

COMMISSION OF INVESTIGATION

into

The Dublin and Monaghan bombings of 1974

Final Report

March 2007

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PREFACE AND ACKNOWLEDGMENTS

The commission of investigation into the Dublin and Monaghan bombings of 1974 (which is referred to in this report as “the commission”) was established by Order of the Government made under section 3 of the Commissions of Investigation Act 2004.

Notice of the Order of the Government was published in the 13th May 2005 edition of *Iris Oifigiúil*.

The terms of reference of the commission were published in the 13th May edition of *Iris Oifigiúil*. A copy of the terms of reference is set out in Appendix 1 to this report.

The Dublin and Monaghan bombings

The bombings to which the commission’s terms of reference relate took place on 17 May 1974 at the following locations:

- Parnell Street, Dublin
- Talbot Street, Dublin
- South Leinster Street, Dublin and
- Church Square, Monaghan.

Thirty-three people, including one pregnant woman, died as a result of these atrocities. Many more were injured.

The Oireachtas Joint Committee on Justice, Equality, Defence and Women’s Rights, in its Final Report on the report of the Independent Commission of Inquiry into the Dublin and Monaghan bombings, gave the following information concerning those who were killed by the bomb explosions which took place on 17 May 1974:

Patrick Askin (44): Forestry worker, married, Glaslough, Co. Monaghan. Killed in the Monaghan bomb. Survived by his wife, Patricia and four young children: sons Paul and Patrick, aged 6 and 7 and two year old twin daughters, Sonia and Sharon.

Josie Bradley (21): Civil Servant, single, Coolfin, Kilcormack, Co. Offaly. Killed in Talbot Street, Dublin. Survived by her parents, May and Chris, twin sister, Marian and eight other siblings.

Marie Butler (21): Temporarily employed as a shop assistant at Clery’s while awaiting a nursing place at Sir Patrick Dun’s Hospital, single. Viliertown, Cappoquin, Co. Waterford. Killed in Parnell Street, Dublin. Survived by her mother, Mary.

Anne Byrne (35): Housewife married, Donaghmede, Dublin. Killed in Talbot Street while on a shopping trip. Survived by her husband, Michael, and two children: Michelle, aged 8 and Trevor, aged 4.

Thomas Campbell (52): Agricultural worker, single, Silverstream, Co. Monaghan. Killed in Monaghan. Survived by his mother and sister, Mary, also two stepsisters. His mother never recovered from the shock of his death and died six weeks later.

Simone Chetrit (30): A French citizen visiting Ireland with a number of other French students on an English language course. She was due to return to her home in Paris the following morning. She was single and was survived by her parents, brothers and Elie, Maurice, Marcel and Albert and sister Yvette. She was killed in Talbot Street.

Thomas Croarkin (36): Agricultural worker, single, Tyholland, Co. Monaghan. Seriously injured in Monaghan and survived until 24th July, 1974 when he died in the Richmond Hospital, Dublin. Survived by his mother and seven siblings.

John Dargle (80): John was a pensioner, who lived alone at Portland Row, Ballybough, Dublin. It seems he had served in the British Army and was working at the Corporation Fruit Market in Dublin. He was killed in the Parnell street bombing.

Concepta Dempsey (65): A shop assistant in Guiney's Talbot Street, Concepta was single and lived at Chord Road, Drogheda, Co. Louth. She was seriously injured in Talbot Street and survived until 11th June when she died in the Mater Hospital. She was survived by five nieces and nephews: Vincent, Deirdre, Gertie, Raymond and Aidan.

Collette & Baby Doherty (21): Collette ran a shop in Sheriff Street with her husband John. She was nine months pregnant when she was killed in Talbot Street. She was survived by her husband John, daughter Wendy, aged 22 months, her parents, Michael and Winifred and siblings. Wendy was with her when she was killed and was found wandering an hour later, relatively unharmed.

Patrick Fay (47): He was employed in the GPO, married, a native of Ardee, Co. Louth, he lived in Artane, Dublin. He was survived by his wife, Maura and only son, Pat, who had moved to live in London. He was killed in Parnell Street, having just filled his car with petrol at Westbrook Motors.

Elizabeth Fitzgerald (59): She had lived with her husband, Christopher in Phibsborough. Both were injured in the Parnell Street bombing. She survived until 19th May 1974, while her husband, Christopher, recovered in the Mater Hospital.

Breda Grace (35): Married, housewife and living in Portmarnock, originally from Tralee, Co. Kerry. She was survived by her husband, Tim and 12 month old son, Edward. Breda was killed in Talbot Street.

Archie Harper (73): An active man who still ran a farm and family pub in his native Co. Monaghan. He was survived by his wife and only daughter, Iris. He was injured in the Monaghan bombing and died on the following Tuesday night, 21st May, at 11.45 p.m.

Antonio Magliocco (37); Italian citizen. Restaurant owner, survived by his wife, Anna, and three young children, Tommassino, Corrado and Marinella. He was a native of Casalattico, near Cassino, in Italy. He was killed instantly in the explosion in Parnell Street, while visiting his brother Mario's restaurant. His wife and family moved back to Italy a number of years after his death, but his brothers and sisters remained in Ireland.

May McKenna (55): Originally from Monaghan and Dungannon, Co. Tyrone, but lived in Talbot Street (over O'Neill's Shoe Shop). She was employed at Clery's. She was survived by her sister, Margaret McNicholl, brother-in-law and three nephews. May was killed instantly in the Talbot Street explosion.

Anne Marren (20): Worked in Department of Posts and Telegraphs in Hawkins Street. She was a native of Lavagh, Ballymote, Co. Sligo. She was survived by her father, two sisters and two brothers. Anne was killed in the Talbot Street explosion.

