

## **OMAGH BOMBING INQUIRY**

### **OPENING STATEMENT**

#### **ON BEHALF OF THE JOHN MCBURNEY CORE PARTICIPANTS**

1. This Opening Statement is made on behalf of the bereaved families and survivor Core Participants represented by John McBurney Solicitors.

#### **Commemorative Hearings**

2. Before starting this Opening Statement, it would be remiss of me not to acknowledge and refer to the Commemorative Hearings.
3. Any comment elaborating on these would do those days a disservice. I say only that the tsunami of human emotion on those days overwhelmed all those present in the room and beyond. The width and depth of human loss, pain and suffering was overcome only by the courage and strength of those who gave their evidence, either in written form or orally.
4. On behalf of those we represent, could I thank you and all your Inquiry team, staff and support workers. In respect of our own clients, we are grateful for the invaluable assistance from the South East Fermanagh Foundation, whom we know as "SEFF".

#### **The John McBurney Core Participants**

5. It is our privilege to represent a number of bereaved families and injured survivors, whose names I placed on the record at the initial hearing. That privilege translates into an awesome responsibility to assist both you and the Inquiry, and to deliver this Opening Statement on their behalf.
6. You have asked us to focus on areas of particular interest and concern for those whom we represent. We welcome that invitation and will identify those issues. In return, we invite you, the Inquiry, to give special attention to them as your work progresses.
7. Preventability is the question that the Inquiry must explore.

8. Whilst not explicitly stated in the Terms of Reference, our collective aim and your foremost objective must be to establish the entire truth relating to all relevant issues prior to 15 August 1998. In this task, the Inquiry must be guided by principles of transparency, openness, diligence, fairness, candour and cooperation – all of which are laudable and achievable aspirations in the discharge of the public duty of this Inquiry.
9. Our clients' key principles were outlined by myself last July.
10. In summary, I repeat those views.
11. First, it is important that we always keep in focus that it was Republican terrorists under the name "Real IRA" who planned and planted the Omagh bomb and they alone are responsible for the loss and hurt caused by it. Indeed, on hearing the accounts of so many at the Commemorative Hearings, it beggars all belief as to what else was intended, other than murderous carnage, by leaving a bomb in a peaceful town's main street on a busy sunny Saturday afternoon, where so many innocent women, children and men were likely to be. The preventability of the murders and injuries was at all times within the absolute control of the Real IRA.
12. Secondly, our clients do not wish to include in any consideration of preventability those members of the RUC who, on the day at the scene, followed orders and used their initiative to try to make safe the area of the bomb, working as they were with false information from the bombers. Those same members of the RUC, as we have heard, valiantly fought at the scene to save lives and to help the injured.
13. Thirdly, our clients are of the clear belief that whatever aspects of preventability may lie at the door of the UK authorities, blame, to a greater or lesser extent, rests with the state authorities in the Republic of Ireland. They again renew their call for a parallel inquiry to be immediately established by the government of the Republic of Ireland – a call that they should not be required to repeat.
14. Fourthly, our clients remain greatly disappointed at the lack of any commitment on the part of the authorities in the Republic of Ireland to meaningfully assist this Inquiry, and they regard the Memorandum of

Understanding agreed with Minister for Justice of the government of the Republic of Ireland as wholly unsatisfactory in that regard. Our clients wish to use this Inquiry to heap shame on the government of the Republic of Ireland for their failures.

15. They consider that there is a moral, human and legal imperative on the government of the Republic of Ireland to establish a parallel inquiry into the deaths of people who were their own citizens, visitors to their country and those who would have been entitled to Irish citizenship under their laws. As a country with a professed European inclination, it is extremely regrettable that the Republic of Ireland continues to be in breach of Article 2 of the European Convention on Human Rights in failing to ensure that there has ever been any effective investigation into the death of the people to whom they owe that duty. There are preventability issues which clearly arise from the territorial origin of the Omagh bomb and the cowardly refuge which its perpetrators enjoyed within the boundaries of the Republic of Ireland.
16. With respect to the work of the Inquiry, we do not underestimate the huge challenge that it faces when, unlike some other inquiries which have more quickly succeeded the events which they were examining, your task is to undertake a historical investigation of facts, matters and circumstances in the period prior to 15 August 1998.
17. You face the task of exploring policing, security and intelligence policies, practices, processes and procedures within a country fighting against ongoing terrorism. Resources, technology, information storage and analysis, cultural attitudes and political dynamics, have all changed so much since the events of 9/11 forever changed how the world viewed and dealt with terrorism.
18. Due to the considerable passage of time, there will inevitably be evidential hurdles for the Inquiry to overcome, in particular in relation to document retrieval, deceased witnesses and memories which have faded.
19. However, the John McBurney Core Participants caution that history must not be re-written. They hope that the Inquiry will appreciate the grim reality of that particular time in history, when Republican terrorists continued to operate against a newly evolving political backdrop.

