Peter Gibson's findings that the intelligence in relation to the Omagh bombing was passed on "promptly and fully" and "within hours" of the bombing[251] have also been vigorously contested. Former Assistant Chief Constable of RUC Special Branch, Ray White, has said that his understanding was that although the Head of Special Branch made repeated requests to GCHQ for intelligence feeds in the aftermath of the Omagh bombing, GCHQ only supplied the names of those using the mobile telephones as late as the 18 or 19 August 1998.[252] According to Ray White, GCHQ therefore never provided RUC Special Branch with the details of the mobile telephone calls, the location of the mobile telephones or the timing of each call, which when taken together gave the "irresistible inference"[253] that they were used in the Omagh bombing. Furthermore, this limited information was not passed onto RUC CID for a further three and a half weeks. RUC Detective Chief Superintendent Norman Baxter said that this delay meant that "the investigation on the 15 August was effectively sabotaged through the starvation of essential intelligence" and by depriving the investigators of evidential opportunities and the chance to interview potential suspects.[254]

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248 *The Omagh bombing: Some remaining questions,* House of Commons Northern Ireland Affairs Committee, *Fourth Report of Session 2009 – 2010,* 10 February 2010, HC 374, evidence of Michael Gallagher,16 March 2009, Ev 3, question 9

249 *Review of intercepted intelligence in relation to the Omagh bombing [Extracts from the Report], Sir Peter Gibson, Intelligence Services Commissioner*, 16 January 2009, paragraph 27

250 http://isc.independent.gov.uk/

251 *Review of intercepted intelligence in relation to the Omagh bombing [Extracts from the Report], Sir Peter Gibson, Intelligence Services Commissioner*, 16 January 2009, paragraph 27

252 Transcript of *Panorama* interview between BBC's John Ware and former Assistant Chief Constable of Special Branch, Ray White, *BBC Panorama,* 15 September 2008

253 *Breslin and Others (Plaintiffs) v Seamus McKenna and Others (Defendants) [*2009] NIQB 50, paragraph 67

254 BBC Panorama response to the *Review of intercepted intelligence in relation to the Omagh bombing [Extracts from the Report], Sir Peter Gibson, Intelligence Services Commissioner*, 16 January 2009; *BBC Panorama: Omagh – what the police were never told,* 12 February 2009

8.7.7 The problems which arose from GCHQ's failure to pass on intelligence can be seen in the subsequent actions of the RUC CID investigators. Indeed, despite GCHQ already holding the information, the RUC CID detectives were required to laboriously go through telephone records for nine months, involving 6.4 million telephone calls, to find the same telephone numbers for themselves. Although the solicitor acting for the families during the civil action, Jason McCue of H_2O Law LLP, described this as "an incredible achievement" by the RUC, he also described GCHQ's and Special Branch's failure to pass this information on as "negligent".[255] It is clear that this lengthy process lost critical evidential opportunities and eliminated any possibility of interviewing the suspects on the basis of specific evidence in the immediate aftermath of the Omagh bombing.

8.7.8 There have been various critical responses to Sir Peter Gibson's report, specifically relating to unresolved allegations. For example, former Northern Ireland Police Ombudsman, Nuala O'Loan has said that although she had only read Sir Peter Gibson's summary report, it had "added nothing" to her findings and her understanding of the events surrounding the bombing.[256] She further revealed that if anything Sir Peter Gibson's report had "confused her" as she did not understand how he had reached the conclusions that he did, specifically relating to his findings that "to the extent that any relevant intelligence was derived from interception, it was shared with RUC HQ and Special Branch South promptly and fully".[257]

8.7.9 The most critical response to Sir Peter Gibson's report, however, came from the editors of the BBC *Panorama* programme, whose investigative journalism was largely responsible for the government commissioning the report from Sir Peter Gibson. On 12 February 2009, the BBC *Panorama* editorial team provided a written response to Sir Peter Gibson's findings.[258] The response explained that a number of the allegations made in the BBC programme remained unanswered and additionally that his report also provided confirmation of many other accusations. In summary, their criticisms were as follows:

- Despite there being a direct allegation in the original BBC *Panorama* programme, Sir Peter Gibson's report never explicitly denied that GCHQ were monitoring specific mobile telephones. BBC *Panorama* suggested that because of this, it was correct to conclude that as many as 24 mobile telephones were being monitored and "that the GCHQ were monitoring the mobiles of some of the bombers during the bomb run".[259]

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255 *The Omagh bombing: Some remaining questions,* House of Commons Northern Ireland Affairs Committee, *Fourth Report of Session 2009 - 2010,* 10 February 2010, HC 374, evidence of Jason McCue, 8 July 2009, Ev 4, question 213

256 Ibid, evidence of Dame Nuala O'Loan, 8 July 2009, Ev 34, question 235

257 *Review of intercepted intelligence in relation to the Omagh bombing [Extracts from the Report], Sir Peter Gibson, Intelligence Services Commissioner*, 16 January 2009, paragraph 27

258 *BBC Panorama response to Sir Peter Gibson's report,* 12 February 2009 http://news.bbc.co.uk/1/shared/bsp/hi/pdfs/12_02_09_panoramagibsonresponse.pdf See also *The Omagh bombing: Some remaining questions,* House of Commons Northern Ireland Affairs Committee, *Fourth Report of Session 2009 – 2010,* 10 February 2010, HC 374, written evidence from BBC *Panorama,* 16 December 2009, Ev 55

259 *BBC Panorama response to Sir Peter Gibson's report,* 12 February 2009 page 1, Summary, point 3

- After reaching the conclusion that GCHQ was monitoring specific calls, the programme had alleged that GCHQ then failed to pass on sufficient information to Special Branch. BBC *Panorama* alleged that GCHQ failed to pass on the specific telephones numbers and the information obtained from these calls to police investigators, which thereby meant that the "investigation on the 15 August [1998] was effectively sabotaged through the starvation of essential intelligence."[260]
- BBC *Panorama* contested Sir Peter Gibson's finding that an intelligence meeting that took place between Special Branch and RUC CID on 20 August 1998, five days after the Omagh bombing. All the interviewed members present at intelligence meetings[261] said that the meeting took place at a much later date than this.
- In contradiction to Sir Peter Gibson's report, BBC *Panorama* alleged that Special Branch had requested that GCHQ monitor the mobile telephone registered to Colm Murphy. BBC *Panorama* alleged that Special Branch had made this request following this mobile telephone's use in the Banbridge bombing on 1 August 1998. Further, the BBC also explained that the telephone was in the scout car on the day of the bombing.[262]
- BBC *Panorama* was critical of Sir Peter Gibson's finding that Special Branch South was "cautious" when dealing with GCHQ and that they did not actively request intelligence. Instead, BBC *Panorama* believed that the failure to pass intelligence on stemmed from GCHQ's "strict conditions" regarding secrecy. [263]
- BBC *Panorama* alleged that in addition to GCHQ withholding intelligence "chatter" from Special Branch either indefinitely or until it was effectively too late in the investigative process, both GCHQ and Special Branch never passed any information on to the RUC CID.
- In a further contradiction to Sir Peter Gibson's report, the BBC *Panorama* programme interviewed a mobile telephone technology expert and discovered that surveillance equipment in 1998 meant that it was possible to trace a mobile telephone to within, at the most, a two mile radius of a mast, but that often the mobile telephone could be traced to a more exact location within that radius. It was further suggested that with this technology available, it was likely that the mobile telephones were subject to surveillance.

8.7.10 BBC *Panorama* reporter John Ware has refused to name the sources used in the two documentaries, he has said that they were people of "integrity".[264] He said that where the BBC documentary stated matters as "absolute fact", such as telephone calls being made at certain times between certain telephones and also the use of such phrases as "the bricks are in the wall" and "we're crossing the line", it did so having received

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260 Ibid, page 2, Summary, point 8

265 Ibid; RUC Chief Superintendent Hamilton Houston believed that "there was a greater gap between the Omagh incident and the meeting". RUC Detective Chief Superintendent Eric Anderson had no record of an intelligence meeting taking place until 29 October 1998.

262 Ibid, page 7, paragraph 33

263 Ibid, page 8, paragraph 42

264 *The Omagh bombing: Some remaining questions,* House of Commons Northern Ireland Affairs Committee, *Fourth Report of Session 2009 – 2010,* 10 February 2010, HC 374, evidence of John Ware and Leo Telling,13 May 2009, Ev 10, question 87

information from people "who are in the know".[265] John Ware has also revealed that "one or two bits" were single-sourced pieces of intelligence, but that the "bricks are in the wall" statement had been given to him by more than one source.

8.7.11 It is clear that many of the serious allegations made in the BBC *Panorama* programme on 15 September 2008 remain unanswered. Due to the very serious nature of these allegations, and as the victims' families have continually demanded,[266] it is surely appropriate that they are conclusively resolved once and for all in an independent cross-border inquiry.

8.8 THE NIAC INQUIRY

8.8.1 In October 2008 the Northern Ireland Select Committee (NIAC), a Select Committee of the House of Commons, travelled to Omagh to meet members of the OSSHC and to pay their respects to all the victims at the Omagh Garden of Light memorial. At the time, the review by Sir Peter Gibson review and the civil litigation[267] were on-going.[268] In 2009 NIAC held an inquiry on the Omagh bombing.

8.8.2 The Committee heard from witnesses on five days between 16 March and 11 November 2009. It focussed on four issues:

- the bombing and the victims;
- the Gibson Review;
- the civil litigation; and
- whether a public inquiry was needed.

Most of its attention was brought to bear on the Gibson Review and the apparent discrepancies between Peter Gibson and BBC *Panorama.*

8.8.3 NIAC called its report *The Omagh bombing: some remaining questions.* NIAC was denied sight of the Sir Peter Gibson's full report. The Chair of NIAC, Sir Patrick Cormack MP, wrote to both the Secretary of State for Northern Ireland, Shaun Woodward MP, and Prime Minister Gordon Brown requesting access to the full, classified report by Sir Peter Gibson, but this request was rejected on the grounds of "legal and national security constraints"[269] and that the Chair of NIAC "must be careful not to cut across the remit"[270] of the Intelligence and Security Committee[271], which is not a Committee of the

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265 Ibid

266 Ibid, evidence of Michael Gallagher and Godfrey Wilson, 16 March 2009, Ev 1

267 See section 10 below

268 *The Omagh bombing: Some remaining questions,* House of Commons Northern Ireland Affairs Committee, *Fourth Report of Session 2009 – 2010,* 10 February 2010, HC 374, paragraph 3 http://www.parliament.the-stationery-office.co.uk/pa/cm200910/cmselect/cmniaf/374/374.pdf

269 *House of Commons: Omagh Bombing – Access to intelligence, Northern Ireland Affairs Committee,* Annex, Letter to the Chairman of the Committee Sir Patrick Cormack. from Right Honourable Gordon Brown MP, Prime Minister, 5 March 2009 http://www.publications.parliament.uk/pa/cm200809/cmselect/cmniaf/873/87304.htm

274 Ibid*,* Letter to the Chairman of the Committee Sir Patrick Cormack from Right Honourable Shaun Woodward MP, Secretary of State for Northern Ireland, 27 January 2009

271 The Intelligence and Security Committee (ISC) was established by the Intelligence Services Act 1994 to examine the policy, administration and expenditure of the Security Service, Secret

House of Commons. Sir Patrick Cormac responded by saying that, as NIAC was charged with overseeing the government's actions in Northern Ireland, it was essential that the it was allowed access to the full report.[272] Sir Patrick Cormack said that the whole Committee was "disappointed" by this decision because the report of Sir Peter Gibson was "the most relevant of all documents relating to the most horrific of all atrocities during or after the period of the Troubles in Northern Ireland"[273] Sir Patrick Cormack said, "We cannot properly conduct our work in relation to Omagh unless we are fully informed of the facts surrounding the bombing. It really is an insult to the Select Committee that its Chairman should not be allowed to see this report."[274] He continued that the Prime Minister's decision also ran contrary to the principle, established in paragraph 68 of the Osmotherly Rules, that "the Government is committed to being as open and as helpful as possible with Select Committees".[275] Prime Minister Gordon Brown, however, insisted "that the public version of the report was an accurate and wholly consistent reflection of the full report".[276]

8.8.4 Sir Peter Gibson appeared in person before the Committee, but he refused to answer any questions that strayed beyond what had already been published in his summary report, which, it emerged, represented only about a quarter of his full report, which was

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Intelligence Service (SIS), and the Government Communications Headquarters (GCHQ). The Committee has developed its oversight remit, with the government's agreement, to include examination of intelligence-related elements of the Cabinet Office including: the Joint Intelligence Committee (JIC); the Assessments Staff; and the Intelligence, Security and Resilience Group. The Committee also takes evidence from the Defence Intelligence Staff (DIS), part of the Ministry of Defence (MoD), which assists the Committee in respect of work within the Committee's remit. The Prime Minister appoints the ISC Members after considering nominations from Parliament and consulting with the Leader of the Opposition. The Committee reports directly to the Prime Minister and through him to Parliament, by the publication of the Committee's reports. The Members are subject to Section 1(1) (b) of the Official Secrets Act 1989 and have access to highly classified material in carrying out their duties. The Committee takes evidence from Cabinet Ministers and senior officials – all of which is used to formulate its reports. See http://isc.independent.gov.uk/

272 *House of Commons: Omagh Bombing – Access to intelligence, Northern Ireland Affairs Committee,* Annex Letter from the Chairman of the Committee Sir Patrick Cormack to the Right Honourable Gordon Brown MP, Prime Minister, 12 February 2009

273 Ibid, Letter from the Chairman of the Committee to the Right Honourable Gordon Brown MP, Prime Minister, 22 April 2009

274 http://www.parliament.uk/business/news/2009/07/report-the-omagh-bombing-access-to-intelligence/

279 The Osmotherly Rules are a set of internal government guidelines which specify how government departments should provide evidence to Parliament Select Committees. In relation to the Omagh bombing, the Osmotherly Rules refer to occasions when it is appropriate for civil servants/officials to refrain from providing evidence to Select Committees on the grounds of national security concerns. In this instance, Sir Patrick Cormack argued that denying the Select Committee access was inappropriate.