Anna Massey (21): Worked at Lisney's Auctioneers and from Sallynoggin, Dublin. Anna was the eldest of seven girls and was a twin. She was survived by her parents, Frank and Annie, and sisters. She was engaged to be married and her wedding was due to take place in July 1974. Anna was killed in the South Leinster Street explosion.

Dorothy Morris (57): Employed at Cadbury's. Dorothy had five siblings and lived all her life in Kimmage with her mother and sister, Georgina. She was killed in the Talbot Street explosion.

O'Brien Family – John O'Brien (24), Anna O'Brien (22), Jacqueline (17 mths) & Anne-Marie (5 mths): Lived in Gardiner Street, originally from Finglas. John worked in Palm Grove, the ice-pop factory. This entire family was wiped out in the Parnell Street explosion.

Christina O'Loughlin (51): Worked in the Shelbourne Hotel as a french polisher. Resided in Townsend Street, Dublin. She was survived by her husband, Kevin and two adult sons, Kevin Junior and Pius. Christina was killed in the South Leinster Street explosion.

Edward John O'Neill (39): *Self-employed painter and decorator who lived in Dominick Street with his wife, Martha and five children: Denise, Angela, Billy, Edward Jr., and Niall. Edward was killed and his two young sons were seriously injured in the Parnell Street bombing. His wife gave birth to a stillborn daughter three months after his death.*

Baby Martha O'Neill (stillborn): *Stillborn child of Edward and Martha O'Neill, born in August 1974.*

Marie Phelan (20): *Worked in the Civil Service. Originally from Ballyvoreen, Woodstown, Co. Waterford and living in Dublin. Survived by her parents, Kitty and Billy, and brothers, Pat and Anthony. Marie was killed in the Talbot Street explosion.*

Siobhán Roice (19): *Worked in the Civil Service. Originally from Thomas Street, Wexford town and living in Dublin. She was survived by her parents, Johanna and Edward, sisters Aileen and Elizabeth and brother James. Siobhán was killed in the Talbot Street explosion.*

Maureen Shields (46): *Originally from Hollyford, Co. Tipperary. Maureen moved to Dublin where she worked in the Civil Service until her marriage to Leo in 1953. They had one son and two daughters. Maureen was killed in the Talbot Street explosion.*

Jack Travers (28): *Self-employed, single and from Park Street, Monaghan Town. Jack still lived with his family and was very athletic. He was engaged to be married. Survived by his parents, brother Jim, sisters and fiancée. Jack was killed in the explosion in North Street, Monaghan.*

Breda Turner (21): *Worked in the Civil Service, in the Income Tax Office, she was engaged to be married the following Easter. Originally from Thurles, Co. Tipperary, she had moved to Dublin and was survived by her parents, Biddy and Jimmy, and brother and sisters. She was killed in the Parnell Street explosion.*

John Walshe (27): *Single, from Crumlin, Dublin. He was survived by his father and mother, sisters Anne and Mary and girlfriend Joan. He was killed in the Talbot Street explosion.*

Peggy White (45): *Part-time restaurant worker. She was survived by her husband, Joe, a daughter and three young sons. She lived in Belgium Park, Monaghan town. Peggy was injured in the bomb in North Road, Monaghan town and died on the night of the bombing.*

George Williamson (72): *A bachelor farmer from Castleshane, Co. Monaghan. George was survived by his sister, Margaret and two brothers, Isiaiah and Jesse, as well as nieces and nephews. He was killed in the explosion in North Road, Monaghan.*

Establishment

The Secretary General to An Taoiseach arranged office accommodation for the commission at Dublin Castle and assigned three officers from the Department of An Taoiseach to act as administrative staff to the commission.

The commission appointed Mr. Felix McEnroy S.C. under the provisions of section 8 of the Commissions of Investigation Act 2004 to advise and assist the investigation. The commission also appointed Mr. Eanna Hickey B.L., a person with legal training and information technology expertise to assist in the investigation. Mr Hickey had acted in a similar capacity with the Commission of Inquiry into the Dublin, Monaghan and Dundalk Bombings, referred to in this report as the Hamilton / Barron Inquiry.

The commission was required, under its terms of reference, to seek access to some secret and confidential material, including intelligence material. With that in mind, the commission spent considerable time taking expert advice and seeking assistance in establishing appropriate electronic and other systems of security in its offices to protect such secret and confidential material.

Rules and procedures

This commission is the first commission of investigation established under the provisions of the Commission of Investigation Act 2005. It therefore had to establish a set of rules and procedures in order to take account of the requirements of the Commissions of Investigation Act.

In establishing and operating its investigative practices and procedures the commission is required by section 10(2) of the Commissions of Investigation Act 2005 to conduct its investigation, to the greatest extent possible consistent with its duties under that Act, by seeking the voluntary co-operation of persons who might be in a position to assist the commission, and to facilitate such voluntary co-operation.

In that regard the commission prepared and published a “Rules and Procedures” document as required by Part 3 of the Commissions of Investigation Act 2004. A copy of the commission’s ‘Rules and Procedures’ is set out in Appendix 2 to this report.

Applications to the High Court

The Commissions of Investigations Act 2004 provides for eight separate possible applications to the High Court for relief under the Act.

The High Court is required under section 47(1) of the Act to “...give such priority as, having regard to all the circumstances, it reasonably can to the disposal of proceedings in the Court ...” under the Act.

When the commission began its work, no rules of Court had yet been made under section 47 (2) of the Act to regulate and facilitate these various applications.

The former President of the High Court, Mr. Justice Finnegan, at the request of the commission, assisted the commission in this matter by publishing on 21 July 2005 a Practice Direction setting out interim rules regulating these various High Court applications, pending the coming into operation of rules of court dealing with the procedures appropriate for such applications. A copy of that Practice Direction is set out in Appendix 3 of this report.

The commission wishes to thank Mr. Justice Finnegan for his speedy and expert provision of the Practice Direction. Whilst the commission has not had to resort to the High Court it was a considerable relief to know that a comprehensive Practice Direction was to hand.