### **Areas of particular interest and concern**

20. Turning then to various topics of particular interest and concern. There will be repetition of some matters by others, so I will refer to those only in passing before addressing certain particular issues of concern raised by those whom we represent.
21. Some general areas of concern will fall to be considered within the upcoming evidence chapters:
  - (a) Chapter 3 – “*The Bombing of Omagh*”, which will involve establishing the sequence of events leading to the bombing; and
  - (b) Chapter 4 – “*Previous incidents*”.
22. We welcome the relevant aspects of the recent ruling made by you on suspects in this regard.
23. There will be some overlap with the subsequent chapter (Chapter 7) concerning “*Intelligence relating to the Omagh Bombing*” but we can, now, highlight some questions in preparation for the initial evidence chapters. They include:
  - (a) What was done to establish a link between any of the incidents that occurred during the 18 months prior to the Omagh Bombing?
  - (b) Were there policing, security or intelligence failures in properly recognising any such links between those incidents?
  - (c) Did those failures contribute to the situation where the potential for prevention of the Omagh bomb was diminished or removed?
  - (d) What was the impact of political developments on the investigation of those 31 incidents?
  - (e) Did political events or influences act as a brake on the investigation and detection of those incidents and the methods used for those purposes. Further, did that have a negative knock-on effect upon the preventability of the Omagh bomb? Were the steps and processes of downgrading border security a consequence of political influence and considerations?

24. More broadly, now is perhaps not the time to examine in any detail all the many issues which have emerged over time and given our clients cause for concern, but it is perhaps appropriate at this stage to highlight two, by way of example. They are:
- (a) Some of our clients have grave concern about the missing threat book. Their calls for an explanation of the disappearance of such an important document cannot continue to go unanswered.
  - (b) Some of our clients have deep seated concerns as to why British Army personnel were not deployed in the Omagh area either before, or on the day of, or after, the Omagh bombing. They want to know whether this departure from normal security measures was deliberate.

### **The Republic of Ireland and preventability**

25. Let me now turn to our clients' main areas of significant concern, to which I have already referred: that is, the responsibility of the government of the Republic of Ireland and their State Authorities to have prevented the Omagh Bombing.
26. Kevin Skelton, whose wife Mena was murdered, gave evidence to the Inquiry and he reflected on this specific area of concern in his own perceptive and succinct Tyrone vernacular, when he said:<sup>1</sup>
- "But the Irish Government – I don't know – I don't see them playing ball with this Inquiry. And if they don't, then it's dead in the water because, at the end of the day, the bomb was made in the south, the people who built the bomb were from the south, the car was stolen in the south, the car was driv from the south and planted in Omagh and them boys driv back home again. And there's some of them still walking the streets."*
27. That is how the families and the injured survivors whom we represent feel; that is a fundamental concern.
28. With the upmost respect to this Inquiry, they have likened the work of this Inquiry to the role of an MOT Test Centre, where a vehicle has been taken

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<sup>1</sup> Transcript of 10 February 2025 (Day 8), pages 35-36.



for inspection. To their disbelief, our clients, the customer, are told that only the engine can be inspected. All that exists beyond the engine – including the body, the suspension, the brakes and contents of the boot – cannot be examined. Such an MOT would clearly be unfit for purpose.