276 *House of Commons: Omagh Bombing – Access to intelligence, Northern Ireland Affairs Committee,* Annex Letter from the Chairman of the Committee Sir Patrick Cormack to the Right Honourable Gordon Brown MP, Prime Minister, 5 March 2009

around 60 pages in length.[277] Sir Peter's approach can perhaps be gleaned from some remarks he made in his opening statement to NIAC:

> "My summary report maintains the usual practice adopted by those who for national security reasons cannot confirm or deny a particular allegation. That practice is well recognised and respected in the courts. It means that those who say that I have not denied an allegation cannot properly interpret such non-denial as a confirmation."[278]

8.8.5 Sir Peter Gibson told NIAC "without any equivocation at all" that there was nothing in the classified material that he had seen which supported the contention that those who carried out the bombing could have been quickly identified and arrested in the immediate aftermath of the bombing.[279] He also said that the "BBC got it completely wrong" in alleging that GCHQ were monitoring specific mobile telephone calls in the weeks prior to the bombing.[280]

8.8.6 Taking his evidence as a whole, it was plain that Sir Peter Gibson left NIAC with the impression, which he did not contradict, that RUC Special Branch had only asked GCHQ for a limited amount of information, and that, for reasons he had deliberately not enquired into, because they fell outside his remit, RUC Special Branch had failed to pass on such information as was supplied by GCHQ to the RUC CID officers investigating the bombing. He told NIAC that he could not explain why the RUC had gone through "literally millions and millions of telephone records" to trace the telephone numbers used in the Omagh bombing and said that "you will have to ask Special Branch" why they did not obtain them from GCHQ.[281] Sir Peter Gibson also made it abundantly clear that he had hoped to exonerate GCHQ of the allegation made in the BBC *Panorama* programme that they had failed to pass intercepted information to the RUC.[282] Given that aspiration, it is difficult to regard his review as having been wholly independent.

8.8.7 NIAC also heard evidence from Michael Gallagher and Godfrey Wilson of OSSHC; John Ware and Leo Telling of BBC *Panorama*; Jason McCue, who had conduct of the civil litigation; former Police Ombudsman for Northern Ireland Nuala O'Loan, and Norman Baxter and David McWilliams both of the PSNI.

8.8.8 Norman Baxter made an important point about prior intelligence during his evidence. He told NIAC:

> "From an investigative perspective ... Omagh cannot be seen as an individual incident. Omagh was the last in a series of incidents dating into the middle of 1997, and so there is a long lead-up to the Omagh explosion. There has to have been information, I am not talking about the intelligence but the information which sits

277 Ibid, evidence of Sir Peter Gibson, 13 May 2009, Ev 21, question 123
278 Ibid, Ev 20, question 121
279 Ibid, Ev 21, questions 125 – 126
280 Ibid, Ev 23, question 143
281 Ibid, Ev 23, question 146
282 Ibid, Ev 26, question 165"I hoped it would have achieved the exoneration from these very serious charges"

behind the intelligence which may have been of value in the early days of the inquiry."[283]

He went on throughout his testimony to suggest that no effort had been made to use the evidential opportunities of each of these bombings to disrupt dissident republican violence.[284]

8.8.9 In their evidence to NIAC Michael Gallagher and Godfrey Wilson, representing the victims' families, stated that there should be a public review of the Omagh bombing. Both men strongly believed that there should be an independent cross-border public inquiry, specifically reviewing the intelligence available before the bombing, such as the e-mails of David Rupert, the telephone call on 4 August 1998 and the accusations of Garda Detective Sergeant John White, as "there are so many anomalies that need to be addressed". They believed the purpose of such an inquiry would be to enable everyone "to see what went wrong and what should be put right". As such, an inquiry would not "shift the blame from those who rightly should receive the blame [the Real IRA]" to the police or intelligence services, but would rather "strengthen the system". Michael Gallagher considered that one of the main benefits of an inquiry would be that a review of the policing system would be likely lead to more criminal prosecutions in Northern Ireland.[285]

8.8.10 The Committee's conclusions and recommendations are reproduced in full at Appendix D. However, significant extracts are reproduced here:

"The Real IRA and the individuals who carried out the bombing murdered 29 people and two unborn children. Responsibility for those deaths is theirs alone… Nothing we have seen leads us to challenge Sir Peter Gibson's conclusion that any available intelligence could have been used immediately prior to the Omagh bombing to prevent it. We repeat our bitter disappointment, however, that, in spite of repeated requests, the Prime Minister has refused to allow our Chairman to read the full report, even under supervision. It is thoroughly reprehensible that the Government should seek to prevent the parliamentary Committee charged with oversight of the affairs of Northern Ireland such access, and we believe that the Government's attitude in that respect has done more damage than good… We invite the Government to justify the argument that the public interest is better served by withholding such evidence, rather than by using it to bring murderers to justice… We are disturbed by the suggestion that arrests could have been made quickly, and forensic evidence obtained, had there been an earlier exchange of information. We are particularly concerned by the suggestion that the names of individuals who owned telephones, thought to have been used in the bombing, were known to the intelligence services or the police. We seek a definitive statement from the police of whether such names were known. If they were, we seek an explanation of why no action was taken to arrest or question the owners of those telephones. … We urge

283 Ibid, Evidence of Norman Baxter, 11 November 2009, Ev 43, question 310

284 See also paragraph 11.4 below

285 *The Omagh bombing: Some remaining questions,* House of Commons Northern Ireland Affairs Committee, *Fourth Report of Session 2009 - 2010,* 10 February 2010, HC 374, evidence of Michael Gallagher, 16 March 2009, Ev 7, question 25

the Secretary of State to revise his view that this issue has 'had its inquiry' and to institute an immediate investigation into whether, and, if so, why, this intelligence was withheld… It is unclear to us precisely what Sir Peter Gibson did investigate… We find all this obfuscation very frustrating... 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… In an inquiry as important as Sir Peter Gibson's into the uses of intelligence relating to Omagh, it is of considerable regret that he was unable to interview all the witnesses whom he considered relevant. This underlines the limitations and, therefore, the unsatisfactory nature of his inquiry and subsequent report… We fully appreciate that security considerations require Sir Peter Gibson's full report to be restricted… We would again strongly urge the Prime Minister to allow our Chairman, even at this late stage, to read Sir Peter Gibson's full report… It is a matter of deep regret that no one has been convicted of causing the worst terrorist outrage in Northern Ireland's history and that no one in authority holds out any realistic possibility that those who committed the atrocity will pay the penalty for it. Whatever the reasons may be, the criminal justice system has in this case badly failed the victims of the bombing… There is a compelling case for some further inquiry into what did or did not occur in relation to Omagh, but whether a full-scale public inquiry is the proper route for that is less clear. We have recommended at paragraph 56 that further investigation be undertaken into how intelligence provided to Special Branch in August 1998 was used. We will defer any final judgment on the need for a public inquiry, until after we receive and study the Government's response to this Report… Far too many questions remain unanswered. The criminal justice system has failed to bring to justice those responsible for the Omagh bombing. The least that those who were bereaved or injured have the right to expect are answers to those questions."

9 THE CRIMINAL JUSTICE SYSTEM AND THE OMAGH BOMBING

9.1 As has been described, in the aftermath of the Omagh bombing there was a considerable amount of information available to police investigators, particularly regarding a number of suspects. This included information from various informers including Kevin Fulton and David Rupert, some of it available before and all of it available after the Omagh bombing. There were also allegations that the RUC had requested GCHQ to monitor specific mobile telephones and also the locations of the mobile telephones used in the Omagh bombing.[286] Despite this cumulative evidence, no-one has ever been successfully prosecuted for the Omagh bombing, the trials of Colm Murphy in Dublin and Sean Hoey in Belfast having resulted in eventual acquittals.[287]

9.2 In two television documentaries for the BBC *Panorama* programme,[288] investigative journalist John Ware named those he believed were responsible for the Omagh

286 *Breslin and Others (Plaintiffs) v Seamus McKenna and Others (Defendants)* [2009] NIQB 50, see generally paragraphs 26-67 (mobile telephones), and paragraphs 87-107 (David Rupert)

287 As previously noted, Colm Murphy was convicted and this conviction was overturned on appeal

293 *Who bombed Omagh?, BBC Panorama*, 9 October 2000, and *Omagh: What the police were never told*, *BBC Panorama,* 15 September 2008

bombing as Colm Murphy, Oliver Traynor, Liam Campbell, Seamus Daly, Seamus McKenna, and Michael McKevitt. He did not name Sean Hoey. This section describes the various criminal proceedings against these individuals and also details the failed prosecution of Sean Hoey and concludes with an analysis of the civil action bought by the relatives of those killed by Omagh bomb.

9.3 In examining these factual matters, RW(UK) accepts that all named individuals are entitled to the presumption of innocence unless and until convicted, and, if brought before the criminal courts, the right to a fair trial.

9.4 **COLM MURPHY**

9.4.1 Colm Murphy was suspected of lending both his own mobile telephone and that used by his foreman Terence Morgan to those engaged in the Omagh bombing.[289] The mobile telephone used by Terence Morgan was registered to his father-in-law Michael McDermott but in police interviews Terence Morgan claimed to have lost it. David Rupert claimed that Colm Murphy was introduced to him as an "engineer" who constructed bombs for the Real IRA.[290] Colm Murphy had various previous PIRA and terrorist-related convictions and was described by Mr Justice Kearnes in the Irish Court of Criminal Appeal, as a "republican terrorist of long standing".[291]

9.4.2 As noted at paragraph 7.36, Colm Murphy was initially arrested and questioned about the Omagh bombing on 22 September 1998 at Monaghan Garda station ROI, a few weeks after the Omagh bombing. According to senior sources there had yet to be an intelligence meeting between RUC Special Branch and the RUC.[292] Colm Murphy was arrested and detained again on 21 February 1999 at the same Garda station. He was interviewed by three different teams of police officers, comprising two officers in each team. The teams were respectively Detective Gardaí Donnelly and Fahy, Detective Gardaí King and Reidy, and Detective Garda Sergeant McGrath and Detective Garda Hanley. He was interviewed 15 times in total[293] and all these interviews were conducted without a solicitor being present. Colm Murphy was charged with conspiracy to cause an explosion likely to endanger life or cause injury and with the membership of an unlawful organisation, the RIRA.[294]

9.4.3 On 22 January 2002,[295] Colm Murphy was found guilty in the Special Criminal Court in Dublin of conspiracy to cause an explosion of a nature likely to endanger life or cause

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289 *DPP v Colm Murphy* [2005] IE CCA 1, pages 1 – 2

290 *Breslin and Others (Plaintiffs) v Seamus McKenna and Others (Defendants) [*2009] NIQB 50, paragraph 97

291 *DPP v Colm Murphy* [2005] IE CCA 1, page 3

292 *RUC Chief Superintendent Eric Anderson and Detective Chief Superintendent Hamilton Houston, BBC Panorama response to the 'Review of intercepted intelligence in relation to the Omagh bombing' by the Intelligence Services Commissioner Sir Peter Gibson arising from transmission of Panorama: Omagh – what the police were never told,* 12 February 2009

293 *DPP v Colm Murphy* [2005] IE CCA 1, page 4

294 *Timeline: Omagh bombing, The Guardian*, 8 June 2009

295 *Hardliner who could not say no to cause,* by Rosie Cowan, *The Guardian,* 23 January 2002

serious injury to property.[296] He was sentenced to 14 years in prison. Colm Murphy was convicted on the following basis:[297]

- That on 14 August 1998 he had borrowed a mobile telephone from his foreman, Terence Morgan, after having claimed that his own "was on the blink". That on the same day he had loaned his own telephone and the borrowed telephone to Seamus Daly in the knowledge that they would be used the following day in the Omagh bombing and that he was aware that this was the purpose after lending the same mobile telephones to Joseph Fee prior to the Banbridge bombing attempt on 1 August 1998.[298]
- That he had admitted to Detective Garda Hanley and Detective Garda Sergeant McGrath that he lent the mobile telephones to Seamus Daly on 14 August 1998 during the course of being held in custody at Monaghan Garda station between 21 February 1999 and 24 February 1999. This admission was contained in a note signed by Garda Officers Hanley and McGrath recoding a verbal response. A security source claimed that Colm Murphy "never had the guts to be a real hands-on terrorist" so would instead supply them with equipment and "transport men and explosives for them". The court believed that Colm Murphy's admission at the Monaghan Garda station was motivated by a desire to distance himself from the allegations that he had actually participated in the Omagh bombing.[299]
- That telephone records from Vodafone in Northern Ireland and Eircell in ROI on 15 August 1998 showed a pattern of communication between the mobile telephone registered to Colm Murphy and the mobile telephone registered to Terence Morgan's father-in-law Michael McDermott. These were:

  Colm Murphy to Terence Morgan:
  12:41 – near the Castleblayney mast
  13:13 – Emyvale mast
  13:29 – Aughnacloy mast
  13:57 – Omagh mast
  15:13 – Stranuden/ Monaghan mast

  Terence Morgan to Colm Murphy:
  14:09 – Omagh mast
  14:19 – Mount Pollnaght mast
  16:00 – Castleblayney mast
  16:01 – Tallonstown mast

- The Special Criminal Court in Dublin concluded that the pattern of the mobile telephone calls indicated that each car travelled from County Monaghan, ROI to

296 Under section 3 of the Explosives Substances Act, 1883, and s. 4 of the Criminal Law Jurisdiction Act 1976

297 *DPP v Colm Murphy* [2005] IE CCA 1, page 1

298 Ibid, page 1

299 Ibid, page 2; since Colm Murphy's solicitor was excluded from police interviews (as was the practice), there is no independent corroboration that he made this damaging admission, so it was for the Special Criminal Court in Dublin to resolve the conflict of evidence before it

Omagh shortly before the detonation of the bomb. The pattern also indicated that both then returned to County Monaghan, ROI. It was held that this indicated that one mobile telephone was used in the car carrying the bomb and the other in the scout car travelling ahead.[300]

- That Colm Murphy was known to have republican connections. He had been convicted of serious terrorist offences in ROI and in the USA and had served prison sentences in both countries. .[301]

9.4.4 Terence Morgan had originally given evidence on 14 November 2001 in which he confirmed that Colm Murphy had asked to borrow the mobile telephone he was using which belonged to his father-in-law, Michael McDermott. However, at the end of the trial of Colm Murphy on 8 January 2002, Terence Morgan retracted his evidence, and claimed that he had been compelled by police to give a false account of events on 14 August 1998, after threats to him and his family from members of the Real IRA.[302] In this new account of events Terence Morgan claimed that he had left the mobile telephone in an open glove compartment in his van, and although he could not find it, he did not alert anyone to its disappearance on 14 August 1998. He claimed to have found the mobile telephone under the car seat on 17 August 1998. However, after observing Terence Morgan's demeanour when giving his new version of events, the trial court rejected his new statement and decided to accept that his original statement was truthful.[303] Colm Murphy was convicted and sentenced.

9.4.5 On 21 January 2005, Colm Murphy's conviction was quashed on the ground that it was unsafe.[304] A retrial was ordered. This was because on the appeal from the Special Criminal Court in Dublin, Mr Justice Kearns in the Court of Criminal Appeal reasoned that the trial judge had given insufficient consideration to the use of unreliable evidence.[305] During the original trial, Detective Garda Sergeant McGrath and Detective Garda Hanley had testified that Colm Murphy had admitted to them during his detention at Monaghan Garda station that he had lent his own mobile telephone and the mobile telephone in the possession of his foreman, Terence Morgan, to Seamus Daly on 14 August 1998. This admission was contained in a transcript of the interview signed by the two detectives.[306] However, throughout the trial Colm Murphy had contended that he had said nothing incriminating and that he had refused to sign the interview notes.

9.4.6 The original interview notes were forensically examined using Electro Static Detection Analysis (ESDA) by the British Home Office Forensic Science Section. The purpose of this

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300 Ibid, page 2

301 Ibid, page 3; as we have previously noted, the trial judge Mr Justice Barr described Colm Murphy as a "republican terrorist of long standing; see also *Dissident guilty of Omagh bomb plot, BBC News Northern Ireland,* 22 January 2002

302 *'Fear' prevents more Omagh convictions, BBC News*, 22 January 2002 at http://news.bbc.co.uk/1/hi/northern_ireland/1776097.stm

303 *DPP v Colm Murphy* [2005] IE CCA 1, page 1

304 *Omagh accused's 'lack of memory',* by Ann O'Loughlin, *National News,* 23 May 2005

305 *DPP v Colm Murphy* [2005] IE CCA 1, pages 2 and 3

306 Ibid, page 6

was to examine whether the interview notes had been altered.[307] The ESDA examination confirmed that the third page of three of the original notes taken from an interview at 3:45pm on 22 February 1999 had been rewritten. The interview had been led by Gardaí Detectives Donnelly and Fahy. The significant re-written section referred to a conversation about Sheila Grew, who was understood to be the girlfriend of Seamus Daly. In the rewritten transcript, the police had removed a question about Sheila Grew after Colm Murphy had apparently said that she was his wife's sister. As this was not true, Colm Murphy's lawyers argued that the question and answer were fabricated and that the two officers, on discovering the error, set about altering the third page of the interview notes.[308]

9.4.7 At the appeal, Mr Justice Kearns considered that because the original trial judge had given insufficient consideration to the nature of what was ruled as inadmissible evidence, there was no guarantee that all the interview notes, including those of Gardaí McGrath and Hanley, were not fabricated. As a result the Garda Detectives in the trial, John Fahy and Liam Donnelly, were charged with perjury, persistent lying under oath and the forgery of interview notes. The Mr Justice Kearns directed a retrial of Colm Murphy.[309]

9.4.8 Colm Murphy was subsequently acquitted at his retrial in 2010 on the basis, reasoned Mr Justice Paul Butler, that the police interview evidence against him continued to be unsafe and unreliable and was therefore inadmissible.[310]

9.4.9 Colm Murphy persistently and unsuccessfully applied to the courts in Northern Ireland to dismiss the civil action bought by the relatives of a number of the Omagh victims against him; for example, he claimed that the firm of solicitors representing the families, H_2O Law LLP, were not legally registered to practice in Northern Ireland.[311] He also applied to prevent the families in the civil action gaining access to the evidence used in his criminal trials[312] and also appealed against the Lord Chancellor's decision to grant the families legal aid.[313] These frustrating, though legitimate, tactics received strong criticism from Lord Chief Justice of Northern Ireland, Lord Kerr who said that "the time has now arrived for this case to proceed with all dispatch" and "without further delay".[314]

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307 Ibid, page 4

308 Ibid, page 5

309 Ibid, page 13

310 As reported, *Murphy acquitted over Omagh bombing, The Irish Times,* 25 February 2010 (the official court judgment is not available); and *Omagh bomb accused Colm Murphy cleared by retrial, BBC News*, 24 February 2012

311 *Court rejects Omagh case appeal, BBC New,* 25 November 2005

312 *Breslin and Others v Seamus McKenna and Others* [2008] IESC 43, upholding the judgment of the High Court reported at [2008] IEHC 22

313 *Colm Murphy and Seamus Daly v The Lord Chancellor and The Northern Ireland Legal Services Commission [*2008] NICA 34 on appeal *from Application by Colm Murphy and Seamus Daly for Judicial Review* [2007] NIQB 15

314 *Breslin and Others v McKenna, The Real IRA, McKevitt, Campbell, Murphy and Daly [*2007] NICA 14, page 44 paragraph 44

9.5 **MICHAEL MCKEVITT**

9.5.1 The informer David Rupert alleged that it was clear that Michael McKevitt "was in charge" of the RIRA at the time of the Omagh bombing. David Rupert also said that at a meeting in December 1998, Michael McKevitt described how the Omagh bombing had been a joint operation between the RIRA and CIRA. Michael McKevitt said that RIRA's role was to build the bombs before the CIRA selected targets and put the bombs in place.[315]

9.5.2 Michael McKevitt has never faced criminal charges in relation to the Omagh bombing. However, he has faced other terrorism-related criminal charges and on 5 August 2003 was sentenced to 20 years in prison at the Special Criminal Court in Dublin.[316] Michael McKevitt's conviction was based on two counts:

- Membership of an unlawful organisation styling itself the Irish Republican Army (IRA) between 29 August 1999 and 28 March 2001.
- Directing the activities of an organisation styling itself the Irish Republican Army between 29 August 1999 and 23 October 2000.

9.5.3 Michael McKevitt's conviction was unprecedented for two reasons. First, Michael McKevitt's "directing terrorism" charge only became possible following an amendment to the Irish Offences against the State Act 1939.[317] This was introduced after the Omagh bombing, which made Michael McKevitt the first person to face such a charge. Second, the trial was also unique as the prosecution were able to use documentation provided by overseas intelligence agencies from the USA and the UK, namely the evidence of agent David Rupert provided to the FBI and MI5I.[318] The dates of Michael McKevitt's membership of the Irish Republican Army, from 29 August 1999 to 28 March 2001, however, meant that the judge was explicit that the charges did not relate to the Omagh bombing on 15 August 1998.[319]

9.5.4 On 9 December 2005, Michael McKevitt unsuccessfully appealed against the directing terrorism conviction. He based his appeal on the prosecution's use of the evidence of David Rupert, who had supplied information to foreign intelligence services (MI5 and the FBI) and whom Michael McKevitt maintained he had never met. Michael McKevitt's appeal also bought into question David Rupert's past and reputation. The appeal was therefore based on the argument that David Rupert could not be considered a credible or reliable witness. This argument was rejected on appeal following the testimony of Garda Detective Sergeant Healey, who had testified that he had witnessed three meetings between the pair.[320]

9.5.5 On 30 July 2008, the Supreme Court of Ireland upheld the decision of the Court of Criminal Appeal against Michael McKevitt and confirmed his conviction for directing

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315 *DPP v Michael McKevitt [*2005] IE CCA 139; see paragraph 6.3 above
316 Ibid, page 1
317 Made in the Offences against the State (Amendment) Act 1998
318 *DPP v Michael McKevitt [*2005] IE CCA 139, pages 4–7; see section 3.4 above
319 Ibid
320 Ibid, pages 12–13

terrorism. The leading judgment was given by Mr Justice Geoghegan.[321] The Supreme Court rejected Michael McKevitt's appeal on two grounds. First, it held that the trial court judge was correct in allowing the prosecution to use documents supplied from a foreign jurisdiction. This referred to the evidence obtained from foreign intelligence services, namely the e-mails David Rupert wrote to MI5 and the FBI. It was also held that the information was credible, and that the courts could not compel these agencies to release further classified material in addition to that which was already provided.[322] Second, the Supreme Court also affirmed the Court of Appeal's decision that David Rupert was a credible witness whose evidence could safely be relied upon. It was held that, despite David Rupert's past, he had consistently provided corroborated information.[323] Chief Justice Murray held that the grounds put forward on behalf of Michael McKevitt in the application were "manifestly unfounded"[324] and that to question the veracity of the previous evidence was "farfetched in the extreme".[325]

9.6 **SEAMUS MCKENNA**

9.6.1 It was alleged during the civil action commenced by a number of the relatives of the Omagh bomb victims that Seamus McKenna was in charge of the organisation of the Omagh bombing in his position as senior commander of RIRA. It was further claimed that Seamus McKenna had received a telephone call at the home of his ex-wife, Catherine McKenna, on the day of the Omagh bombing from the mobile telephone registered to Terence Morgan's father-in-law Michael McDermott which Terence Morgan had been using but claimed to have lost, and which was allegedly used in the bombing. This was assumed to have been the confirmation call that the Omagh bombing had taken place.[326]

9.6.2 Seamus McKenna has never faced criminal charges in relation to the Omagh bombing. However, on 8 December 2004 he was convicted of the unlawful and malicious possession of explosive substances, with intent to endanger life or cause serious injury to property contrary to section 3 of the Explosive Substances Act 1883. Seamus McKenna was sentenced to six years' imprisonment.[327]

9.7 **SEAMUS DALY**

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321 *DPP v McKevitt [*2008] IESC 51

322 Ibid, page 7, "It seems to us that the defence were in possession of more than adequate material for a cross-examination directed to that end and purpose, having as they did material about David Rupert spanning three decades and which related to many questionable episodes of his past life." Michael McKevitt's defence team had argued that they were in possession of insufficient intelligence material to effectively cross-examine David Rupert.

323 Ibid, page 12

324 *DPP v McKevitt [*2009] IESC 29, page 5

325 *Real IRA leader to stay in jail as judges throw out appeal¸ Independent*, 31 July 2008 http://www.independent.ie/national-news/real-ira-leader-to-stay-in-jail-as-judges-throw-out-appeal-1443742.html?service=Print

326 Ibid; see also *Omagh suspect drunk, says ex-wife,* by Lesley-Anne Henry, *Belfast Telegraph,* 17 April 2008

327 *Mark Christopher Breslin and Others (Plaintiffs) v Seamus McKenna and Others (Defendants)* [2008] IEHC 22, page 2

9.7.1 It has been alleged that Seamus Daly took part in the delivery of the bomb to Omagh and involvement in previous RIRA bomb attacks earlier in 1998 at Lisburn and Banbridge which were connected by forensic evidence. It is also alleged that Seamus Daly had borrowed the mobile telephone registered to Colm Murphy and that he was in the possession of the mobile telephone used by Terence Morgan but which he claimed to have lost. These two mobile telephones were used to assist in co-ordinating the attack and were in Omagh 71 minutes before the bombing.[328]

9.7.2 Seamus Daly was arrested and questioned by the Gardaí on 21 September 1998. His interviews were conducted without a solicitor. According to senior police sources,[329] by this date, RUC Special Branch and RUC CID had yet to have an intelligence meeting.[330]

9.7.3 Seamus Daly has never faced criminal charges in relation to the Omagh bombing. However, on 2 March 2004 Seamus Daly pleaded guilty to being a member of an illegal organisation (RIRA) and imprisoned for two and a half years.[331]

9.8 **LIAM CAMPBELL**

9.8.1 It has been alleged that Liam Campbell took part in the Omagh bombing.[332] This is, in part, supported by allegations made by BBC *Panorama* that GCHQ recorded the mobile telephone calls of Liam Campbell.[333]

9.8.2 Liam Campbell has never faced criminal charges in relation to the Omagh bombing. However, on 24 May 2004, despite pleading not guilty to the charges, Liam Campbell was convicted on two counts of membership of an unlawful organisation, (RIRA), by the Special Criminal Court in Dublin. He was sentenced to eight years in prison.[334] He now faces extradition on terrorist charges to Lithuania.