Acknowledgments

The commission wishes to express its gratitude to all who co-operated with, facilitated and supported the commission in the course of its work.

The commission would like in particular to thank the following:

- Ann Whelan, who directed the administrative side of the commission, together with Margaret O'Brien, Tanya Ganly and Susan Healy. Una Dempsey and Michelle O'Connor, were temporarily assigned to the investigation for short periods. The commission also wishes to thank Jean Barnwell. All the above people were assigned by the Department of the Taoiseach. The commission appreciates that it made demands on them which must have been considerably beyond their expectations.
- Felix McEnroy SC and Éanna Hickey BL, for their invaluable advice, assistance and commitment to the commission's work. Mr Hickey soon found that a part-time job in fact required a very demanding full-time commitment, which he unstintingly gave to the commission.
- Tommy O'Shaughnessy, Tom Doyle and the constables and staff of Dublin Castle provided continuous practical support to the commission.
- The families of the victims and survivors of the Dublin and Monaghan bombings, who came to visit the commission and were understanding of the commission's obligation to conduct its affairs in private. The commission's meetings with these families were important in conveying to the commission the reality of the suffering caused to them by the bombings, and the importance of the work of the commission to those families and survivors.

- Margaret Urwin, Secretary of 'Justice for the Forgotten', assisted the commission extensively and made it possible for the commission to identify and contact two important witnesses in this investigation.
- The relevant government departments, the Garda Síochána and the Defence Forces each appointed a liaison officer to assist the commission in its investigation. The commission wishes to thank each of those officers. In particular, the commission wishes to thank Deputy Commissioner Martin Callinan of the Garda Síochána, who had by far the most onerous task of such liaison officers and who fulfilled this task to the highest professional standard.
- Garda Commissioner Noel Conroy was conspicuously supportive of the commission's work and the commission thanks him for that support.
- The Secretary General of the Department of Foreign Affairs assisted the commission throughout its work, and particularly with certain logistical difficulties faced by the commission at an advanced stage of its work. The commission wishes to thank him personally, and the members of the diplomatic corps both at home and abroad who he pressed into our service.
- The registrars of the Circuit Court in Monaghan and Meath, and the registrar of the Special Criminal Court, who found material and furnished it to the commission with remarkable speed. In particular, the commission wishes to thank Josie Duffy for her sterling efforts on the commission's behalf.
- A number of those who assisted the commission were people of advanced years and sometimes poor health. In those circumstances, coming to give evidence to the commission was not easy. The commission appreciates that fact and thanks them.

Chapter one

HISTORICAL BACKGROUND

Introduction

- 1.1 The commission is asked to take into account, amongst other documents, the report of the Hamilton / Barron Inquiry into the Dublin and Monaghan bombings. That report contains a chapter entitled 'historical background' which gives an account the wider political and historical circumstances in which the Dublin and Monaghan bombings took place. The commission is satisfied from its own reading and research that the Hamilton / Barron account is accurate, balanced and fair-minded, and that it fulfils the difficult task of placing the bombings in their historical context. Accordingly, the commission is pleased to adopt the Hamilton / Barron account as a suitable summary of the historical background to the bombings for the purposes of this report. With the kind permission of Judge Barron, it is reproduced below.

'The Troubles' begin

- 1.2 *The first civil rights march to take place in Northern Ireland passed off peacefully in August 1968. A subsequent march in Derry on 5 October was broken up by the RUC. Two days of serious rioting in Catholic areas of the city followed. This is considered by many to mark the start of 'the Troubles'. On 1 January 1969, members of a group called People's Democracy began a four-day march from Belfast to Derry. The marchers were attacked on a number of occasions, most notably at Burntollet Bridge on the final day of the march. The city-centre rally that followed the march was dispersed by the RUC, and again serious rioting resulted.*
- 1.3 *The Prime Minister of Northern Ireland at that time, Terence O'Neill, was in favour of internal reform and open to dialogue with his counterpart in the Republic. An election on 24 February 1969 saw him re-elected, but the Unionist party began to fragment into 'Official' and 'Unofficial' Unionists, as a minority began to push for a more hard-line approach.*
- 1.4 *On 30 March, bombs were detonated at an electricity substation at Castlereagh, East Belfast. Four more attacks on electricity and water installations took place in April. Initially the IRA were blamed for the attacks, but it was later established that they were carried out by members of the Ulster Volunteer Force (UVF) and the Ulster*

Protestant Volunteers (UPV) as part of a campaign to destabilise the O'Neill government and bring an end to its policies of reform. In October a similar attack took place on a power station across the border at Ballyshannon, Co. Donegal. Thomas McDowell, a member of both the UVF and UPV died from injuries received when the bomb he was planting exploded prematurely.

1.5 *On 12 August 1969, serious rioting erupted in the Bogside area of Derry city following an Apprentice Boys' parade nearby. Pitched battles between police and residents took place over two days as the RUC sought to gain control of the area. The rioting spread across Northern Ireland, stretching the resources of the RUC to breaking point. Many people, mostly Catholic, were forced from their homes. On 14 August, the Stormont Government received permission from Westminster to deploy British Army troops in flashpoint areas. Twelve days later, the Hunt Committee was appointed to inquire into the violence and the appropriate security response. On 28 August, the General Officer Commanding (GOC) of the British Army was made Director of Operations for security matters, removing control of security from the Northern Ireland Government and giving prime security responsibility to the Army over the RUC.*

1.6 *On 10 October 1969 the Hunt report was published. The report recommended:*

“The R.U.C. should be relieved of all duties of a military nature as soon as possible and its contribution to the security of Northern Ireland from subversion should be limited to the gathering of intelligence, the protection of important persons and the enforcement of the relevant laws.”