29. This Inquiry can only examine the parts of the car made in the UK (the preventability) – it cannot examine the rest of the car, where the terrorists sat, or the boot area, where the deadly bomb was hidden. If this Inquiry could examine the whole car, then it would also be able to identify any preventability issues that fall on the Republic of Ireland state authorities and all the faults and defects in the vehicle could be identified.
30. The John McBurney Core Participants are very anxious to press the Inquiry to spend considerable time and effort dealing particularly with paragraph 2(i) of the Terms of Reference. Paragraph 2(i) states that the Inquiry will investigate

*“(i) any other matters which are relevant to whether the Omagh Bombing on 15th August 1998 could have been prevented by UK State Authorities. To the extent it is relevant to the issue of preventability by UK State Authorities, this may include information sharing and investigations with and by State Authorities in the Republic of Ireland.” (emphasis added)*
31. The Opening Statements Protocol, in paragraph 18, acknowledges that *“opportunities at this stage for submissions on the detail of the evidence”* are circumscribed by the limited material that has been made available to date.
32. However, there are, from even the most preliminary perusal of some of the documentation that has been made available by the Inquiry, issues which only intensify the concerns which I have indicated. I take only a small number of examples, and make some brief observations.
33. The report of the Smithwick Inquiry, dated 29 November 2013. The Smithwick Inquiry was quite prepared to make a finding that:<sup>2</sup>

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<sup>2</sup> [INQ000258](#)\_0260, at 14.6.2.

*“there was a failure on the part of the RUC to put all relevant information in its possession before An Garda Siochana, when requested by Deputy Commissioner Conroy to do so. The failure in this respect relates to the 1985 intelligence in its possession...”*

34. On 6 December 2013, Mr Gallagher swore an affidavit in the judicial review proceedings, in which he refers (in paragraph 14) to an assurance given to the bereaved families by the Prime Minister of the Republic of Ireland, Bertie Ahern, that *“no stone would be left unturned”*.<sup>3</sup> However, that is a promise which has significance only for the ignoring and disregarding of it which has taken place over the almost 27 years which have passed since the Omagh Bombing.

35. The Bridger Report, which was published in June 2012, states clearly, on page 11, that:<sup>4</sup>

*“public confidence can go some way to being restored by both the British and Irish Governments showing that they are willing to do their utmost to have perceived failures fully investigated and dealt with.”* (emphasis added).

36. Without going into detail, a plethora of issues arise from reports over the years which warrant careful scrutiny by the Inquiry. They include:

- (a) The activities of Kevin Fulton in the Republic of Ireland;
- (b) The activities of David Rupert in the Republic of Ireland;
- (c) The extent to which knowledge of those individuals was in the possession of, or attributable to, the State Authorities of the Republic of Ireland;
- (d) The credibility of the information being supplied by Garda Detective Sergeant John White;
- (e) The role of Dermot Jennings, Assistant Commissioner with responsibility for Security and Intelligence;

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<sup>3</sup> [INQ000709](#)\_0007, paragraph 14.

<sup>4</sup> [INQ000645](#)\_0012.

- (f) A clear allegation (referred to on page 46) by Enda Kenny, the former Taoiseach of the Republic of Ireland<sup>5</sup> as to, and more generally, the inadequate nature of the Nally Report and its investigations;
  - (g) The interactions between An Garda Siochana and RUC Senior Officers, including intelligence sharing;<sup>6</sup> and
  - (h) Mobile phones, tracking and the Security Services.
37. Our clients wish for the Inquiry, in considering any material relating to interactions with authorities in the Republic of Ireland, to explore any failures on the part of those authorities which are explicitly or implicitly demonstrated by such material.
38. Enda Kenny also stated, during a debate in the Dail on 20 February 2004, and prior to his election:<sup>7</sup>
- "You will get your truth. You will get your truth and so will Ireland."*
39. I have the authority of those I represent to say that they are sick and tired of platitudes, false assurances, broken promises and grand but empty words from the state authorities of the Republic of Ireland. Their resolute refusal to institute a parallel inquiry and their ongoing failure to provide real and meaningful cooperation with this Inquiry, speaks far louder than their words.

### **The Memorandum of Understanding**

40. All of this leads to consideration of the Memorandum of Understanding dated 15 April 2025 between the Inquiry and the Minister for Justice of the Government of Ireland on *"Matters Relating to Disclosure of Materials"*.
41. Horner J, in the judicial review proceedings brought by Michael Gallagher ([2021] NIQB 85), stated, in paragraph 310, that an investigation:<sup>8</sup>

*"... will necessarily involve the scrutiny of both OPEN and CLOSED material obtained on both sides of the border. It is not within my power to order any*

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<sup>5</sup> [INQ000645](#) 0047.