9.9 **SEAN HOEY**

9.9.1 It has been alleged that Sean Hoey was a bomb maker for the Real IRA.[335] On 2 September 2003, Sean Hoey was arrested by the PSNI and charged with the possession of explosives relating to the Omagh bombing.

9.9.2 On 13 April 2007 Sean Homey's solicitor Peter Corrigan of Kevin R Winters and Company of Belfast, initiated legal proceedings against the PSNI Weapons and Explosives Research

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328 *DPP v Colm Murphy* [2005] IE CCA 1, page 2; and *Cross-border co-operation was a myth*, by John Ware*, BBC New,* 15 September 2008

329 *Chief Superintendent Eric Anderson and Deceptive Chief Superintendent Hamilton Houston, BBC Panorama response to Sir Peter Gibson's report*, 12 February 2009

330 See paragraph 7.2.8

331 *Breslin and Others v McKenna, The Real IRA, McKevitt, Campbell, Murphy and Daly* [2007] NICA 14 at paragraph 4

332 Ibid

333 *BBC Panorama response to Sir Peter Gibson's report*, 12 February 2009

334 *Court reserves judgment in Omagh relatives' application, Breakingnews.ie*, 11 January 2005 at http://www.breakingnews.ie/ireland/court-reserves-judgement-in-omagh-relatives-application-184278.html

346 *Eight years on, electrician stands in the dock accused of Omagh bombing,* by Owen Bowcott, *The Guardian*, 26 September 2006

Centre (WERC) who had carried out the forensic examinations in preparation for the case against his client.[336] Peter Corrigan said that the scientists commissioned by the prosecution had been given access to the evidence used in the criminal trial of his client, for which the authorities gave no explanation, and that it was likely that the forensic evidence to be used in the trial against him was contaminated. Peter Corrigan said that this was "unacceptable" as it "drives a coach and horses through a defendant's entitlement to a fair trial". [337]

9.9.3 On 20 December 2007, Sean Hoey was acquitted by Mr Justice Weir, sitting in Belfast Crown Court, of 58 charges related to 29 counts of murder, conspiracy to murder, causing explosions, conspiracy to cause explosions and possession of explosive substances with intent to endanger life or cause serious damage to property. The charges related to thirteen bomb and mortar attacks after 24 March 1998, including the Omagh bombing.[338] The charges were based upon what the prosecution said were a number of strands that taken together led to the conclusion that Sean Hoey was involved in each of the bombings. These were:

- That there were a number of consistent features in twelve Mark 19 TPUs (thermoplastic polyurethane bomb casing units) which indicated that they had been manufactured by the same person. This argument was rejected on the basis of the evidence given by Dennis McAuley, a Senior Scientific Officer at the Northern Ireland Forensic Science Agency. It was found that although there were a number of similarities in the devices such as the use of "Coupatan" timers, storage in Addis lunchboxes, melted glue and two toggle switches, there were also significant dissimilarities. The number of these dissimilarities led Dennis McAuley to conclude only that there "may" have been common authorship, thereby falling well short of the standard of proof of beyond reasonable doubt.[339]
- Knitted glove fibres were recovered from melted glue used to secure components in several of the TPUs. The prosecution argued that this indicated that similar gloves were used to assemble a number of the TPUs. When a mobile home at Sean Hoey's property was searched in 2003, four fibres recovered from the glue in the Lisburn device were said to be indistinguishable from five fibres recovered from the mobile home. However, no knitted gloves were recovered from the property.[340] This argument was rejected on the basis of the evidence given by two members of the Northern Ireland Forensic Science Agency, Dr Logan and Dr Griffin. Both found that there was not a consistent replication of the same fibre across more than one device; for example, although a glove fibre was found in the Omagh bomb device, it was different from the fibre recovered from the Newry device.[341]

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336 The WERC is listed as part of the PSNI at http://www.nio.gov.uk/guidance_on_northern_ireland_firearms_controls.pdf being 2005 guidance on firearms control issued by the Northern Ireland Office

337 *Crucial evidence in Hoey trial 'contaminated', Ulster Herald,* 13 April 2007.

338 *R v Sean Hoey* [2007] NICC 49, paragraph 65

339 Ibid, paragraph 37

340 Ibid, paragraph 30

341 Ibid, paragraph 40

- A Low Copy Number DNA examination was undertaken on a number of items recovered from the sites in Lisburn, Armagh, Blackwatertown Road and Altmore Forest. There were errors in the nature of its collation. The DNA evidence was rejected after it was revealed that the forensic examinations were undertaken sometime after 1998 and that those who were responsible for recovering, storing and moving the items had not taken the necessary protective measures, such as wearing gloves, masks or overshoes. For example, the devices recovered at Lisburn were covered in police tape, were not bagged and were stored on top of one another. Mr Justice Weir was highly critical of the collection of evidence describing it as "thoughtless and slapdash".[342]

9.9.4 The criminal trial of Sean Hoey ended with Mr Justice Weir criticising the RUC, accusing two key prosecution witnesses, namely police witnesses Detective Chief Inspector Philip Marshall and Constable Fiona Cooper, of "deliberate and calculated deception" for claiming that they wore protective clothing when collecting DNA and labelling much of the evidence presented in court as useless because of a "cavalier disregard for its integrity" which had resulted in improper handling. Further Mr Justice Weir accused a detective sergeant in the case and a Scene of Crimes Officer of a "deliberate and calculated deception".[343] Mr Justice Weir sent the two police witness statements to the Police Ombudsman for an investigation into possible disciplinary action. By the end of the trial, Sean Hoey had spent over four and a half years in custody.

9.9.5 Michael Gallagher and the late Victor Barker, from OSSHC, said that they continued to believe that Sean Hoey played a part in the bombing. They said that the judgment did not irrefutably prove Sean Hoey's innocence but rather "it is a [prosecution] case not proved". Michael Gallagher further said that, "The DNA and forensic evidence was flawed but that does not mean that he was not one of the bombers."[344]

9.9.6 On 9 July 2008 the Northern Ireland Policing Board published a review of the Sean Hoey case. The review found that two of the police officers in the Sean Hoey trial should not be suspended. The report considered that Mr Justice Weir had only expressed a "concern" about them, and that on investigation there was no evidence of wrongdoing.[345]

9.9.7 The two officers were officially cleared of wrongdoing by the Police Ombudsman for Northern Ireland on 19 February 2009.[346] PSNI Chief Constable Sir Hugh Orde was of the view following the criminal trial of Sean Hoey and the Northern Ireland Policing Board report that "without a confession or reliable witnesses, or scientific evidence, it is unlikely a new prosecution could be launched at present".

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342 Ibid, paragraph 59

343 *Omagh judge in court row,* by Noel McAdam, *Belfast Telegraph,* 10 July 2008

344 *The flawed case against Hoey, The Guardian,* 20 December 2007

345 *Independent Review of R v Hoey,* Northern Ireland Policing Board, 9 July 2008

346 *Statement of the Police Ombudsman's investigation into Sean Hoey trial,* 19th February 2009; http://www.policeombudsman.org/publicationsuploads/OMAGH-TRIAL-FULL-STATEMENT.pdf. This report was signed off by then Police Ombudsman Al Hutchinson who resigned in 2012. A number of reports issued during his tenure are now subject to review and potential legal challenge. See also *Omagh judge in court row,* by Noel McAdam, *Belfast Telegraph,* 10 July 2008

9.10 **OLIVER TRAYNOR**

9.10.1 The mobile telephone registered to Oliver Traynor was used throughout the Omagh bombing operation.[347] Oliver Traynor was also named by the 2000 BBC *Panorama* programme entitled "Who bombed Omagh?" as having been involved in the bombing. Oliver Traynor has never faced criminal charges nor was he named in the civil action bought by the Omagh families. Oliver Traynor was questioned about the whereabouts of his mobile telephone after the Omagh bombing but claimed that he had lost it. He was never further questioned or charged in relation to the offence despite the fact of being named by BBC *Panorama* in 2000.

9.10.2 Oliver Traynor sought legal advice to prevent his name being disclosed by the BBC but his lawyers never issued a writ following the broadcast, in which John Ware confronted Oliver Traynor.[348]

9.11 **JOSEPH PATRICK "MOOCH" BLAIR**

9.11.1 Kevin Fulton and Jeffrey Donaldson MP (the latter speaking under the benefit of parliamentary privilege),[349] both revealed that they believed the identity of Man A in the PONI Report was Joseph Patrick "Mooch" Blair.[350] Kevin Fulton has also alleged that he met "Mooch" Blair before the bombing, and he told him "there's something big on".[351] Kevin Fulton also said that he had had other meetings with "Mooch" Blair and on one occasion "Mooch" Blair had asked for coffee grinders, which are considered to be an indication that he wanted to make bombs, and on another occasion, he had fertilizer (pink powder – see above at paragraph 3.3.7) on his jumper, again an indication that he had made bombs.[352]

9.11.2 Kevin Fulton further believed that Patrick "Mooch" Blair had been acting as a British agent. Kevin Fulton claimed that this was because he had given the RUC police warnings of other events involving "Mooch" Blair but they were never followed up, which indicated to Kevin Fulton that "Mooch" Blair was operating with the benefit of police protection.[353] "Mooch" Blair has never faced criminal charges in relation to the Omagh bombing; no explanation has ever been given for this. Most recently "Mooch" Blair denied involvement in both the Omagh bombing and being a British informer whilst given evidence to the Smithwick Tribunal in 2011.[354]

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347 *Breslin and Others (Plaintiffs) and Seamus McKenna and Others (Defendants) [*2009] NIQB 50, paragraph 45

348 *BBC has names of 11 more Omagh bombing suspects*, *The Telegraph*, 15 October 2000

349 *Hansard*, HC Deb, 9 January 2002, volume 377 column 636*; IRA man denies Omagh claim,* Irish Times, 29 November 2011

350 *Man who made atrocity bomb may have been a British agent, News Letter*, 5 September 2003

351 See paragraphs 3.3.6 and 3.3.7 above

352 *'He had been making a bomb. I told my RUC handler an attack was imminent'*, by Nick Hopkins, *The Guardian*, 1 August 2001

353 Ibid

354 *Smithwick Tribunal: Patrick 'Mooch ' Blair denies Omagh role,* by Jennifer O'Leary, *BBC News*, 29 November 2011

10 THE CIVIL ACTION AND LIABILITY FOR THE OMAGH BOMBING

10.1 In an unprecedented response to the continued failures of the cross-border police investigation, on 10 August 2001, a number of the relatives of the Omagh bomb victims initiated civil proceedings against five of the men suspected of involvement in the bombing: Michael McKevitt, Liam Campbell, Seamus Daly, Seamus McKenna, and Colm Murphy.[355] The purpose of the writ was that many families believed that, in view of the failures in the cross-border criminal investigations to successfully prosecute anyone for the Omagh bomb, then suing those alleged implicated in the bombing was their only hope of obtaining justice in terms of the attribution of civil liability even though such an outcome fell short of establishing criminal responsibility.[356] The application was unprecedented because the relatives of victims of acts of terrorism had never previously sued individuals alleged to be terrorist suspects.

10.2 The writ sought £14 million in damages for personal injury under the Fatal Accidents (Northern Ireland) Order 1997 for "the intentional infliction of harm, trespass to the person and/or conspiracy to commit trespass to the person and/or conspiracy to murder".[357] Lord Brennan QC, at the civil retrial, described the cause of action as trespass to the person (battery) and conspiracy to trespass established on the balance of probabilities.[358]

10.3 Despite the failures of the police investigation, the families' solicitor Jason McCue asserted that the various police services and other intelligence agencies were reluctant to help them with their case. For example, Jason McCue alleged that the PSNI, An Garda Síochána, MI5 and the FBI were "evasive" and created "obstacle after obstacle after obstacle" for him whilst H2O prepared evidence for the civil case. Jason McCue was particularly critical of the UK government and stated that letters and telephone calls went unanswered and that they refused to provide agreed material following civil disclosure orders. Jason McCue, in his evidence to the Northern Ireland Affairs Committee of the House of Commons in 2009, said he believed that "it was all games".[359]

10.4 The Omagh families also faced difficulties in funding the action. However after extensive campaigning, on 8 August 2003 it was announced that the families of the victims would receive £800,000 from the Legal Services Commission to help fund their civil suit. It was the first time that victims' families had been granted funds by the UK government in order to bring a civil action against those suspected of terrorism.[360] The Lord Chancellor and the Legal Services Commission had been given the power to do this by Article 10A(2)(b) of the Legal Aid, Advice and Assistance (Northern Ireland) Order

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355 *The story so far behind the worst atrocity in the troubles*, *Irish Independent,* 5 May 2005

356 *Timeline: Omagh bombing*, *The Guardian*, 8 June 2009

357 *The story so far behind the worst atrocity in the troubles*, *Irish Independent*, 5 May 2005

358 See *Breslin and Others (Plaintiff) v Michael Colm Murphy and Seamus Daly (Defendants)* [2013] NIQB 35 at paragraph 36; Mr Justice Gillen analysed the jurisprudence of this cause of action between paragraphs 37-56 and the standard of proof between paragraphs 57-61.