1.7 *It also recommended that the RUC should be disarmed; that the Ulster Special Constabulary (USC or 'B Specials') be disbanded; that a new RUC Reserve be set up; and that a new, locally recruited, part-time force be established under control of the British Army. These recommendations were carried out. The replacement for the USC, named the Ulster Defence Regiment (UDR), became operational on 1 April 1970.*

1.8 *The principal militant republican organisation, the Irish Republican Army (IRA) split into two factions on 28 December 1969 - the 'Official' and 'Provisional' groups. While the Official IRA moved slowly away from violence, culminating in the declaration of a ceasefire in 1972, the Provisional IRA rapidly developed into an effective exponent of guerilla warfare. By 1972 the level of violence in the North had reached*

unprecedented levels, as an ever-escalating PIRA campaign was countered by loyalist paramilitary attacks.

- 1.9 *In June 1971, the British Army GOC Sir Harry Tuzo said he believed that a permanent military solution to the conflict in Northern Ireland could not be achieved. Despite this, military measures designed to counter growing PIRA activity increased in severity - notably with the re-introduction of internment on 9 August 1971. Internment was to continue until 5 December 1975. Of the 1,981 people detained during that time, 107 were loyalists, with the remainder republicans.¹ Not surprisingly, internment is generally viewed as having contributed strongly to an upsurge in PIRA support amongst the Nationalist community on both sides of the border. The initial internment sweeps sparked two days of widespread sectarian conflict which resulted in thousands of people fleeing their homes - many crossing the border into the South.*

Spiralling violence

- 1.10 *On Sunday, 30 January 1972, 13 civilians were killed by British Army gunfire during a civil rights march in Derry. Eighteen people were wounded, one of whom subsequently died. The response to 'Bloody Sunday' in the Republic was enormous: over 100,000 people took part in a march to the British embassy in Dublin. Later that day, a crowd attacked the embassy with stones, bottles and petrol bombs. The building was burnt to the ground.*
- 1.11 *In March, British Prime Minister Edward Heath announced that the Stormont Parliament would be replaced by 'Direct Rule' from Westminster. William Whitelaw was appointed as the first Secretary of State for Northern Ireland.*
- 1.12 *On 21 July, the PIRA detonated 22 bombs in Belfast in the space of 75 minutes, killing 9 people and injuring approximately 130 others. In response to this, the British Government launched 'Operation Motorman', bringing in a further 4,000 troops to assist in dismantling barricades which had formed 'no-go areas' in Belfast and Derry.*
- 1.13 *On 1 December, two people were killed and 127 injured when bombs exploded at Liberty Hall and at Sackville Place in the centre of Dublin. At the time of the explosions the Dail was debating the Offences Against the State (Amendment) Bill, which was designed to give the police further powers aimed primarily at curbing PIRA activity. The bill*

¹Bew & Gillespie, *Northern Ireland, a chronology of the Troubles*, p.109.

seemed destined not to pass; but following a one-hour adjournment, Fine Gael dropped its opposition and the Dail voted overwhelmingly in favour of it.

1.14 *A further explosion at Sackville Place, Dublin on 20 January 1973 killed one person and injured 17 others.*

1.15 *In February, the first two loyalists to be interned without trial were sent to Long Kesh. Following a meeting of paramilitary and vigilante groups in East Belfast, Vanguard Party leader William Craig called for a two-day general strike. The strike was supported by the Loyalist Association of Workers (LAW), a group composed mainly of power-station workers, but also containing in its ranks leading members of the UDA. Electricity blackouts took place across Northern Ireland, but the strike was marred by violence, looting and riots, and failed to engage the support of the wider unionist community.*

1.16 *That year also marked the development of the car bomb by the PIRA as an offensive weapon in urban areas. The cars would normally contain 300-400 lbs of home-made explosive based on a combination of Ammonium Nitrate and Fuel Oil (ANFO), together with a detonator, plus a smaller amount of commercial explosive to ensure detonation of the home-made explosive. The ammonium nitrate usually came from commercial fertilisers. The Inquiry has been told that loyalist groups were responsible for approximately 5-10% of car bombs in 1973-74, but that the vast majority were planted by the IRA in Belfast. In rural areas, the IRA used so-called 'culvert bombs' - bombs hidden in roadside ditches to be detonated as mobile army or police patrols passed by. These again consisted of large quantities of ANFO, but this time stored in milk churns or similar containers. The adoption of these tactics by the IRA led to an exponential increase in the amounts of explosives used by paramilitary organisations, with a corresponding increase in the amount of explosives seized by the security forces in Northern Ireland.*

1.17 *However, a combination of new regulations restricting the ammonium nitrate content of fertilisers and new restrictions on parking and vehicular access in Belfast and other city centre areas led to a decline in the use of car bombs from 1975 onwards.*

1.18 *In October 1973, the IRA used a hijacked helicopter to free three of their members from Mountjoy Prison, Dublin. This unusual event may well have reinforced loyalist beliefs that the authorities in this State were either unable or unwilling to combat IRA violence.*

Power-sharing and the Sunningdale Agreement

1.19 *In March 1973, the British Government produced a white paper entitled Northern Ireland Constitutional Proposals. It contained detailed proposals for the creation of a new, elected Northern Ireland Assembly. This body would be given power to legislate in respect of most matters. Executive functions would devolve to a new Northern Ireland Executive, with the notable exception of matters relating to law and order.*

1.20 *On the subject of relations with the government of this State, it was stated:*

“The Government favours, and is prepared to facilitate, the establishment of institutional arrangements for consultation and co-operation between Northern Ireland and the Republic of Ireland.

Progress towards setting up such institutions can best be made through discussion between the interested parties. Accordingly, following the Northern Ireland elections, the Government will invite representatives of Northern Ireland and of the Republic of Ireland to take part in a conference to discuss how best to pursue three inter-related objectives. These are the acceptance of the present status of Northern Ireland, and of the possibility – which would have to be compatible with the principle of consent – of subsequent change in that status; effective consultation and co-operation in Ireland for the benefit of North and South alike; and the provision of a firm basis for a concerted governmental and community action against terrorist organisations.”