<sup>6</sup> [INQ000645](#) 0043.

<sup>7</sup> [INQ000645](#) 0060.

<sup>8</sup> [INQ000281](#) 0101.



*type of investigation to take place in the Republic of Ireland but there is a real advantage in an Article 2 compliant investigation proceeding in the Republic of Ireland simultaneously with one in Northern Ireland”.*

42. It is against the background of defiance to such a request, and its continuance by successive governments of the Republic of Ireland in ignoring the pain and plight of the Omagh families and survivors, that has led to their signature on the Memorandum of Understanding. In a cynical effort to appear to be assisting and cooperating, and to alleviate the pressure of the commencement of this Inquiry on themselves, they grasped this opportunity of a fig leaf.
43. Any analysis of the MOU must have the starting point that this Inquiry, by its Terms of Reference, can only look at “*whether the Omagh Bombing could have been prevented by UK State Authorities*”. This limitation is then compounded by a further limitation: the mere commitment of the government of the Republic of Ireland to disclose what it considers to be “*potentially relevant materials*”.<sup>9</sup>
44. These two limitations make the Memorandum of Understanding redundant. First, because the assessment of relevance is in the power of the Republic of Ireland. Secondly, because it only relates to relevance concerning preventability by the UK State Authorities. This is an unacceptable yet significant escape clause for the Republic of Ireland. Under the Memorandum of Understanding, the Republic of Ireland state authorities, and therefore any information that reflects badly on them, could be determined by them to be irrelevant.
45. The recitals to the Memorandum of Understanding state that:  
  
*“The Government of Ireland’s provision of assistance to the Inquiry is solely within the grant of the Government of Ireland”.*

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<sup>9</sup> Paragraph 2: <https://cloud-platform-e218f50a4812967ba1215eaecede923f.s3.amazonaws.com/uploads/sites/42/2025/04/Signed-Omagh-MOU-UK-copy-15-April-2025.pdf>

46. This voluntary statement of participation by the government of the Republic of Ireland lacks any degree of real commitment and does nothing to give our clients any degree of confidence in it.
47. Similarly, the Memorandum of Understanding relates only to documentation; there is no power to compel the attendance of witnesses.
48. To take an example, in the recent corporate witness statement provided on behalf of the PSNI (to which I will return), it is stated (in paragraph 384) that:<sup>10</sup>

*“Assistant Commissioner (AC) Dermott Jennings, who was in the Security and Intelligence Section of the AGS, informed the Nally Group that he was in frequent contact with the RUC about operational matters in and around the period of the Omagh bombing.”*

Details as to how frequent this contact was, the nature of the contact, the records of such contact, and the personnel involved, and whether the phrase *“in and around the period of the Omagh bombing”* primarily means *“after the event”*, among many other details, would all be the ideal sort of inquiry to be made seeking documentary disclosure and cross examination of witnesses such as Mr Jennings as part of a parallel inquiry in the Republic of Ireland. Such necessary inquisitorial demands cannot be satisfied by the arrangements established under the Memorandum of Understanding.

49. Even as to documents, the Memorandum of Understanding entitles the authorities in the Republic of Ireland to act and react only to specific disclosure requests. There is no commitment to carrying out either any general, full or comprehensive search for, or any analysis of, documents which may be within the possession of its state authorities and of which this Inquiry might have no knowledge. In fact, under the Memorandum of Understanding, the authorities in the Republic of Ireland may form the opinion that it is best, in its own interests, not to look for anything at all unless specifically asked to by the Inquiry.
50. To add insult to injury, even if, inadvertently, the existence of a relevant document is made known to the Inquiry and such a document is duly

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<sup>10</sup> [INQ012954](#)\_0109.

requested, the unilateral power of redaction remains with the government of the Republic of Ireland. This will be applied to all documents as the state authorities of the Republic of Ireland see fit, before such documents even cross the border to this Inquiry.

