



House of Commons
Northern Ireland Affairs
Committee

The Omagh bombing: Government response

Eighth Report of Session 2009-10

Report, together with formal minutes

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The Northern Ireland Affairs Committee

The Northern Ireland Affairs Committee is appointed by the House of Commons to examine the expenditure, administration, and policy of the Northern Ireland Office (but excluding individual cases and advice given by the Crown Solicitor); and other matters within the responsibilities of the Secretary of State for Northern Ireland (but excluding the expenditure, administration and policy of the Office of the Director of Public Prosecutions, Northern Ireland and the drafting of legislation by the Office of the Legislative Counsel).

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The current staff of the Committee are David Weir (Clerk), Alison Groves (Second Clerk), Emma McIntosh (Senior Committee Assistant), Becky Crew (Committee Assistant), Karen Watling (Committee Assistant), Becky Jones (Media Officer), and Mr Tes Stranger (Committee Support Assistant).

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Omagh bombing: Government response

1. Our report *The Omagh bombing: some remaining questions* was published on 16 March 2010.¹ Under normal circumstances, we would expect the Government to respond within two months, on or around 16 May. In view of the forthcoming dissolution of Parliament and the general election, we asked the Secretary of State for Northern Ireland for a speedy response. That response is published as an appendix to this Report, along with letters from the Secretary of State and the Prime Minister.²

2. We are grateful to the Government for making every effort to respond so quickly. We appreciate that it has done so within just three weeks of our publishing the Report. Our inquiry lasted 18 months, involved consideration of many documents, took oral evidence from eight sets of witnesses, including the Secretary of State and the Chief Constable of the Police Service of Northern Ireland, and was considered at 19 of our meetings. We accept that such a swift response could not cover every matter raised in the necessary detail.

3. Even allowing for the time constraint, however, we must express deep dissatisfaction with, and disappointment at, the quality of the response provided. The Government has not fully addressed the unanswered questions identified by our Report. We make the following points in the hope that any Northern Ireland Affairs Committee constituted after the 2010 general election will continue to pursue them.

4. First, the Prime Minister and the Government again reject our request that our Chairman be allowed, on our behalf, to read, under whatever conditions the Government may wish, the full report provided by the Intelligence Services Commissioner, Rt Hon. Sir Peter Gibson, on intercept intelligence relating to the Omagh bombing.³ We remain of the view that this refusal is unreasonable, and **we again ask that the Gibson review of intelligence intercepts relating to the Omagh bombing be made available to our Chairman.**

5. We would also note that the Intelligence and Security Committee, which has seen the full Gibson report, but which is not a Committee of Parliament, has made no reference to it in any publication.

6. Secondly, we found it regrettable, in recommendation 13, at paragraph 57 of our Report, that Sir Peter Gibson had been unable to interview all the witnesses whom he considered relevant. In its response, the Government suggests that Sir Peter was unable to interview witnesses because the BBC Panorama reporter Mr John Ware would not reveal his sources. This relates in no way whatsoever to what Sir Peter told us about those whose identities were known to him and who refused to give evidence:

1 Northern Ireland Affairs Committee, *The Omagh bombing: some remaining questions*, Fourth Report of Session 2009-10, 16 March 2010, HC 374

2 Appendix one, including letters from the Prime Minister, 17 March 2010, and the Secretary of State for Northern Ireland, 1 April 2010.

3 Intelligence Services Commissioner, *Review of intercepted intelligence in relation to the Omagh bombing of 15 August 1998*, published 16 January 2009. The published review is a summary of the full report.

“the PSNI suggested a list of people in the police or former members of the police whom I should interview. I interviewed all of them save for one person who was not willing to be interviewed [...] Apart from another policeman, who again did not wish to be interviewed, I do not believe there was anyone whom I wanted to see whom I did not see”.⁴

Our Report quite clearly refers at paragraph 57 to police officers known of by Sir Peter Gibson who refused to co-operate with his private inquiry. Rather than seeking to criticise a journalist protecting his sources, the Government should respond to the point we made about the limits of Sir Peter’s inquiry.

7. Thirdly, the Government appears to contradict itself over whether the Omagh bombing requires further inquiry. The Secretary of State in his covering letter reiterates his view that all relevant matters were adequately considered during the 2001 inquiry by the then Police Ombudsman, Dame Nuala O’Loan (now Baroness O’Loan). The response adds that “We do not believe a further inquiry would provide anything beyond what the Police Ombudsman’s investigation and Sir Peter Gibson’s report have established”.⁵ The response also notes, however, that both the Secretary of State and the Prime Minister have indicated “that we intend to await the publication of Lord Saville’s Report into Bloody Sunday and the outcome of the work on the Consultative Group on the Past before making any decision in relation to a public inquiry”.⁶ **We seek clarification of whether the Government believes further inquiry is necessary into the way in which the Omagh bombing was investigated. We entirely fail to see why any inquiry into the Omagh bombing need be contingent on the outcome of the entirely separate Bloody Sunday inquiry.**

8. In conclusion, we strongly urge our successor Committee and the Secretary of State, whoever that may be after 6 May, to consider again the important points made in our Report, which we do not believe have been sufficiently thoroughly addressed in the attached response.