1.21 *The white paper was followed in May with the passing of the Northern Assembly Act, (allowing the creation of a 78-member elected assembly) and in July with the Northern Ireland Constitution Act, which provided for the devolution of powers to a new executive body. Section 12 of the latter Act gave that body the power to consult and enter into agreements with “any authority of the Republic of Ireland.”*

1.22 *Elections for the new Assembly were held in June. Although a majority of unionist candidates opposed the power-sharing proposals set out in the white paper, the seats won by the SDLP, Alliance Party and the minority of unionists in favour of the proposals resulted in a majority in favour of the proposed changes.*

- 1.23 *In September, the Taoiseach met the Prime Minister at Baldonnell, Dublin. One week later, Irish Minister for Foreign Affairs Garret Fitzgerald announced that the two governments had agreed on the formation of an executive, the reform of the RUC and the civil service, and the creation of a “Council of Ireland” with equal representation from North and South.*
- 1.24 *The fact that these negotiations took place at Government level - effectively sidelining local politicians in Northern Ireland – and that the results of those negotiations were announced by an Irish Minister must have been extremely galling to the loyalist community in Northern Ireland. The manner in which the Sunningdale process was pushed ahead in the teeth of vehement local opposition greatly inflamed loyalist antipathy towards their own Government and towards the Republic of Ireland. It was unquestionably the major catalyst for the Ulster Workers Council strike in May 1974, and most likely also for the Dublin and Monaghan bombings.*
- 1.25 *Negotiations with the various parties represented in the Assembly on the formation of an executive continued for two months. Agreement was finally reached on the composition of an 11-member executive with 6 unionists, 4 SDLP and 1 Alliance Party member. The leader of the UUP, Brian Faulkner, was to become Chief Executive, with Gerry Fitt (SDLP) as his deputy.*
- 1.26 *The issue of a Council of Ireland remained unresolved until a conference between the British and Irish governments, the UUP, SDLP and Alliance Party at Sunningdale Park, Berkshire from 6-9 December. Following the conference, a communiqué was issued which became known as The Sunningdale Agreement. The proposed Council of Ireland was described as follows:*

“It would comprise a Council of Ministers with executive and harmonising functions and a consultative role, and a Consultative Assembly with advisory and review functions. The Council of Ministers would act by unanimity, and would comprise a core of seven members of the Irish Government and an equal number of members of the Northern Ireland Executive with provision for the participation of other non-voting members of the Irish Government and the Northern Ireland Executive or Administration when matters within their departmental competence were discussed....The Consultative Assembly would consist of 60 members, 30 members from Dail Eireann chosen by the Dail... and 30 members from the Northern Ireland Assembly chosen by that Assembly.”

1.27 *The Council was not given any specific executive functions, but it was agreed to set up studies that would report on*

“...areas of common interest in relation to which a Council of Ireland would take executive decisions, and in appropriate cases, be responsible for carrying those decisions into effect.”

1.28 *It was anticipated that those areas might include agriculture, tourism, sport, culture, environmental matters and matters arising from EEC membership. It was also suggested that the Council might consider ways in which the principles of the European Convention on Human Rights could be expressed in domestic legislation in the State and in Northern Ireland. The communique continued:*

“It would be for the Oireachtas and the Northern Ireland Assembly to legislate from time to time as to the extent of functions to be devolved to the Council of Ireland. Where necessary, the British Government will cooperate in this devolution of functions.”

The remainder of the statement was taken up with proposals for increasing co-operation in the areas of security and policing.

1.29 *The Sunningdale Agreement produced strong reactions, especially amongst unionists. A spokesman for Vanguard called it “the most shocking betrayal since the Nazi massacre of the surrendered Jews in Warsaw.”² Mr Harry West, leader of those members of the UUP who opposed power-sharing, singled out the granting of executive powers to the Council of Ireland, and the prospect of joint policing operations which might result in Gardaí crossing the border as the most objectionable aspects of the Agreement. He announced the beginning of a campaign to have Brian Faulkner removed from leadership of the Ulster Unionist Party. Other loyalist criticisms of the Agreement focused on the absence of any commitment on the part of the Irish Government to remove the claim of sovereignty over the whole island contained in the Constitution, or to take steps to allow the extradition of political prisoners to Northern Ireland.*

1.30 *On the republican side, the Agreement was condemned by spokesmen for Official and Provisional Sinn Fein for failing to deal with issues including internment and the presence of the British Army in Northern Ireland. The Council of Ireland was accused of being no more than a “talking shop”, devoid of real power.*

² *Irish Times, 10 December 1973.*

- 1.31 *The day after the agreement was announced, loyalist paramilitaries announced the formation of the Ulster Army Council - a paramilitary umbrella group which included the UDA, the UVF and the Red Hand Commandos. They offered their support to any loyalist politician who was prepared to oppose the Sunningdale Agreement.*

General election in the United Kingdom

- 1.32 *On 1 January 1974, the new Northern Ireland Executive took office. Three days later, the Ulster Unionist Council (governing body of the Ulster Unionist Party) rejected the Sunningdale Agreement by 427 votes to 374, precipitating Brian Faulkner's resignation as UUP leader³.*
- 1.33 *In a subsequent general election for Great Britain and Northern Ireland, candidates campaigning on an anti-Sunningdale ticket won 11 of the 12 seats available to them.⁴ In the UK as a whole, the Labour party assumed power as a minority government. Harold Wilson became Prime Minister and Merlyn Rees, Secretary of State for Northern Ireland.*
- 1.34 *In a statement outlining the new Government's policy on 4 April, Rees announced the removal of the UVF and Sinn Fein from the list of proscribed organisations, and declared an intention to phase out internment. The UVF had declared a ceasefire from the previous November, though this was modified in February to allow for attacks on "genuine" PIRA targets on both sides of the border. Legislation to legitimise the UVF and Sinn Fein was passed in Westminster on 14 May – the day before the Ulster Workers Council strike began.*
- 1.35 *Also in April following a day of talks between the Taoiseach and the Prime Minister, the former expressed the hope that a further tripartite conference to formally ratify the Sunningdale Agreement could be held in early May. The leader of the Northern Ireland Executive, Mr Faulkner, responded immediately by declaring that ratification would not take place until the unionists were satisfied that promises in relation to improved cross-border security and tackling the IRA had been fulfilled.⁵*
- 1.36 *Not happy with this, a coalition of unionist politicians opposed to the Agreement issued "a stern warning to the people of Ulster" that confrontation with the British Government was becoming inevitable.*