51. Having regard to the previous experience of the Kingsmill families, at their inquest into murders on purely sectarian grounds by Republican terrorists operating from the Republic of Ireland, our clients have no confidence whatsoever in the workings of Section 3 of the Criminal Justice (International Cooperation) Act 2019.
52. Perhaps one of the most telling statements ever to have been made by the An Garda Siochana was that contained in their written submissions to the Smithwick Inquiry. Under paragraph 17, they stated:<sup>11</sup>

*“The RUC and Northern authorities were not obliged by the Tribunal to comply with Orders for Discovery. As such, they were able to decide themselves what they would disclose and what they could conceal.”*

53. Such attitude and accusation does nothing to suggest that any better self-serving approach would prevail in the provision of assistance to this Inquiry by those authorities in the Republic of Ireland who may have this in mind.
54. Finally, in this regard, it may be of interest that the evidence of the Police Service of Northern Ireland, in the recent corporate witness statement provided on its behalf, is that the retired former senior officers who assisted with the statement have explained that the realities of the time were that:<sup>12</sup>

*“... the provision of information by the AGS to the RUC – of the type which would allow for pre-emptive operational action by the RUC against subversives – was very rare...”*

### **The Political Context**

55. The other significant area of concern for the families and injured I represent is the political background in the period leading up to the Omagh Bombing.

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<sup>11</sup> [INQ000258](#) 0651.

<sup>12</sup> [INQ012954](#) 0108.



This is part of the Inquiry's investigation, and will be covered in Chapter 5 under the heading "*The Peace Process and Security and Normalisation*".

56. At this juncture, our clients have one basic question to pose to this Inquiry: could it be, that the peace process, the Belfast/Good Friday Agreement and the political dynamics thereafter led to circumstances in which the Omagh Bombing was "*not preventable?*" This is a vast area, in relation to which our clients require the most intense and detailed investigation.
57. Were the political directions emanating from the governments of both the United Kingdom and the Republic of Ireland such that interference with security measures, installations, surveillance techniques, mobilisation and deployment of manpower and other resources all led to a situation whereby preventability of the Omagh Bombing became an impossibility to a greater or lesser degree?
58. We wish to know to what extent there was diminishing activity against Republican terrorists, lest such activity could disclose the involvement of well-known individuals in the Provisional IRA and Sinn Féin, all of which would have been very harmful to the ongoing peace process.
59. It may be of no small significance that the Intelligence and Security Committee, in their Annual Report 1997/1998, reporting on 31 July 1998, just days before the Omagh Bombing, stated, at paragraph 16:<sup>13</sup>
- "For the Security Service, the renewed ceasefires in Northern Ireland led directly to a drop of over 5% in the Service allocation of resources to Irish and domestic counter-terrorism work, from 24.8% to an anticipated 19.5% during the course of the year... Despite the cease fire and the Good Friday Agreement, there are clearly still elements in Northern Ireland who are intent on using terrorism to further their political aims..."*
60. I will turn shortly to give a brief and immediate response to the Opening Statements which we have been provided from State Core Participants.

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<sup>13</sup> [INQ011983](#)\_0016, paragraph 16.

61. However, at this stage I am compelled to highlight a most astonishing, shocking and incredible revelation. This is found in the corporate witness statement provided on behalf of the PSNI.<sup>14</sup>
62. In the course of that statement, reference is made to what are called “*Security Policy Meetings*”, attended by the Secretary of State and other senior representatives including the Chief Constable, the General Officer Commanding (of the Army), the DCI (being the Director and Coordinator of Intelligence within the Security Service) and the Permanent Secretary of the Northern Ireland Office. Paragraph 251 of the witness statement, in response to the Inquiry’s request for copies of the agenda, briefing papers and minutes of such meetings, the PSNI states:

*“The PSNI has located agendas, briefings and minutes for SPMs for 1996, but none for 1997 and 1998”.*<sup>15</sup>

63. The reality of the above statements is as staggering as it is incredible. It is hard to imagine a more high-level set of meetings to discuss security and intelligence considerations and policy touching upon the lives of citizens in Northern Ireland in the years 1997 and 1998, and yet no record of those meetings has to date been located. Such a revelation only serves to heighten the suspicions and fears of the Omagh families and survivors that there are views to be hidden and information to remain undisclosed, at the highest possible level, for deep seated but hugely embarrassing and difficult political reasons.