4 Oral evidence, 13 May 2009, Q 127, published in Northern Ireland Affairs Committee, *The Omagh bombing: some remaining questions*, Fourth Report of Session 2009-10, 16 March 2010, HC 374, Ev 21-22.

5 Paragraph 10 of the appendix

6 Paragraph 21 of the appendix.

Formal Minutes

Wednesday 7 April 2010

Members present:

Sir Patrick Cormack, in the Chair

Stephen Hepburn
Kate Hoey
Mr Denis Murphy

Stephen Pound
David Simpson

Draft Report (*The Omagh bombing: Government response*), proposed by the Chair, brought up and read.

Ordered, That the Chair's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 8 agreed to.

A paper was appended to the Report as Appendix 1.

Resolved, That the Report be the Eighth Report of the Committee to the House.

Ordered, That the Chairman make the Report to the House.

[The Committee adjourned.]

Appendix: The Government's response to the Committee's Fourth Report of Session 2009-10

Letter to the Chair of the Committee from the Prime Minister, 26 March 2010

Thank you for your letter of 17 March.

I am grateful for the work that you and your Committee have put in to your recent report on the Omagh bombing. But, as I have previously stated, it remains the Intelligence and Security Committee which has the statutory responsibility to oversee the work of the agencies, and which has therefore had access to Sir Peter's full report. As I have previously assured you, Sir Peter's report is entirely consistent with the full classified version, and omits only the sensitive detail of Agency sources, methods and capabilities.

Letter to the Chair of the Committee from the Secretary of State, 1 April 2010

Further to my letter of 18 March, I am writing in response to the Committee's report into the Omagh bombing. I would like to begin by thanking the Committee for its interest in this matter. We have taken time to consider the recommendations and were keen to respond prior to the forthcoming dissolution of Parliament.

As I indicated in my recent correspondence, it is important to emphasise that, as the Committee acknowledged, Sir Peter Gibson, in his report, stated categorically that 'Any intelligence derived from interception as might have existed could not have prevented the bombing'.

I note the Committee's concerns regarding the sharing of information, particularly by Special Branch. The dissemination of information within the RUC was fully investigated by the former Police Ombudsman for Northern Ireland, Dame Nuala O'Loan, in 2001. Her recommendations and those of subsequent reviews established by the Policing Board have been implemented.

The report highlights the Committee's disappointment at not being granted access to Sir Peter Gibson's classified report however, as both the Prime Minister and I have explained previously, only the Intelligence and Security Committee may be afforded access to such information; and, even then, only when they have a demonstrable need to know. The Committee will wish to note that similar requests from select committees and their chairs have been resisted in the past.

We have considered the issues raised in the report and the Government's response to each of the 'Conclusions and Recommendations' is set out in the attached document. The paragraph numbers reflect the corresponding paragraphs in the "Conclusions and Recommendations" section of the Committee's report.

GOVERNMENT RESPONSE TO THE NIAC REPORT: THE OMAGH BOMBING: SOME REMAINING QUESTIONS

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)

The Government welcomes the Committee's comments. The Omagh bombing was a most horrendous tragedy and the Government deeply regrets the loss of life. Once again, our thoughts turn to those who suffered as a result of this atrocity. There can be no doubt that those involved in the Omagh Support and Self Help Group have worked tirelessly in support of victims of the bombing and Government commends them for their commitment.

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)

A summary of Sir Peter Gibson's report was published, which is entirely consistent with the full and highly classified version and it only omits information which is protected on legal and national security grounds. The Committee have been assured of this by the Prime Minister, Sir Peter Gibson and Dr Kim Howells (Chairman of the Intelligence and Security Committee). It is not possible to grant the Committee access to Sir Peter's classified report due to legal and national security constraints.

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)

It has long been the practice of successive Governments to neither confirm nor deny the existence of intelligence material in any specific case. Furthermore, there is no legal basis

upon which such material, nor its existence, may be made public. The Government is committed to introducing intercept as evidence if a way can be found to do so that facilitates bringing cases to trial and does not jeopardise the continued effective use of intercept as intelligence. Unfortunately, the work programme which concluded in December 2009 concluded that the model seen as the best prospect for introducing intercept as evidence would not be legally viable, and would worsen rather than enhance our ability to bring the guilty to justice. As reported in the Home Secretary's Written Ministerial Statement of 25 March, further work since then has not been able to find a legally and operationally viable way forward.