³ *Despite this resignation, he continued to hold the position of Chief Executive until 28 May.*

⁴ *The distribution of seats was as follows: UUP - 7, Vanguard - 3, DUP - 1 and SDLP - 1.*

⁵ *Irish Times, 6 April 1974.*

The group, calling itself the United Ulster Unionist Assembly Coalition, announced a three-day conference of its own later in the month, to discuss further tactics. The Belfast Newsletter reported:

“It is understood that militancy and civil disobedience will be discussed as ‘alternatives to democracy’.”⁶

1.37

All of this political activity took place against a background of violence on a scale which is hard to remember or imagine in these times of relative peace. On 16 May, the day before the Dublin and Monaghan bombings, Northern Ireland Minister of State Stan Orme announced that from the 1st of January to the 30th of April of that year, 74 people had been killed; while claims in relation to damaged property amounted to £102 million. Paul Bew and Gordon Gillespie’s book, *Northern Ireland, a chronology of the Troubles 1968-1999* gives the following statistics for the years 1973 and 1974.⁷

SECURITY STATISTICS	1973	1974
<i>Deaths arising from the Troubles</i>	252	220
<i>Shootings</i>	5,019	3,208
<i>Bombs planted</i>	1,520	1,113
<i>Firearms found</i>	1,313	1,236
<i>Explosives found (kg)</i>	17,426	11,848
<i>Cases of intimidation</i>	3,096	2,453
<i>Persons charged with subversive / serious public order offences</i>	1,418	1,374

1.38

The following account of 28 February 1974 (general election day) gives a flavour of these turbulent times, and an indication of the sort of things the security forces could be confronted with on any given day:

“In Derry an oil tanker is hijacked and bombs damage two shops. A land mine found 200 yards from the home of Austin Currie in Coalisland is defused by the army. Gunmen fire at soldiers guarding a police station in Andersonstown, Belfast, though no one is injured. There are twelve explosions in Belfast that evening, with a man being killed at the Red Star bar in Donegall Quay. There are also explosions at Glengormley, Whiteabbey, and Lurgan, and a land mine is defused at Carnlough, Co. Antrim.”⁸

⁶ *Belfast Newsletter*, 6 April 1974.

⁷ Bew and Gillespie, *Northern Ireland, a chronology of the Troubles, 1968-1999* (Dublin, 1999), pp. 76, 97.

⁸ *Ibid.* p.80.

- 1.39 *In addition to the violence in Northern Ireland itself, the years 1973-74 found the Provisional IRA stepping up its bombing campaign on mainland Britain. On 19 May 1974 - two days after the Dublin and Monaghan bombings - Merlyn Rees declared a State of Emergency under s.40 of the Northern Ireland Constitution Act, 1973. On 17 June, the PIRA injured 11 people with a bomb at Westminster Hall. On 21 November, bombs in Birmingham killed 21 people. Four days later, the British government introduced the Prevention of Terrorism Act, 1974.*

The Ulster Workers Council strike

- 1.40 *The British and Irish Governments were aware of the potential for widespread civil disturbance following the outcome of the Sunningdale conference. An Irish Army report of a meeting between British Intelligence sources and Irish Army Intelligence dated 7 December 1973 stated:*

“Protestant militant organisations have now become a serious threat to peace in Northern Ireland and it is believed that there is a serious risk that they could spark off a Civil War. The danger period is seen as the current month and up to the first week in January 1974. If this is avoided another peak is seen as mid-January...

The Protestant militant campaign, should the signal be given to start it, would include widespread industrial unrest, withdrawal of services, refusal to man even essential services, blocking of roads, erecting of barricades, attacks on Catholic ghettos particularly in Belfast, assassination of Protestant and Catholic leaders... and bombings and shootings both in Northern Ireland and in the Republic.”

- 1.41 *Contrary to expectations, the predicted militant campaign did not occur in that period. Following another meeting with British Intelligence sources on 19 February 1974, Irish Army Intelligence reported:*

“The overall military co-ordination attempted by the different Protestant extremist groups in the creation of an Ulster Army Council has all but disappeared. this has come about through a lessening of fears about the ‘Sunningdale Agreement’.... The militants went to the brink on 21 January 1974 but drew back.”

- 1.42 *A report of another meeting on 20 April 1974 stated:*

“The UDA is reluctant to commit itself to a policy of violence against the Council of Ireland since it believes that it will not go ahead.”

That report also suggested that a majority of Protestants were in favour of the steps taken towards power-sharing within Northern Ireland, though they remained opposed to the Council of Ireland. With the benefit of hindsight, this seems to have been an overly optimistic analysis.