### **Disclosure and corporate/opening statements**

64. Evidence Chapters 3 to 7 will all require an analysis of policing, security and intelligence information. The families and injured we represent have come to this Inquiry, some with degrees of reluctance, given the passage of time and the lack of any adequate investigation to date by the State Authorities either in the United Kingdom or in the Republic of Ireland. Within the context of the present Inquiry, an imperative must be that there will be full and open disclosure of material.

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<sup>14</sup> [INQ012954](#).

<sup>15</sup> [INQ012954](#) 0073, paragraph 251.



65. A general comment can be made that there is need for as much open material as possible to be disclosed to the bereaved families and injured survivors as Core Participants. That should be the starting point and should not be deviated from unless there is clear and compelling reason, established with evidence, for material to become closed.
66. We strongly urge the Inquiry, when applying the relevant test, to take a robust approach, in support of the interests of the bereaved families and injured survivors, and to disclose material or parts of material whenever it is possible to do so. Finely balanced judgments should fall in their favour.

PSNI corporate witness statements

67. It was therefore with considerable dismay that we read the corporate witness statement provided on behalf of the PSNI (to which I have already referred) and the addendum thereto.<sup>16</sup> These documents were disclosed by the Inquiry only two weeks ago.
68. I have already highlighted the appalling absence of the documents relating to the Security Policy Meetings for the years 1997 and 1998. That position, however, is made all the more difficult to comprehend when, in the addendum witness statement, at paragraph 30, a fallback position is a comment smacking of desperation: that any reports conveyed during higher level meetings such as the Security Policy Meetings “*may or may not have been written*”.<sup>17</sup>
69. However, that has to be compared against a further effort in desperation where, at paragraph 79 of the addendum statement, it is said that it cannot even be definitively stated “*how often such meetings normally took place*”.<sup>18</sup>
70. These are meetings between the highest level of security officials and politicians within Northern Ireland. Such responses to this Inquiry are astonishing, and do nothing to inspire confidence. This Inquiry must pursue these matters with all possible diligence, determination and strength. It is wholly unacceptable that the mantra of “*hear no evil, see no evil*” now includes

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<sup>16</sup> [INQ012954](#) and [INQ013684](#).

<sup>17</sup> [INQ013684](#) 0009, paragraph 30.

<sup>18</sup> [INQ013684](#) 0019, paragraph 79.

*“write no evil and keep no evil”*. I will restrain myself from alluding to the images which usually accompany such phrases. All I will say is that the families, and the injured survivors, deserve better; they deserve respect. This Inquiry also deserves better; it deserves respect.

71. It is of deep concern to our clients that the corporate witness statements provided on behalf of the PSNI now reveal that not only have the most important documentary records of meetings in 1997 and 1998 not been located but, additionally, crucial intelligence documents, some of which have political and security policy development aspects, also cannot be located. In total, eight categories of documents, solely relating to Northern Ireland/the United Kingdom State Authorities cannot be located, and three additional categories of documentation relating to the RUC and AGS cannot be located.
72. Additionally, and regrettably, it appears that this malaise of being unable to locate important documents extends to documents relating to important regular cross-border meetings in the critical period. They are:
- (a) First, monthly meetings between the Assistant Commissioner for Crime and Security in the AGS and the Head of Special Branch of the RUC and the Intelligence Management Group. In paragraph 39(a) of the addendum corporate statement provided on behalf of the PSNI, it is said, in parenthesis, as if to portray it as an acceptable aside, that *“The PSNI has not been able to locate the minutes”* of any of these meetings;<sup>19</sup>
  - (b) Secondly, regular cross-border senior officer meetings chaired jointly by the Deputy Chief Constable of the RUC and the Deputy Commissioner of the AGS. In paragraph 39(b) of the addendum statement, it is said, again, in parenthesis, that *“The PSNI has not been able to locate the minutes”* of any of these meetings;<sup>20</sup> and

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<sup>19</sup> [INQ013684](#) 0011, paragraph 39(a).

<sup>20</sup> As above, paragraph 39(b).