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)

The Government acknowledges the Committee's concerns regarding the threat posed by dissident republicans.

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)

This is an operational matter for the PSNI and this recommendation has been passed to them for their consideration.

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)

The remit of Sir Peter's investigation was to assess the availability of any intercept intelligence and the manner in which it was shared. From the published summary of Sir Peter's report it is clear that there are no unanswered questions in respect of this line of inquiry.

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)

The Police Ombudsman's investigation and Sir Peter Gibson's review have had access to all the available information including any relevant intelligence. Between them they have addressed the issues and determined, to the extent it is possible to do so, what happened. There is no basis to believe that any new inquiry, working from the same material, would reach any different conclusions.

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)

We do not believe that a further inquiry would provide anything beyond what the Police Ombudsman's investigation and Sir Peter Gibson's report have established.

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'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'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)

The terms of Sir Peter's investigation are clearly set out in the published summary of his report. The Committee will know from reading this published summary that the terms of Sir Peter's investigations were to look into the availability of any intercept intelligence and how it was used and shared. This was in response to allegations made that vital intercept intelligence had not been passed to the police promptly to prevent the bombing or to assist police in their investigations. Therefore, the remit of Sir Peter's investigation was not to assess the use made of all sources of intelligence, which can be wide and varied, but to focus only on the allegations made about the use of intercept intelligence.

The dissemination of information by Special Branch was fully investigated by the former Police Ombudsman for Northern Ireland, Dame Nuala O'Loan, in 2001. Her recommendations and those of subsequent reviews by the Policing Board have been implemented.

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)

A number of witnesses were not interviewed by Sir Peter Gibson because Mr John Ware would not reveal the sources of his information. However, this is not a credible basis on which to suggest that Sir Peter Gibson's investigation was in anyway deficient. Sir Peter had access to witnesses and highly classified information which were not available to Mr John Ware and therefore Sir Peter was able to reach more informed conclusions.

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 detectives investigating a crime than appears to have been the case at Omagh. (Paragraph 63)

The Government welcomes the Committee's positive comments in relation to the changes that have been implemented in this respect.

15. We fully appreciate that security considerations require Sir Peter'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'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's full report. (Paragraph 66)

The Prime Minister and Dr Kim Howells (Chairman of the Intelligence Security Committee) have assured Sir Patrick Cormack that the classified version of the report is entirely consistent with the published summary. Sir Patrick has also been given a private briefing on the contents of the report by officials. As stated previously, legal and national security constraints prevent further disclosure of the report.

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'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)

This is a matter for the Intelligence and Security Committee. They will respond to the Committee separately.

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)

As with all proceedings falling within the scope of the legal aid scheme, in the first instance, the issue of funding for the enforcement of the High Court judgment in respect of the Omagh Civil Action is a matter for the Northern Ireland Legal Services Commission. It would only become a matter for the Government should the Commission decide to refer it to the Lord Chancellor (or, upon devolution, the Minister for Justice).

Where the Commission request an authorisation for funding, subject to the relevant criteria, Ministers may grant such an authorisation. Ministers cannot issue directions to the Commission to fund individual cases.

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)

The Government shares the Committee's regret that no-one has been made amenable for the bombing.

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 book. 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)

In Northern Ireland, the legacy of the past remains one of the greatest challenges still to be faced. It is important that we consider a range of ways to help Northern Ireland society come to terms with the past, so that the people of Northern Ireland can build a shared future.

That shared future must include dealing with the needs of the victims of the Troubles, who have suffered so much. I know that the success of the Omagh civil action was of great importance to the Omagh families. Of course, there are many different requirements and views amongst victims and their families; for some, civil actions may be a valuable way to resolve their needs, but that will not be the case for others.

The current legal aid arrangements would allow the funding of civil actions in the circumstances described in wholly exceptional cases, for which formal guidance has been issued by the Lord Chancellor to the Northern Ireland Legal Services Commission.

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)

The Government acknowledges the Committee's concerns. Both the Prime Minister and I have indicated previously that we intend to await the publication of Lord Saville's Report into Bloody Sunday and the outcome of the work on the Consultative Group on the Past before making any decision in relation to a public inquiry.

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)

The proposal for a Legacy Commission is contained in the report of the Consultative Group on the Past. The Government will consider this recommendation alongside the Consultative Group's proposals.

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)

The Government acknowledges the Committee's comments.

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)

The Government recognises the suffering endured by the bereaved and injured and deeply regrets that those responsible for the Omagh bombing have not been brought to justice. The investigation into the Omagh bomb remains open. However, as the previous Chief Constable, Sir Hugh Orde stated, for there to be a breakthrough, those with knowledge of those responsible would need to come forward with that information.

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