- 1.43 *In fact, plans for a general strike had been made by a new group, the Ulster Workers Council. This organisation grew from and replaced the remnant of the Loyalist Association of Workers, which had entered a decline following the failure of the general strike in March 1973 to gain popular support. As with the LAW, the UWC’s membership at first consisted predominantly of workers in the electricity, shipyard and heavy manufacturing industries.*
- 1.44 *The UWC had intended to begin their campaign of action in January. They met with loyalist politicians and informed them of plans for another general strike. They were persuaded to postpone their action by Vanguard Party leader William Craig, who indicated that a general election in the United Kingdom was imminent and suggested that any industrial action should await its outcome. His advice was accepted, and the UWC leadership concentrated on building up grassroots support for the eventual strike. This organisation was to prove pivotal in uniting a large number of diverse loyalist groups, at least in the short term. For paramilitaries, politicians and ordinary unionists, the UWC became the hub through which efforts to destroy the Sunningdale institutions were channelled.*
- 1.45 *By the time the general election was over, the UWC had acquired a 21-man executive whose composition reflected an unprecedented level of co-operation between loyalist workers, politicians and paramilitaries. In addition to the leaders of the three main unionist parties (UUP, DUP and Vanguard), this executive body contained representatives from the UDA, UVF, the Orange Volunteers and Down Orange Welfare. The chairman of the UWC, Glen Barr, was both a UDA officer and a representative of Vanguard in the Assembly.*
- 1.46 *On 23 March, the UWC made its first public statement. Drawing attention to the results of the general election, it threatened widespread civil disobedience unless fresh Assembly elections were held. On the 15th of May, it called for a general strike.*

- 1.47 *Initially, the strike gained little public support, and political reaction was subdued. Electricity workers cut power supplies by up to 40 per cent, and stoppages ensued in some factories. Over the next few days, members of the UDA, UVF and other paramilitary groups visited businesses, using intimidation “without violence” to persuade workers to stay home. Roads were blocked with hijacked vehicles, and gangs of armed and uniformed men maintained an overt presence on the streets.⁹ On 16 May, the UWC announced that it would ensure the maintenance of “essential services” – in practice, this meant the UDA taking over the distribution of food and petrol in certain areas.*
- 1.48 *As the UWC action was seen to be having an effect without the violence and rioting which had marred earlier protests, it began to gain in popular and political support. On 19 May, the strike received the official approval of the United Ulster Unionist Council (UUUC). The UUUC had been formed by the DUP, Vanguard and the Official Unionist Party (now under Harry West following the resignation of Brian Faulkner as party leader) for the purpose of co-ordinating strategy for the general election.*
- 1.49 *Despite strong denouncements of the strike from the Prime Minister and the Secretary of State for Northern Ireland, the security forces were not directed to confront the strikers. Instead, they concentrated on clearing roads and attempting to keep control of essential services such as electricity. The only major arrest operations carried out by the army during that time took place over the weekend of the 24-26 May. Thirty-five people were arrested following riots and the shooting of a Catholic near Ballymena. A separate army raid in the Rathcoole area resulted in somewhere between 22 and 40 arrests. It is believed that Craig was instrumental in persuading the local UDA and UVF units not to carry out reprisals against the army on the basis that the strike was about to succeed.¹⁰*
- 1.50 *On Monday 27 May, the British Army took control of a number of petrol stations in Belfast. The UWC responded by announcing a complete halting of all essential services, to take place within 24 hours. One day later, the Executive collapsed following the resignation of Chief Executive Faulkner and the other unionist members. The ostensible reason for the resignations was the continued refusal of the British Government to talk directly with the UWC, though Faulkner admitted in his press statement that “the degree of consent needed to sustain the Executive does not at present exist.” The following morning, the strike was called off. On 30 May, the Northern Ireland Assembly was prorogued for a period of four months.*

⁹ Fisk, *The point of no return*, pp.55-59.

¹⁰ See Rees, *Northern Ireland, a personal perspective*, p.81 and Fisk, *The point of no return*, p.214.

- 1.51 *In relation to the Dublin and Monaghan bombings, it is worth noting that the bombings took place during a period when loyalist militants achieved a level of power and popular support never seen before or since. They did this by achieving equally unprecedented levels of co-operation, organisation and discipline amongst themselves.*

IRA ‘doomsday’ plans

- 1.52 *On the morning of Friday, 10 May, RUC officers, with the assistance of the British Army, arrested two PIRA members at a house in Myrtlefield Park, Belfast. Amongst the documents discovered at the house were what appeared to be plans for a temporary IRA takeover of certain areas of Belfast.*
- 1.53 *The plans were shown to reporters at a press conference in Stormont Castle on the following Monday. The Northern Ireland Executive was briefed, and MI5 informed Irish Army Intelligence of the find and its supposed significance. The Prime Minister, Harold Wilson gave a speech in the House of Commons in which he cited police and army belief that the plans were proof that the IRA were about to launch a major offensive designed to plunge Northern Ireland into civil war.*
- 1.54 *On the same day, newspapers reported that copies of the documents were presented to the Irish Government during a visit to Dublin by the Secretary of State for Northern Ireland, Merlyn Rees. Irish Government minutes of the meeting with Rees show that the Myrtlefield documents, though not on the original agenda for the meeting, were discussed informally at one point. They do not indicate whether copies of the documents were left in the possession of the Irish Government. When interviewed by the Inquiry, Lord Rees was unable to remember if copies had been handed over.*
- 1.55 *On 15 May, articles appeared in The Times and The Irish Times to the effect that sources in the PIRA had confirmed the authenticity of the plans, but said they were essentially defensive in nature, outlining possible IRA responses in the event of a civil war breaking out. The author of the Times piece, Robert Fisk, had in fact written an article some 19 months previously in which he claimed:*

“The Provisional and Official IRA have been holding informal talks on a local level in Belfast to plan a joint defence of Roman Catholic areas in the event of attack.”¹¹

¹¹*Times*, 22 October 1972.