- (c) Thirdly, meetings between the RUC and any other organisations within the Republic of Ireland. In paragraph 394 of the main corporate statement provided on behalf of the PSNI, it is stated:<sup>21</sup>

*“The PSNI has not located any record of the RUC engaging with any other organisations within the Republic of Ireland with responsibility for gathering intelligence about the activities of those engaged in acts of terrorism, other than AGS.”*

A critical question to which this Inquiry may wish to pay particular attention intelligence is any contact with the Army Intelligence Services of the Republic of Ireland.

73. Such a profoundly serious state of affairs as to this asserted absence of documents represents, to the John McBurney Core Participants, a disastrous commencement of the substantive work of this Inquiry and leaves them with a distinct lack of confidence and assurance in the cooperation of the State Core Participants, in particular, the PSNI.
74. For ease of reference, in addition to the professed absence of any documents from Security Policy Meetings (to which I have already referred), the other categories of document which it is stated cannot be located include:
- (a) Any policy documents as to liaison between the RUC and GCHQ (paragraph 68);<sup>22</sup>
  - (b) Any relevant Northern Ireland Intelligence Reports (“NIIRs”) and assessments, which facilitated the establishment of the Northern Ireland intelligent requirements and political and security policy development (paragraph 259);<sup>23</sup>
  - (c) Any documents relating to meetings of the Intelligence Management Group (“IMG”), which acted as a central collection point to which all operational, strategic and political intelligence arrived at RUC HQ from the Special Branch regions and elsewhere, and which also had the task

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<sup>21</sup> [INQ012954](#)\_0012.

<sup>22</sup> [INQ012954](#)\_0026, paragraph 68.

<sup>23</sup> [INQ012954](#)\_0076, paragraph 259.

of providing the various security and intelligence committees in Northern Ireland with briefing and intelligence (paragraph 288);<sup>24</sup>

- (d) Any documents relating to meetings of the Intelligence Review Committee (“IRC”), which met weekly (paragraph 296);<sup>25</sup>
- (e) Any documents relating to meetings of the Senior Management Group (paragraph 311);<sup>26</sup>
- (f) Any documents relating to meetings of Regional Source Units in the RUC Special Branch, which met daily, weekly and monthly (paragraph 323);<sup>27</sup> and
- (g) Any documents relating to periodic or ad hoc reports provided by the RUC to the Secretary of State for Northern Ireland on specific issues during the relevant period (paragraph 29 of the addendum witness statement).<sup>28</sup>

75. Indeed, it is noted in passing (in paragraph 264 of the main corporate statement provided on behalf of the PSNI) that certain documentation relating to the minutes of lesser groups, was classified as “*secret*” and “*kept either in [Special Branch Headquarters] or in the Chief Constable’s Office*”.<sup>29</sup>

76. All of this is particularly regrettable in light of the criticism of the PSNI years ago, in 2010, by Lord MacLean in the Billy Wright Inquiry Report. He found the reasons given by the PSNI for failing to disclose information “*unconvincing*”, “*inconsistent*” with the evidence, “*unsatisfactory*” and “*inadequate*”.<sup>30</sup> He concluded, with concern, that there may have been “*deliberate malpractice*” involving the “*destruction of audit trails and the concealment of evidence which might have been damaging to the reputation of the RUC*”.<sup>31</sup> The question is being understandably asked whether anything

<sup>24</sup> [INQ012954](#) 0084, paragraph 288.

<sup>25</sup> [INQ012954](#) 0087, paragraph 296.

<sup>26</sup> [INQ012954](#) 0090, paragraph 311.

<sup>27</sup> [INQ012954](#) 0094, paragraph 323.

<sup>28</sup> [INQ013684](#) 0009, paragraph 29.

<sup>29</sup> [INQ012954](#) 0077, paragraph 264.

<sup>30</sup> [INQ000325](#) 0142, paragraph 6.101.

<sup>31</sup> [INQ000325](#) 0145, paragraph 6.109.



has changed and why are the Omagh families and survivors being potentially subjected to similar treatment.

77. In summary, at this early stage of the Inquiry, these are initial responses which fill the hearts of our clients with considerable disquiet, and bode ill for the efficacy of the work of the Inquiry, despite its best intentions, in the days ahead.
78. We were, however, greatly assisted by the structure of the corporate statements provided on behalf of the PSNI, which included the text of the relevant Rule 9 requests to which a response was being provided. In circumstances where the bereaved family and survivor Core Participants have not separately been provided with, or had visibility of, the Rule 9 requests issued to the State and organisational Core Participants and others who may have documents and evidence to give, we welcome this approach and ask that it be adopted by all who provide Rule 9 responses to this Inquiry.