359 *The Omagh bombing: Some remaining questions,* House of Commons Northern Ireland Affairs Committee, *Fourth Report of Session 2009 - 2010,* 10 February 2010, HC 374, evidence of Jason McCue, 8 July 2009, Ev 29, question 190

360 *Now bring the Omagh bombers to justice*, *Daily Telegraph*, 10 August 2003

1981, which authorised the Legal Services Commission to grant legal aid in exceptional circumstances.[361] The Secretary of State for Northern Ireland, Paul Murphy, responded to criticisms that public funds were used very rarely to help other victims, by explaining that the precedent set was "totally exceptional".[362]

10.5 On 8 June 2009, in a landmark court victory,[363] the 12 relatives who brought the civil action were awarded £1.6 million in compensation against Michael McKevitt, Seamus Daly, Liam Campbell and Colm Murphy. The action against Seamus McKenna was dropped because the evidence against him was based on the unreliable hearsay testimony of his ex-wife Catherine McKenna.[364] Michael McKevitt offered no defence at the hearing. The award of such a large amount in damages was a historic victory. However, no money has been received by the relatives so far. Mr Justice (now Lord Chief Justice) Morgan's judgment was welcomed by the Omagh families. Many of the families had previously received as little as £7,500 in compensation from the government for their loss and many victims had been, in their view, treated disrespectfully.[365] Stanley McCombe, the widower of Omagh bomb victim Anne McCombe, said that, "It was never about money. We can stand and say that these guys are responsible for Omagh. That's what we wanted."[366] The families also declared that they remained determined to obtain a fully independent cross-border public inquiry.[367]

10.6 The civil action was based on a wide range of information, including the testimony and e-mail traffic evidence of the informant David Rupert (see section 3.4 above) and the tracking of the numerous mobile telephone calls (see paragraph 9.4.3 above) on the day of the Omagh bombing. In particular, the families relied on the mobile telephone reports of Eircell, Vodafone and BT Cellnet provided to the Gardaí and the RUC which gave details of the timing and location of the telephone calls which led Mr Justice Morgan sitting in the Royal Courts of Justice in Belfast to conclude that the "irresistible inference"[368] was that these mobile telephones had been used in the Omagh bombing operation. Mr Justice Morgan was therefore satisfied that the respondents had been responsible for damages in civil law in their various ways for the planning, production, planting and detonation of the Omagh bomb and therefore causing loss to the applicants. Resulting in both aggravated and exemplary damages, "It is clear that it was

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375 As set out in *Application by Colm Murphy and Seamus Daly for Judicial Review* [2007] NIQB 15, which was an unsuccessful application to halt the legal aid payment

362 *Now bring the Omagh bombers to justice*, *Daily Telegraph*, 10 August 2003

363 *Breslin and Others v Seamus McKenna and Others* [2009] NIQB 50; the Northern Ireland Court of Appeal ordered a retrial of the claims against Michael Colm Murphy and Seamus Daly reported at *Breslin and Others v McKevitt and Others* [2011] NICA 33.

364 Ibid, paragraphs 69 – 77 and 265

379 *Timeline: Omagh bombing, The Guardian*, 8 June 2009. Rose Ingram, who was injured in the bombings, revealed that she was made to strip to her underwear in front of three male lawyers for a compensation application.

366 *The positive legacy of Omagh*, by Jason McCue, *The Guardian*, 9 June 2009; *Landmark court win for Omagh relatives, The Yorkshire Pos*t, 8 June 2009.

367 Ibid

368 *Breslin and Others (Plaintiffs) v Seamus McKenna and* Others (Defendants) [2009] NIQB 50, paragraph 67

the firm intent of those involved in the planning, production, planting and detonation of this bomb that it should explode causing massive damage to Omagh town centre."[369]

10.7 Michael McKevitt and Liam Campbell appealed against the ruling, but lost. In July 2012 they were refused leave to appeal to the Supreme Court.[370]

10.8 Colm Murphy and Seamus Daly also appealed and won their case in July 2011. They contested the judge's finding that they were liable for the bombing and also the amount of damages awarded against them. In October 2011 they were sent for retrial[371]. The retrial was due to commence on 10 October 2012, but the trial judge Mr Justice Gillen adjourned it until 14th January 2013 because of the ill-health of one of the defence barristers.[372] Just before the trial was due to begin, lawyers acting for the Omagh victims were granted permission by the High Court in Belfast to examine witnesses and take evidence in the Republic of Ireland. In particular, the lawyers were keen to interview Dennis O'Connor, who allegedly spoke to Seamus Daly on the day of the bombing, and two Garda officers to whom Dennis O'Connor allegedly identified Seamus Daly and said he had had previous telephone contact with him.[373] The judgment was delivered on 20 March 2013 and found Colm Murphy and Seamus liable in civil law for the Omagh bombing in terms of both the tory of trespass against the person (battery) and conspiracy to trespass.[374]

10.9 In relation to the evidence of Dennis O'Connor, Mr Justice Gillen concluded that he had spoken to Seamus Daly: "I am satisfied that he spoke to O'Connor at 3.30pm on the day of the bombing using phone 585. For the reasons I have already given I am satisfied that 585 was used in connection with this bombing."[375]

11. FURTHER NEW EVIDENCE AND THE OMAGH BOMBING

11.1 On 22 February 2006, on the eve of his retirement from the PSNI, Assistant Chief Constable Sam Kinkaid addressed the Omagh victims and survivors in the town library. He was accompanied by his successor, Peter Sheridan, Superintendent Norman Baxter, the SIO, and Colin Monteith, Baxter's deputy. Sam Kinkaid told the families that MI5 had known five months in advance of a plot to bomb either Omagh or Derry using a Vauxhall Cavalier car, and knew that one of the suspects lived in Omagh. MI5 had passed this information to An Garda Síochána, but not to the RUC. The informer and car-dealer Paddy Dixon had told An Garda Síochána that a car had been stolen for an attack on Northern Ireland, but the Gards had not intervened for fear of blowing his cover. Peter Sheridan also confirmed to the families that the anonymous telephone call

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369 Ibid, paragraph 34 and paragraphs 265-270 and paragraph 271

370 http://www.supremecourt.gov.uk/docs/permission-to-appeal-1207.pdf

371 *Breslin and Others (Plaintiffs) v McKevitt and Others and Others (Defendants)* [2011] NICA 33 See also the related satellite judgment on aspects of the evidence reported as *Breslin and Others (Plaintiffs) v Michael McKevitt and Others (Defendants)* [2011] NICA 69 (further submissions); Seamus McKenna was not joined in this appeal as civil liability was not established against him.

372 *Omagh bomb civil action case retrial delayed, BBC News,* 6 November 2012

373 *Omagh bombing civil retrial lawyers cleared to quiz Garda officers*, *BBC News*, 5 October 2012

374 *Breslin and Others (Plaintiffs) v Michael Colm Murphy and Seamus Daly (Defendants)* [2013] NIQB 35 at paragraph 232 (Colm Murphy) and paragraph 242 (Seamus Daly)

375 Ibid, at paragraph 243.

of 4 August 1998, warning of an attack on Omagh on August 15, had been dismissed. Even after the Omagh bombing, RUC Special Branch, MI5 and An Garda Síochána withheld what they knew from the police investigation team. The evidence for these claims, the senior officers said, came from emails sent by the agent David Rupert[376] to his MI5 handlers while he worked in Ireland between 1996 and 2001, and notes kept by John White[377], a Garda detective who handled Paddy Dixon under the direction of Detective Chief Superintendent Dermot Jennings. On April 11 1998 David Rupert, now working for MI5 without the knowledge of An Garda Síochána, told his handlers that republican dissidents were planning to bomb Derry or Omagh and that he had taken part in a scouting operation. MI5 informed An Garda Síochána and three suspects were arrested, including a man from Omagh, but later released. In a subsequent email, MI5 confirmed that the terrorist plot had only been delayed. It wrote to David Rupert, "We disrupted the intention to use the car bomb, but maybe not for long . . . Mr [Tony] Blair owes you a beer." None of this information was passed to the PSNI, to the Police Ombudsman, or to Mike Tonge, who was appointed by the Policing Board to oversee the police investigation. Mike Tonge's team specifically asked MI5 if it had any relevant intelligence and were told that it had none. The senior PSNI officers told the Omagh families that, based on John White's testimony, four bombs were allowed to get through by An Garda Síochána in order to protect Dixon's cover. The first was a mortar attack on Moira RUC station in February 1998 in which several police officers and civilians were injured. The second vehicle, a Fiat Punto stolen in Hartstown, was used in an unsuccessful rocket attack in Beleek in May. On May 13, a vehicle containing home-made explosives was, according to John White, let through and later found burnt out. The last one was the Omagh bomb, contained in a maroon Vauxhall Cavalier, precisely the type of vehicle Rupert had warned was likely to be used in Omagh or Derry.[378]

11.2 The OSSHG referred to this information in their written[379] and oral[380] evidence to NIAC, yet in its report concentrated on the dispute between the *Panorama* Team and Sir Peter Gibson, and failed to endorse the call for an independent cross-border inquiry.

11.3 On 18 June 2012, OSSGH met the Secretary of State for Northern Ireland, Owen Paterson[381], at Hillsborough and presented him with a dossier of new evidence. The dossier, commissioned by the OSSHG, was compiled by consultancy firm Sambei Bridger and Polaine. One of its authors was Martin Bridger, who had worked previously on the PONI investigation into the bombing.[382] The report has not been made public because it contains some legally sensitive material, but it is said to pull together all that is known about the various inquiries and investigations which have taken place on both sides of

376 See section 3.4. above
377 See section 3.6. above
378 *Focus: Four months before a car blew up in Omagh, the Gardaí and MI5 were told it would be there. Why did they do nothing?* by Liam Clarke, *Sunday Times,* 26 February 2006
379 *The Omagh bombing: Some remaining questions,* House of Commons Northern Ireland Affairs Committee, *Fourth Report of Session 2009 – 2010,* 10 February 2010, HC 374, Ev 52
380 Ibid, Ev 5, question 13
381 *Secret GCHQ recording: Omagh bomb families demand public inquiry into our revelations, Belfast Daily*, 25 October 2012
382 *Omagh bomb victims' relatives meet Owen Paterson*, *BBC News*, 18 June 2012

the border. [383] According to media reports, the dossier alleges that both the landline and the mobile telephone belonging to the bomb maker known as Suspect A (later alleged to be former Provisional IRA bomb-maker Patrick Joseph "Mooch" Blair[384]) was being monitored by GCHQ "in the hours and days after the attack". He was said to have telephoned another suspect on his (A's) mobile and to have said, "I'm so sorry. I didn't know that was going to happen. I am so sorry for what I did."[385] Also under surveillance were Michael McKevitt, Seamus Daly and Liam Campbell. The warrants permitting the eavesdropping were signed by Northern Ireland Secretary of State Mo Mowlam. The surveillance was requested by RUC Special Branch, but they were unable to share the information they received from GCHQ with CID because, "We were told it was not ours to hand over." [386]

11.4 Norman Baxter made a claim in an addendum to his evidence to NIAC which is surprising indeed. He said:

> "…I am aware of a briefing to the Senior Operational Commander, South Region on 14th August 1998 indicating that information had been received from An Garda Siochana in connection with a potential vehicle borne IED [improvised explosive device] on 15th August. As a consequence a joint police military operation was deployed in the South Armagh/South Down area on the morning of 15th August 1998. The Police Ombudsman's Report 2001 refers to this security operation.[387]

11.5 Unless it is contained in her unpublished full-length report, the former Police Ombudsman made no mention of this operation. NIAC does not appear to have followed up in this claim. We can find no other reference to it anywhere. It is striking for a number of reasons. First, this intelligence was available the day before the bombing. Secondly, it referred specifically to an attack on 15 August, the day of the bombing, although it apparently did not specify Omagh as being the target. Thirdly, it referred explicitly to a car bomb. One question that none of the many reviews into the Omagh bombing appears to have addressed is why RUC Special Branch asked GCHQ to undertake surveillance on named suspects. Could it be that it was this intelligence, passed on by An Garda Síochána in the nick of time, was what sparked the request made by the RUC just before the Omagh bombing?

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383 *FBI agent's evidence at core of Omagh families' private report*, *Tyrone Constitution*, 26 July 2012

384 *Omagh accused flee as the police move in*, by Henry McDonald, *The Observer,* 27 January 2002

385 *GCHQ secretly record Omagh bomber telling Real IRA pal: I'm so sorry for what I did to families*, *Belfast Daily*, 24 October 2012

386 *Secret GCHQ recording: Omagh bomb families demand public inquiry into our revelations, Belfast Daily*, 25 October 2012

387 *The Omagh bombing: Some remaining questions,* House of Commons Northern Ireland Affairs Committee, *Fourth Report of Session 2009 – 2010,* 10 February 2010, HC 374, Ev 43, addendum by Norman Baxter

12. CONCLUSION: REMAINING QUESTIONS

12.1 This report has described in as much detail as possible what is currently in the public domain about the events surrounding the Omagh bombing. It has described the events prior to the bombing, the various allegations revealed in intelligence sources available before and after the bombing and the failures of the criminal justice systems in Britain and Ireland, both in terms of the police investigations and the inability of the courts to deliver justice.

12.2 Not one of the many reviews into the Omagh bombing has delivered what the Omagh Support and Self Help Group want – truth and justice – and the criminal justice system appears to have given up on Omagh.

12.3 On 21 December 2007, following the acquittal of Sean Hoey, the PSNI Chief Constable Sir Hugh Orde said that he believed it was "highly unlikely" that anyone would ever be convicted of the Omagh bombing. He blamed this state of affairs on "mistakes during the initial investigation after the bombing".[388]

12.4 On 21 November 2008, Detective Chief Inspector Norman Baxter, in charge of the inquiry since May 2002, retired from the PSNI. Michael Gallagher said, "I think his retirement marks the end of the line for Omagh as far as the police are concerned. They have thrown in the towel. Omagh has been consigned to the archives."[389]

12.5 In January 2009, in a newspaper interview, the head of PSNI's Serious Crime Branch, Detective Chief Superintendent Derek Williamson, said that detectives were no longer actively working on the Omagh bombing case and he suspected it was unlikely anyone would ever be convicted of the offences:

> "As the person now responsible for Omagh my assessment is that unless someone's conscience pricks them and they come forward and tell us what they know or some key witness comes forward then unfortunately, investigatively we have done as much as we can." [390]

12.6 The state of the investigation was described by departing Chief Constable Sir Hugh Orde to NIAC on 15 July 2009 during a hearing on policing and justice. He said that despite the success of the victims' families' civil action, he believed that it was "highly unlikely" that this would ever lead to new criminal proceedings as the standard of proof "is way higher" in a criminal trial.[391] He revealed that in light of the failed case against Sean Hoey "substantial new evidence" would have to be found before they could be "absolutely certain" of a strong enough case to bring new criminal proceedings.[392]

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388 *Conviction 'unlikely' over Omagh, BBC News,* 21 December 2007

389 *Omagh inquiry chief announces resignation,* by Diana Rusk, *Irish News,* 21 November 2008

390 *We have done as much as we can on Omagh, says top officer,* by Deborah McAleese, *Belfast Telegraph,* 10 January 2009

391 "Beyond reasonable doubt" is applied as the standard of proof in criminal proceedings, as opposed to that of "on the balance of probabilities", which is applied in civil proceedings

392 *Policing and Justice Meeting,* Northern Ireland Affairs Committee, evidence of Sir Hugh Orde, 15 July 2009, question 23 http://www.parliament.the-stationery-office.co.uk/pa/cm200809/cmselect/cmniaf/745/9071501.htm

12.7 Although a number of those suspected of involvement in the Omagh bombing have since received sentences for other offences, some of them relating to terrorism, the fact remains that no-one has been held responsible in criminal law for the Omagh bombing. The unprecedented civil case, for which there is a lower evidential threshold,[393] revealed that significant evidence existed against at least four members of RIRA.

12.8 The families have also been continually let down by governments and politicians. The UK government initially promised that "no stone would be left unturned in the investigation"[394] and former Secretary of State for Northern Ireland Mo Mowlam assured the families "you will want for nothing".[395] In September 2002[396] it was revealed that Tony Blair had refused to meet the families of the victims and in February 2004 the families called Bertie Ahern's offer of only "five or ten minutes of his time" an "insult" after trying to arrange a meeting for over five years.[397] Whatever the political motivations were for this, whether they were the product of a fear that successful prosecutions would destabilise the peace process or that a full review would unearth too many unwanted truths, the attitude of some political figures towards the families of the victims and the injured has made things worse. Shaun Woodward MP, the then Secretary of State for Northern Ireland said in 2010 "…. The issue has already had its inquiry; the Ombudsman did it, the lessons have been learned and it has moved on".[398] Despite republicans having publicly stated that they will co-operate with any independent public inquiry[399], and although the former Secretary of State for Northern Ireland, Owen Paterson MP, has met with members of the Omagh Support and Self Help Group on three separate occasions since September 2011 and has been presented with the dossier of new evidence mentioned at paragraph 11.3 above, so far the UK government has refused to undertake a holistic review of the Omagh bombing and its aftermath. The families have been left with an overwhelming sense that key figures have wanted to consign the Omagh bombing to history.

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393 As previously explained, on the balance of probabilities (more probable than not) as opposed to beyond all reasonable doubt

394 *Dublin gets tough with terrorism as 16 more bomb victims buried, Scottish Herald,* 20 August 1998

395 *Northern Ireland Affairs Committee, Tenth Report* [Victims and Survivors], *evidence of William Jameson*, 28 February 2005, question 706: "Mo Mowlam sat on my youngster's bed in the County Hospital in Omagh and she sat there and told me the biggest – I will say it in front of you all here now as colleagues of hers – the biggest bullshit that I have ever heard in my life. She said to me, 'You will want for nothing.'" http://www.parliament.the-stationery-office.co.uk/pa/cm200405/cmselect/cmniaf/303/50228p07.htm

396 *Omagh victim is disgusted by Blair's snub,* by David Sharrock, *Daily Telegraph,* 9 February 2009

397 *Families Snub Ahern after Omagh visit 'insult'*, by Thomas Harding, *Daily Telegraph,* 20 February 2004; civil servants from the Irish government have tried to provide considerable assistance to the victims.

398 *The Omagh bombing: Some remaining questions,* House of Commons Northern Ireland Affairs Committee, *Fourth Report of Session 2009 – 2010,* 10 February 2010, HC 374, evidence of Shaun Woodward MP, 1 April 2010, Ev 324, question 24 and page 16, paragraph 48

411 *Timeline: Omagh bombing, The Guardian*, 8 June 2009. On 7 May 2007 Martin McGuinness said that republicans are willing to co-operate with any independent, international cross-border public inquiry.

12.9 It is not only the families who find the failure to hold anyone properly accountable for the Omagh bombing unacceptable. The inadequate response to Omagh, whether in terms of policing, reviews, or politics, has undoubtedly undermined public faith in policing, the criminal justice system, politicians, governments, and ultimately in the Rule of Law. Protocols, procedures, interagency mechanisms and cross border arrangements need to be reviewed or implemented in a systematic way so as to avoid a repeat of the Omagh bomb or similar terror or criminal attack.

12.10 The Omagh Support and Self Help Group made a campaign statement in 2009, re-launched in 2011, to the UK Parliament calling for an independent cross-border public inquiry into the circumstances surrounding the Omagh bombing. This statement is reproduced in full at Appendix C to this report. The statement argued that this was necessary because of the "monumental failures of intelligence and the investigative and administrative mishandling which undoubtedly minimized the chances of a successful prosecution".[400] Michael Gallagher has explained that the purpose of an independent cross-border public inquiry would not be to "shift the blame from those who rightly should receive the blame",[401] from RIRA and onto the police or intelligence services of both countries, but to enable everyone "to see what went wrong and what should be put right."[402] In an event as significant as the Omagh bombing, involving so many deaths and injuries, an independent, cross-border public inquiry would be very important as it would "strengthen the system"[403] so that such a crime could never happen again, or at the very least it would be properly investigated, in compliance with Article 2 of the European Convention on Human Rights, which provides for effective investigations into the loss of life when the state is implicated in the violation.

12.11 If the UK government had any prior intelligence which could have prevented the deaths and injuries caused by the Omagh bombing, then it would be in breach of the European Convention on Human Rights. The European Court of Human Rights (ECtHR) has held:

> "The obligation to protect the right to life under Article 2 of the Convention… also requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force… The essential purpose of such investigation is to secure the effective implementation of the domestic laws which protect the right to life and, in those cases involving State agents or bodies, to ensure their accountability for deaths occurring under their responsibility."[404] and
>
> "What form of investigation will achieve those purposes may vary in different circumstances. However, whatever mode is employed, the authorities must act of their own motion, once the matter has come to their attention. They cannot leave

400 *Submission to UK Parliament by Omagh Support and Self-Help Group,* 2 September 2009; re-launched on 11 October 2011 and at http://www.omaghbomb.co.uk/public_inquiry.html

401 *The Omagh bombing: Some remaining questions,* House of Commons Northern Ireland Affairs Committee, *Fourth Report of Session 2009 – 2010,* 10 February 2010, HC 374, evidence of Michael Gallagher and Godfrey Wilson, 16 March 2009, Ev 1, question 11

402 Ibid, question 18

403 Ibid, page 27, paragraph 76

404 *Jordan v UK* [2001] ECHR 327, paragraph 105

it to the initiative of the next of kin either to lodge a formal complaint or to take responsibility for the conduct of any investigative procedures…"[405] and

"Where the events in issue lie wholly, or in large part, within the exclusive knowledge of the authorities, as for example in the case of persons within their control in custody, strong presumptions of fact will arise in respect of injuries and death which occur. Indeed, the burden of proof may be regarded as resting on the authorities to provide a satisfactory and convincing explanation…"[406]

12.12 Not only have the Omagh victims and survivors not received an effective investigation, but they have been forced to commission their own investigations, and they have received no convincing explanations or answers from the government to their many questions.

12.13 Clarity is also required concerning the working arrangements between security agencies operating in Northern Ireland under the St Andrews Agreement of 2006. This document set out five key principles governing the relationship between the PSNI and MI5, which took over responsibility for counter-terrorism:

a. All Security Service [MI5] intelligence relating to terrorism in Northern Ireland will be visible to the PSNI.
b. PSNI will be informed of all Security Service counter terrorist investigations and operations relating to Northern Ireland.
c. Security Service intelligence will be disseminated within PSNI according to the current PSNI dissemination policy, and using police procedures.
d. The great majority of national security CHISs [covert human intelligence sources, or agents] in Northern Ireland will continue to be run by PSNI officers under existing police handling protocols.
e. There will be no diminution of the PSNI's ability to comply with the HRA [Human Rights Act] or the Policing Board's ability to monitor said compliance. [407]

While this appears to be a coherent structure, it disguises the fact that, while the PSNI is scrutinised by PONI, MI5 is not similarly accountable for its actions. If the relationship between the two agencies was incoherent and dysfunctional both before and after the Omagh bombing, it has since become even more opaque.

12.14 Another important benefit of an independent cross-border public inquiry would be to provide a sense of accountability and closure, not only for the community in Omagh but for the wider public. As this report has explained, the existing information, the previous reviews and the allegations and counter-allegations have all painted a confusing and unclear picture of events. The fact that the British government has never conscientiously sought to resolve these issues is remarkable for a number of reasons.

405 Ibid

406 Ibid, paragraph 103

407 *St Andrews Agreement, Annex E, Future National Security Arrangements in Northern Ireland: Paper by the British Government*, 2006 at http://www.nio.gov.uk/st_andrews_agreement.pdf

- First, it is remarkable considering the gravity of the event and the number of people who lost their lives and were injured.
- Second, it is surprising in light of the fact that the Omagh bombing was clearly designed to undermine the peace process, although fortunately it had the opposite effect.
- Third, it stands in stark contrast to how rapidly the government acted to set up the 7 July Review Committee following the terrorist bombings in London 2005.
- Fourth, it is both extraordinary and dangerous considering how obviously harmful it is to the present peace process in Northern Ireland. Leaving so many questions unanswered after an atrocity on such a scale has a corrosive effect on any democracy.

12.15 The unwillingness to learn from past mistakes prolongs and deepens the legacy of the conflict in Northern Ireland and the fuels the persistence of political violence. It is distressing, not only for the victims but also for those who were witnesses to it, and for the wider public, to see that same unwillingness casting such a long shadow over the evolving peace process.

12.15 Finally, it is imperative that any cross-border public inquiry is independent; fair; well-resourced, completed to a set timescale and learns from the numerous mistakes of earlier reviews. There is no room left for another failed review. RW(UK) supports the Omagh Support and Self Help Group's call for an independent, cross-border public inquiry and calls on the United Kingdom and Irish governments to facilitate such an inquiry without further delay.

Rights Watch (UK), May 2013

APPENDICES

Appendix A
Those injured in the Omagh bombing

The following is a list of some of those who were injured by the Omagh bomb. In total, about 220 people were injured by the bomb. Injuries ranged from ear and lung lacerations, to traumatic amputation, severe burns, abdominal blast injuries and shrapnel injuries. The birthplace of some of the injured is not known.