Sir Ronnie Flanagan's opening statement

79. Sir Ronnie Flanagan, in his Opening Statement, in paragraph 31, appears to be very concerned about hindsight.<sup>32</sup> He reminds the Inquiry of a quotation from Sir Anthony Hidden QC (a rather apt name in the circumstances), and suggests that there is "*a requirement for an Inquiry to remind itself of the danger of hindsight*".
80. We would suggest that it is not hindsight itself which is dangerous. Instead, it is any wrong interpretation of what hindsight reveals. However, it would appear that the primary danger for this Inquiry might well be, not hindsight, but the absence of sight of crucial documentation held by State Authorities.

Secretary of State for Northern Ireland opening statement

81. As to the Opening Statement on behalf of the Secretary of State for Northern Ireland Core Participant Group, it is disappointing to read, a purported summary of the Judicial Review proceedings in which the decision of Horner J is described, in paragraph 18, as having been based on the fact that he

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<sup>32</sup> [INQ015518](#)\_0010, paragraph 31.



*“found that the relatively low bar of plausible argument was made out in relation to four of the ten grounds” of challenge” (emphasis added).<sup>33</sup>*

82. The John McBurney Core Participants consider that the plain insinuation being made is that this Inquiry exists only because a low bar was applied in judicial review proceedings. This wrongly, and unfairly, minimises the importance of the work of the Inquiry and the weight of the evidence already available to it. Indeed, it is especially bold for such loaded comments to be made in the context of the Secretary of State Core Participant group declining the Chairman’s invitation for concessions to be made, given the substantial time which they (and other organisational Core Participants) have already had to understand and investigate their role in relation to the Omagh bombing.
83. In a similar vein, it is hoped that all restriction orders which may be sought will be limited to such materials as can properly be considered sensitive, whether on national security or on other grounds. However, again, the recent approach of the Secretary of State to the redaction of all names of junior civil servants from otherwise relevant material, on which a ruling has now been given confirming that the Secretary of State’s alleged assessment of relevance was erroneous, did little to reassure the John McBurney Core Participants that they will receive the standard of openness, candour and transparency that they can and do expect.

*The Police Ombudsman for Northern Ireland opening and corporate statement*

84. On the matter of open and closed material, I wish to mention the approach of the Police Ombudsman for Northern Ireland.
85. The Inquiry has recently disclosed a corporate witness statement provided on behalf of the Police Ombudsman. That statement is said to be offered in response to Rule 9 requests from the Inquiry.
86. The internal headings of the statement,<sup>34</sup> make clear that that the Rule 9 request had six parts. It is therefore difficult to understand, and disappointing, that the Police Ombudsman considered that the Rule 9 request merited a response in relation to only one of those parts – namely, Part A, which

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<sup>33</sup> [INQ015517](#)\_0006, paragraph 18.

<sup>34</sup> [INQ012981](#).

concerned general background as to “*The Role and Functions of the Police Ombudsman for Northern Ireland Generally*”.

87. The other five parts of the Rule 9 request – Part B to Part F – related to the following important topics: (B) Engagement with the Republic of Ireland; (C) Knowledge of Past Attacks; (D) Kevin Fulton; (E) David Rupert; (F) Other Agent Reporting.
88. Each of these topics received no substantive response. Instead, it was stated: “*this will be addressed within the closed version of my statement*”.<sup>35</sup>
89. It seems, to the John McBurney Core Participants, difficult to believe that, after 26 years, there is nothing that could be said about any of these topics on an open basis. Such an approach serves to exclude the bereaved families and survivor Core Participants. The Inquiry should be cautious to guard against any narrow, lazy or obstructive approach by State Core Participants to the disclosure of relevant material, and must ensure that any closed material is minimised.

Alan Kane KC

Michael Smyth BL

Beth McMullan BL

Instructed by John McBurney Solicitors

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<sup>35</sup> [INQ012981](#)\_0024, paragraphs 47-51.