Armstrong, Karen (Omagh)
Barrett, Michael (Omagh)
Baselga Blasco Lucrecia (Spain)
Beattie, David
Bell, Edna (Newtownards)
Black, Audrey
Blanco, Maria Teresa (Omagh)
Blanco, Gonzalo (Spain)
Bradley, Annie
Burke, Nuala (Omagh)
Caldwell, Patricia (Omagh)
Canedo, Gonzalo (Omagh)
Colgan, Ann (Omagh)
Colton, Eoin
Colton, Stephanie (Omagh)
Connolly, Ailish (Castlederg)
Connolly, Clare (Castlederg)
Coyle, Francis
Coyle, Linda
Coyle, Steven (Strabane)
Cummings, Adrian (Beragh)
Curran, Mary T
Davies, Rachel (Omagh)
Devine, Tracey (Strabane)
Devlin, Niall
Donnelly, Ciaran (Sixmilecross)
Donnolly, Nicola (Beragh)
Edgar, Wendy (Omagh)
Elliot, Janice (Omagh)
Ellis, Martha
Emery, Nicola (Omagh)
Emery, Valerie (Omagh)
Ferris, Kathleen
Fleming, Teresa
Gailey, Valerie
Gallagher, Claire (Omagh)
Gallagher, Patricia (Omagh)
Gault, Katrine (Omagh)

Green, Pauline (Omagh)
Gormley, Mary (Omagh)
Graham, Wendy (Omagh)
Grimes, Karen
Guy, James
Hall, Alastair (Omagh)
Hall, Gwen (Omagh)
Hamilton, Laura (Omagh)
Hamilton, Nicola (Omagh)
Hamilton, Valerie (Omagh)
Harkin, Graínne (Omagh)
Harkin, Sinead (Killyclogher)
Haughey, Patrick (Killyclogher)
Haughey, Sharon
Henderson, Edith
Ingram, Rosemary (Omagh)
Jameson, Ursula (Omagh)
Kelly, Christina (Omagh)
Kelly, Katherine
Kelly, Suzanne (Omagh)
Keyes, Donna (Omagh)
Larson, Marguerite
Loughran, Maura
Marlow, Nicola (Eskra)
McBrien, Rosemary
McCann, Diane
McCartney, Allbhe (Omagh)
McCay, Wendy (Drumquin)
McConnaghtie, Avril (Dromore)
McCormack, Imelda (Omagh)
McCourt, Giles (Omagh)
McCrea, Ann (Omagh)
McCrossan, Mary
McCullagh, Linda (Omagh)
McCullagh, Roisin (Plumbridge)
McFadden, Francis (Mountfield)
McGillion, Gary (Newtownstewart)
McGirr, Gareth (Omagh)
McGlynn, Jamie (Omagh)
McGrath, Sean (Omagh) [died of his injuries on 5 September 1998]
McGurk, Una (Omagh)
McKinney, Caroline (Omagh)
McLaughlin, Catherine
McLaughlin, Emmett (Buncrana)
McManus, Maura
McNamee, Fabian (Omagh)
McNeillis, Rosaleen
McParland, Mary

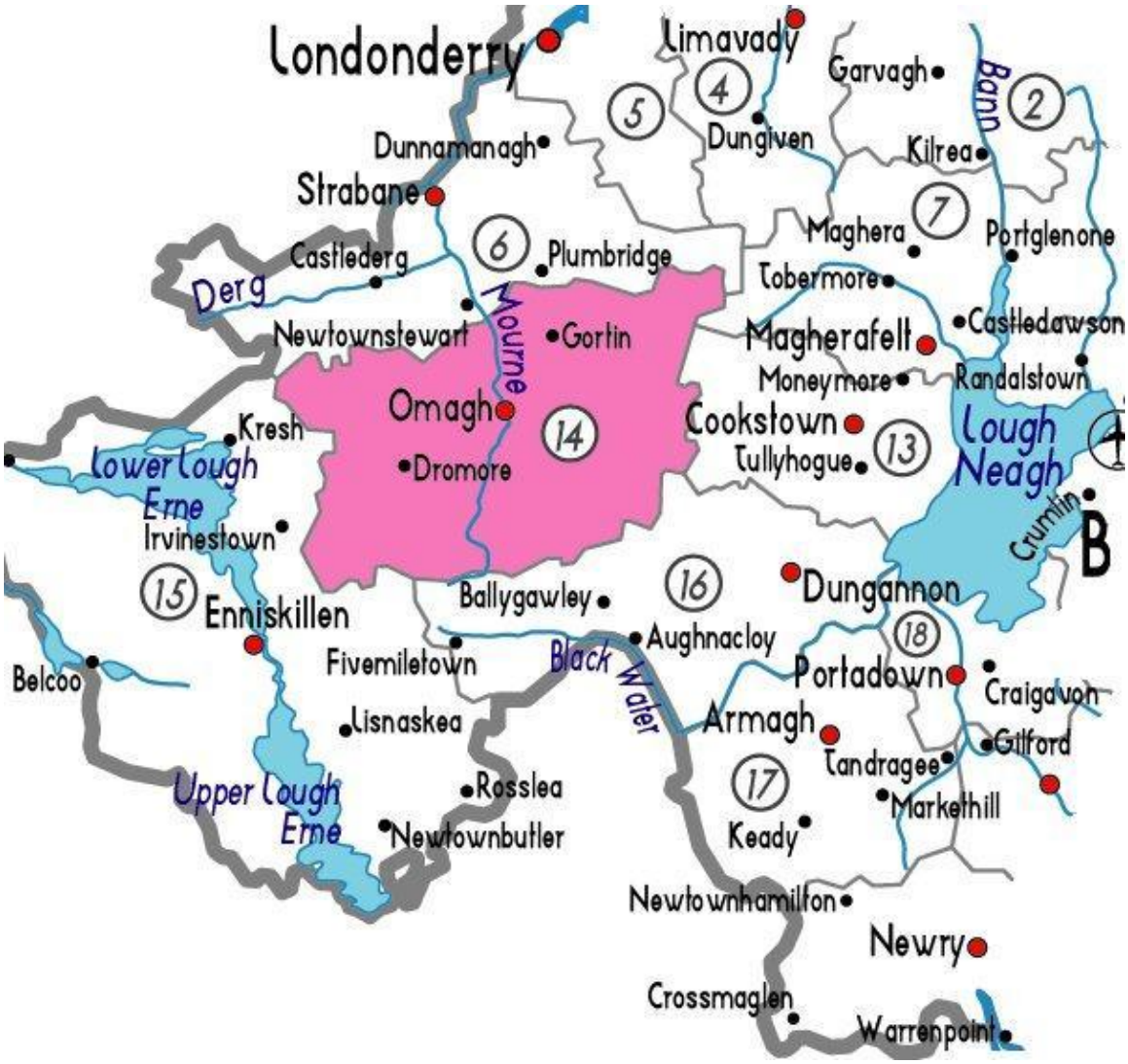
McSorley, Niall (Omagh)
Mimnagh, Michelle (Drumquin)
Moore, Gertrude
Morris, Ann (Omagh)
Morris, Patrick (Omagh)
Mulcahy, Leona (Omagh)
Mulgrew, Sylvia (Omagh)
Mulholland, Michael (Omagh)
Nixon, Florence
O'Donnell, Elaine (Omagh)
Ordenez, Martha (Spain)
Ortiz, Elguero (Spain)
Pearson, Jacqueline (Omagh)
Porter, Glen (Magherafelt)
Poyntz, Teresa (Drumquin)
Preston, Doreen (Omagh)
Puech, Beatriz (Spain)
Sanchez, Maria (Spain)
Scott, Louise (Omagh)
Shiels, Clarke (Omagh)
Skelton, Shauna (Drumquin)
Sloan, Kathleen
Smith, Sandra (Omagh)
Spratt, Nora (Drumquin)
Sproule, Andrew
Sutton, Mary (Fintona)
Teague, Keith
Toal, Marina (Mountfield)
Walker, Sarah
Walker, Shane (Omagh)
White, Norma (Omagh)[408]

408 http://www.wesleyjohnston.com/users/ireland/past/omagh/injured.html

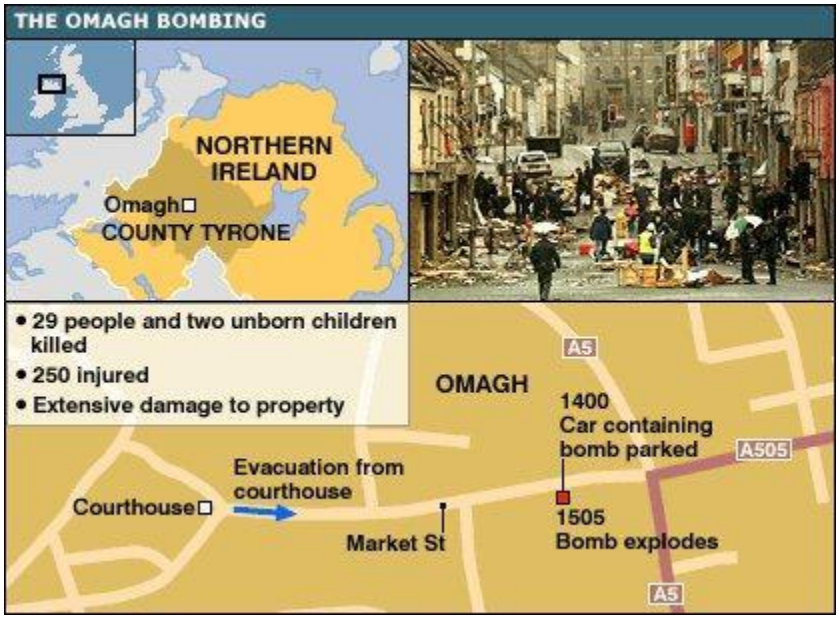
APPENDIX B
MAPS

MAP OF NORTHERN IRELAND

MAPS OF OMAGH AND SURROUNDING AREA


Londonderry
Limavady
Garvagh
Bann
2
5
4
Dungiven
Dunnamanagh
Kilrea
Strabane
7
Maghera
Portglenone
6
Plumbridge
Castlederg
Tobermore
Derg
Mourne
Newtownstewart
Gortin
Magherafelt
Castledawson
Moneymore
Randalstown
Omagh
14
Cookstown
Lough
Neagh
Kresh
Tullyhogue
13
Lower Lough
Erne
Dromore
Crumlin
Irvinestown
15
Ballygawley
16
Dungannon
Enniskillen
18
Aughnacloy
Fivemiletown
Black
Water
Portadown
Craigavon
Belcoo
Armagh
Gilford
Lisnaskea
Tandragee
17
Upper Lough
Erne
Rosslea
Markethill
Keady
Newtownbutler
Newtownhamilton
Newry
Crossmaglen
Warrenpoint

MAP OF OMAGH BOMBING



Courtesy of the BBC

APPENDIX C
THE OMAGH SUPPORT AND SELF-HELP GROUP 11 OCTOBER 2011:
A CALL FOR A FULL CROSS BORDER PUBLIC INQUIRY INTO THE OMAGH BOMBING

"We do not consider the Omagh Bomb to be part of the history of the Troubles. The bombing of Omagh happened in peacetime. The then Secretary of State, Mo Mowlam, stated that those responsible would not be given any special treatment under the Good Friday Agreement because the atrocity was carried out after the peace agreement was signed. Similarly the Bradley Eames initiative Consultative Group on the Past has taken the Good Friday Agreement as the end limit for its definition of historical cases and has explicitly distinguished the Omagh Bomb from other atrocities falling within the period of the Troubles.
We believe the only way forward for the families of those murdered in Omagh is for the British and Irish Governments to grant a full cross border public inquiry into the circumstances surrounding the Omagh Bomb.

This document has been produced to provide an overview of the atrocity identifying actions taken, as well as operational strengths weaknesses and failings.

The Omagh Bomb is an event which is unique in the history of our country murdering thirty-one innocent men women and children and injuring hundreds of others from three nations. The Omagh Bomb happened at a time when we were all looking to the future. Many families thanked God that they had survived the thirty years of the Troubles and had been largely untouched by terrorism. That illusion was shattered for many hundreds of innocent people on that sunny Saturday afternoon in August 1998. From that day many of us have made it part of our very reason for living to get the truth and establish the facts of what happened in Omagh on that day.

We have never been left in any doubt as to who was responsible for this wicked and evil act: the Real IRA. They proudly announced that an active service unit from their group had parked the explosive laden car in Market Street Omagh. Without providing proper warnings they returned over the border to safety before it exploded with horrific consequences. The innocent men women and children of Omagh, Buncrana and Madrid were left to pick up the pieces.
However there remain many unanswered questions about the circumstances surrounding the Omagh Bomb and in particular about how much intelligence was available to and how it was used by the British and Irish authorities.

It has emerged that MI5 and the FBI were jointly handling an informant in the Republic of Ireland who had infiltrated the dissident movement at a high level. In April 1998 four months before the Omagh Bomb the informant provided information that Derry (Londonderry) and Omagh were potential targets for car bomb attacks. Their agent also reported that the dissidents had decided to shorten the warning time of bomb attacks. The PSNI Assistant Chief Constable informed the Omagh families of this in February 2006. The PSNI had not learned of this source or the information he provided until January of that year. The Omagh Investigation Team was never provided with the information.

On the 4 August 1998 eleven days before the Omagh Bomb Omagh Police Station received an anonymous phone call warning that there was to be a terrorist attack in Omagh on the 15 August. Special Branch dismissed the phone call as unfounded. However, this was exactly what

happened Omagh was the scene for a terrorist attack on the 15t August. Omagh Sub Divisional commander was not informed about this call until two and a half years later. During the course of her investigation the then Police Ombudsman for Northern Ireland Nuala O'Loan found that the claims made in the 4 August phone call merited further investigation than they had been given and that there was reason to suspect links between republicanism and the individuals named in the call. The Serious Threat Book for the period of August 1998 in which such warnings would be recorded has inexplicably gone missing from Omagh PSNI Station and has yet to be recovered.

In September 2008 the BBC broadcast a current affairs programme entitled *Panorama* "*Omagh:* What the Police Were Never Told". In it was claimed that GCHQ had been monitoring and recording the voices of members of the bomb team as they drove five hundred pounds of explosives towards Omagh on 15 August 1998. Within thirty-six hours of the broadcast the Prime Minister Gordon Brown ordered a review of intelligence intercepts. Sir Peter Gibson, Intelligence Services Commissioner was appointed to head the review. The families approached Sir Peter Gibson making themselves available and requesting the terms of reference. No response was ever received from Sir Peter Gibson. In January 2009, Sir Peter Gibson delivered his review. The families received a sixteen page document outlining his findings. His full Report has never been made public and even the Chairman of the House of Commons Northern Ireland Affairs Committee has been denied access to it. Nowhere in the summary document provided to the families, is it indicated that intercepts did not take place on the day of the bombing.

These events sparked a year-long investigation from the Northern Ireland Affairs Committee. Their Chairman, Sir Patrick Cormack MP, commented: "Far too many questions remain unanswered. The criminal justice system has failed to bring to justice those responsible for the Omagh bombing. The least that those who were bereaved or injured have the right to expect are answers to those questions."

During the course of the civil action bought by some of the relatives of the Omagh victims against alleged members of the Real IRA it was alleged that the PSNI Special Branch and/or Security Services have in their possession a recording and transcripts relating to conversations which indicate that some individuals had planted a recording device in the car that delivered the bomb to Omagh.

It has emerged that the Irish Government was in secret talks with the Real IRA at the highest level. It has also emerged that An Garda Siochana had well-placed informants close to and at the top of the Real IRA leadership. A member of the Gardaí, Detective Sergeant John White made public claims that he had information passed on from Gardaí informant Paddy Dixon regarding the Real IRA and the Omagh Bomb. The Police Service of Northern Ireland considered Paddy Dixon to be a potentially crucial witness in the investigation of the Omagh bombing. They have made a number of formal requests to interview him without success. The Gardaí have denied them access to Dixon who is currently on an Irish Government witness protection scheme.

The Office of the Police Ombudsman for Northern Ireland subjected White's claims to thorough investigation and found them to have substance. The then Police Ombudsman Nuala O'Loan personally delivered her findings to the Irish Foreign Affairs Minister Brian Cowen. The Irish Government appointed three retired senior civil servants to carry out an inquiry into the allegations. None of these three individuals had any investigative skills. One was a former DPP

and as such may have made decisions about Omagh. The inquiry was selective in the witnesses selected for interview Dixon was not interviewed by the team despite the fact that he was a central figure in the case nor was Norman Baxter PSNI Senior Investigating Officer Omagh Investigation or other potential witnesses who made themselves available. John White's telephone records were not examined even though he gave permission for them to be acquired by the team. The resulting Nally Report completely exonerated the Gardaí of any blame. The Report lacked judicial powers of investigation and independence. The Nally Report has never been fully published.

In addition to the litany of failures which occurred in advance of the bombing the investigations conducted on both sides of the border have been subject to scathing attack. An internal review of the PSNI investigation carried out by Reviewing Officer McVicker identified hundreds of failures in the investigation and produced over three hundred recommendations including a number of previously unexamined investigative leads. The Review of the Office of the Police Ombudsman was equally damning of the PSNI investigation.

The only charges ever to be brought in Northern Ireland in relation to the Omagh Bomb resulted in the trial of Sean Hoey. He faced fifty-eight terrorist charges. After a fifty-six day trial Hoey was acquitted of all charges in a blaze of controversy. The judge accused PSNI witnesses of beefing up evidence on the stand. Throughout the course of the trial huge in competencies in forensic processes were revealed including potential forensic contamination. In addition key pieces of evidence including the Timer Power Units of a number of linked bombing incidents had been lost. At the conclusion of the trial the then PSNI Chief Constable Sir Hugh Orde stated that it was highly unlikely that anyone will ever be convicted in connection with the Omagh Bomb.

The bomb attack was launched from the Republic of Ireland with the bomb team spending less than forty minutes in Northern Ireland. However, the Irish Government has repeatedly failed to assist the PSNI in their investigation of the atrocity. For instance, the Irish Government has repeatedly refused to hand over DNA profiles of suspects to the PSNI. In addition the Garda investigation has failed to charge a single person with murder at Omagh. Despite a confession from the person who stole the car in Carrickmacross which was used in the Omagh bombing no charges have ever been brought against him not even for car theft.

The only conviction ever to be secured in relation to the Omagh Bomb was of Colm Murphy who was charged with conspiring with the Omagh bombers in 2002. He was sentenced to fourteen and a half years imprisonment in the Special Criminal Court in Dublin. He was later granted a retrial when it was found that Detective Garda Liam Donnelly and Detective Garda John Fahy were engaged in persistent lying under oath.

The Omagh families have experienced nothing but failures and excuses. We have been promised, both publicly and privately that those responsible would be brought before the courts. We were assured that no stone would be left unturned in the pursuit of justice. Nothing could be further from the truth. There have been monumental intelligence and investigative failures and colossal administrative mishandling which has undoubtedly minimised the chances of a successful prosecution of anyone responsible for the worst atrocity in the history of Northern Ireland.

When people ask why an inquiry into the Omagh bombing is required we respond with the following to establish the facts and circumstances surrounding the Omagh bombing to review and revise standards and procedures and to improve security readiness and crisis management; to assess the efficiency and effectiveness of intelligence handling surrounding the Omagh Bomb to determine the adequacy of coordination of intelligence and anti-terrorism countermeasures amongst Northern Irelands security services Republic of Irelands security services and business organisations generally.

We must make sure that the lessons of Omagh are learnt. Never has so much been known about an atrocity and yet so little done to stop it or to catch those responsible.

The terms and powers of any inquiry would need to be such as to inspire widespread public confidence be guaranteed access to all the relevant official material and to otherwise enjoy full official cooperation and operate independently so that it can investigate thoroughly and comprehensively the circumstances surrounding the Omagh bomb and deliver a genuine impartial finding as to what happened in Omagh why it happened and who must bear the responsibility for it. This is the only type of inquiry which can end the continuous series of piecemeal inquiries into Omagh which have been conducted thus far.

We urge the Secretary of State for Northern Ireland and the British and Irish Governments to work with the Omagh Support and Self-Help Group to achieve public closure."

APPENDIX D
HOUSE OF COMMONS NORTHERN IRELAND AFFAIRS COMMITTEE:
THE OMAGH BOMBING: SOME REMAINING QUESTIONS (FOURTH REPORT OF SESSION 2009 – 10 HC 374 PAGES 31 – 34: CONCLUSIONS AND RECOMMENDATIONS)

1. The Real IRA and the individuals who carried out the bombing murdered 29 people and two unborn children. Responsibility for those deaths is theirs alone. (Paragraph 2)

2. We warmly commend those who have worked so long to maintain the Omagh Support and Self-Help Group as a source of information, solace and social support for victims of the bombing. (Paragraph 7)

3. We appreciate that nothing we say can bring total satisfaction or real comfort to the families of those who died at Omagh, both those who continue to campaign to keep the Omagh bombing in the public eye and those who grieve in private. (Paragraph 8)

4. Nothing we have seen leads us to challenge Sir Peter Gibson's conclusion that any available intelligence could have been used immediately prior to the Omagh bombing to prevent it. We repeat our bitter disappointment, however, that, in spite of repeated requests, the Prime Minister has refused to allow our Chairman to read the full report, even under supervision. It is thoroughly reprehensible that the Government should seek to prevent the parliamentary Committee charged with oversight of the affairs of Northern Ireland such access, and we believe that the Government's attitude in that respect has done more damage than good. (Paragraph 15)

5. While there may be good security reasons for not disclosing the content of transcripts, we are not persuaded that confirming or denying their existence should present problems. We invite the Government to do so. The case for or against the use of intercept evidence being admissible in UK courts has been argued for many years. We invite the Government to justify the argument that the public interest is better served by withholding such evidence, rather than by using it to bring murderers to justice. (Paragraph 28)

6. It is the fact that dissident republicans continue actively to seek to undermine Northern Ireland's progress towards peace and normalisation that makes it so important to learn lessons from the experience of Omagh. (Paragraph 29)

7. We are disturbed by the suggestion that arrests could have been made quickly, and forensic evidence obtained, had there been an earlier exchange of information. We are particularly concerned by the suggestion that the names of individuals who owned telephones, thought to have been used in the bombing, were known to the intelligence services or the police. We seek a definitive statement from the police of whether such names were known. If they were, we seek an explanation of why no action was taken to arrest or question the owners of those telephones. (Paragraph 39)

8. The desire for a speedy report on intelligence relating to the Omagh bombing leaves crucial questions that remain to be answered about the investigation of the mass murder that occurred that day. (Paragraph 45)

9. We urge the Secretary of State to revise his view that this issue has "had its inquiry" and to institute an immediate investigation into whether, and, if so, why, this intelligence was withheld. (Paragraph 47)

10. Further inquiry on the Omagh bombing is required not because inquiries naturally lead to further inquiries, as the Secretary of State puts it, but because one substantial question outlined in this Report remains unanswered: what public interest justification there can be, if any, for the withholding of intelligence, information or evidence from the team of detectives who investigated the Omagh bombing. (Paragraph 48)

11. It is unclear to us precisely what Sir Peter Gibson did investigate. His terms of reference state that he was asked to investigate how intelligence was shared. He did not investigate Special Branch's caution in not sharing relevant intelligence, however. We seek an explanation of why Sir Peter Gibson's published terms of reference did not stretch as far as appeared when his review was announced. We find all this obfuscation very frustrating. (Paragraph 53)

12. Whatever Sir Peter Gibson'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. (Paragraph 56)

13. In an inquiry as important as Sir Peter Gibson's into the uses of intelligence relating to Omagh, it is of considerable regret that he was unable to interview all the witnesses whom he considered relevant. This underlines the limitations and, therefore, the unsatisfactory nature of his inquiry and subsequent report. (Paragraph 57)

14. We are glad that the PSNI has recognised that lessons needed to be learned with regard to practices for the storing and sharing of information, not just in relation to Omagh, but in the general treatment of intelligence and forensic evidence. We welcome the assurance of the Northern Ireland Office that relevant intelligence would today be more likely to reach the detectives investigating a crime than appears to have been the case at Omagh. (Paragraph 63)

15. We fully appreciate that security considerations require Sir Peter Gibson's full report to be restricted. We remain of the view that our Chairman should be enabled, on our behalf, to satisfy himself that the contents of the full report conflict in no way with the published summary of Sir Peter Gibson's review. (Paragraph 64)

16. We would again strongly urge the Prime Minister to allow our Chairman, even at this late stage, to read Sir Peter Gibson's full report. (Paragraph 66)

17. Meanwhile, we must reluctantly accept that the full review is being withheld from the House of Commons Committee for which it is material evidence. We must therefore request that the Intelligence and Security Committee, which is allowed access to the full report, revisit Sir Peter Gibson's conclusions in the light of the questions raised by this

Report. We also urge the ISC to make its findings on these matters as public as is possible. (Paragraph 67)

18. We trust that the Omagh victims will be given every possible assistance by the Government, the police and other relevant agencies as they seek to pursue the compensation awarded by the High Court against four individuals and the Real IRA. We seek a statement from the NIO of what action would be taken to provide such assistance, and we urge that such a statement be made before the end of the present Parliament. (Paragraph 69)

19. It is a matter of deep regret that no one has been convicted of causing the worst terrorist outrage in Northern Ireland's history and that no one in authority holds out any realistic possibility that those who committed the atrocity will pay the penalty for it. Whatever the reasons may be, the criminal justice system has in this case badly failed the victims of the bombing. (Paragraph 70)

20. We recommend that the Northern Ireland Office undertake consultation on how the victims of terrorist atrocities might be legally aided, financially or otherwise, in bringing civil actions where the criminal justice system has not brought the perpetrators to account. We recognise that substantial safeguards would be required to prevent the misuse of public money in this respect, but believe that the action raised by some of the Omagh families has highlighted an avenue largely made unavailable to victims of terrorism on account of the prohibitive costs involved. (Paragraph 73)

21. There is a compelling case for some further inquiry into what did or did not occur in relation to Omagh, but whether a full-scale public inquiry is the proper route for that is less clear. We have recommended at paragraph 56 that further investigation be undertaken into how intelligence provided to Special Branch in August 1998 was used. We will defer any final judgment on the need for a public inquiry, until after we receive and study the Government's response to this Report. (Paragraph 81)

22. We see some potential in the suggestion that the victims of Omagh – the relatives of those who died and were injured – might benefit from close engagement with any Legacy Commission if one eventually emerges from the Consultative Group process. (Paragraph 85)

23. We believe that this Report, covering as it does the most appalling crime committed in the history of Northern Ireland, is in many ways the single most important Report that the Committee has produced during this Parliament. We urge the Government to respond fully and unequivocally to our recommendations before this Parliament comes to an end. (Paragraph 86)

24. Nevertheless, we are conscious that the Committee will not have an opportunity to discuss matters further after Dissolution. We would therefore urge our successor Committee to do so with whoever holds the office of Secretary of State for Northern Ireland in the next Parliament and we would also urge that as and when policing and criminal justice issues are devolved those who hold appropriate office in the Northern Ireland Executive do likewise. (Paragraph 87)

25. Far too many questions remain unanswered. The criminal justice system has failed to bring to justice those responsible for the Omagh bombing. The least that those who were bereaved or injured have the right to expect are answers to those questions. (Paragraph 88)