1.56 *These talks between the two republican paramilitary groups were believed to have been organised in response to a speech given by Vanguard Party leader William Craig at a meeting of right-wing MPs at Westminster, in which he claimed he could mobilise 80,000 men who “are prepared to come out and shoot and kill.”¹²*

1.57 *In his book on the UWC strike, Fisk referred to the Myrtlefield plans as having a possible connection with the Dublin and Monaghan bombings:*

“Inquiries in Portadown during the UWC strike proved that UVF officers there had paid considerable attention to [Harold Wilson’s] statement made in the House of Commons on Monday 13 May.... In Portadown details of this [IRA] plan had been studied with care and, so it was being put about in UVF circles, the IRA’s tactics had been industriously employed by the loyalists south of the border.”¹³

¹² *Ibid.*

¹³ Fisk, *The point of no return*, p.80.

Chapter two

THE COMMISSION OF INVESTIGATION

Terms of reference

2.1 The terms of reference of this statutory investigation were published by the Government in *Iris Oifigiúil* on 13 May 2005. Those terms of reference are:

To undertake a thorough investigation and make a report on the following specific matters considered by the Government to be of significant public concern:

1) *Why the Garda investigation into the Dublin and Monaghan bombings was wound down in 1974?*

2) *Why the Gardaí did not follow-up on the following leads:*

i. *information that a white van, with an English registration plate, was parked outside the Department of Posts and Telegraphs in Portland Row and was later seen parked in the deep sea area of the B & I ferry port in Dublin, and the subsequent contact made with a British Army officer on a ferry boat leaving that port;*

ii. *information relating to a man who stayed in the Four Courts Hotel between 15 and 17 May, 1974 and his contacts with the UVF;*

iii. *information concerning a British Army corporal allegedly sighted in Dublin at the time of the bombings;*

and

3) *In relation to the missing documentation:*

i. *the exact documentation (Departmental, Garda intelligence and any other documentation of relevance) that is unaccounted for;*

ii. *the reasons explaining why the documentation went missing;*

iii. *whether the missing documentation can now be located; and*

iv. *whether the systems currently in place are adequate to prevent a re-occurrence of such documentation going missing.*

To take account of investigative work already undertaken into the Dublin and Monaghan bombings of 1974, including the Report of the Independent Commission of Inquiry, the Final Report of the Joint Committee on Justice, Equality, Defence and Women's Rights, Inquest Statements and the Internal Garda Investigation. To provide a final report to An Taoiseach not later than six months from the date of establishment of the Commission.

Commissions of Investigation Act

- 2.2 The Commissions of Investigations Act 2004 regulates both the manner in which the terms of reference of a statutory investigation are set out and the formulation by the Government of the content of those terms of reference.
- 2.3 The relevant statutory provisions are set out in sections 3 to 6 (inclusive) of the Commissions of Investigation Act 2004.

Section 3 of the Commissions of Investigation Act 2004 provides:

- 3.(1) *Following a proposal made by a Minister with the approval of the Minister for Finance, the Government may, by order, establish a commission to—*
- (a) investigate any matter considered by the Government to be of significant public concern, and*
 - (b) make any reports required under this Act in relation to its investigation.*
- (2) *An order may be made under this section only if—*
- (a) a draft of the proposed order and a statement of the reasons for establishing the commission have been laid before the Houses of the Oireachtas, and*
 - (b) a resolution approving the draft has been passed by each House.*
- (3) *The order establishing a commission shall specify—*
- (a) the matter that is considered by the Government to be of significant public concern and that is to be investigated by the commission, and*
 - (b) the Minister responsible for overseeing administrative matters relating to the establishment of the commission, for receiving its reports and for*

performing any other functions given to him or her under this Act.

- (4) *A commission may be established under this section even if the matter considered by the Government to be of significant public concern arose before the passing of this Act.*

Section 4 of the Commissions of Investigation Act 2004 provides:

- 4.(1) *The order establishing a commission may authorise the specified Minister to set the commission's terms of reference.*
- (2) *If the order establishing a commission does not authorise the specified Minister to set its terms of reference, they may be set by the Government.*
- (3) *Before setting a commission's terms of reference, the specified Minister or the Government, as the case may be, may consult with any persons.*

Section 5 of the Commissions of Investigation Act 2004 provides:

- 5.(1) *A commission's terms of reference shall, as appropriate and to the extent possible, specify the events, activities, circumstances, systems, practices or procedures to be investigated, including—*
- (a) the dates on which or the periods during which the events occurred, the activities were undertaken, the circumstances arose or the systems, practices or procedures were in operation,*
- (b) the location or area within the State where the events occurred, the activities were undertaken, the circumstances arose or the systems, practices or procedures were in operation, and*
- (c) the persons to whom or which those events, activities or circumstances relate or whose activities, systems, practices or procedures are to be investigated,*
- with a view to ensuring that the scope of the investigation into any matter referred to the commission is described precisely.*
- (2) *The specified Minister shall ensure—*

(a) that an accompanying statement is prepared containing—

(i) an estimate of the costs (including legal costs) to be incurred by the commission in conducting the investigation and preparing its reports, and

(ii) a time frame for the submission of the commission's final report to the specified Minister, and

(b) that, as soon as possible after the terms of reference are set, they are published with the statement in Iris Oifigiúil and in such newspapers or other publications as the Minister considers appropriate.

Section 6 of the Commissions of Investigation Act 2004 provides:

6.(1) The power to set a commission's terms of reference includes the power to amend, at any time before the submission of the commission's final report, those terms with the consent or at the request of the commission for the purpose of clarifying, limiting or extending the scope of its investigation.

(2) A commission may not consent to or request an amendment of its terms of reference if satisfied that the proposed amendment would prejudice the legal rights of any person who has co-operated with or provided information to the commission in the investigation.

(3) No consent or request is required for the amendment of a commission's terms of reference under section 44(2).

(4) The requirements of section 5(1) apply with any necessary modifications to the amendment of a commission's terms of reference as it applies to the setting of those terms.

(5) The specified Minister shall ensure that the statement accompanying a commission's terms of reference is revised if, as a consequence of an amendment of those terms under this section or section 44(2), either or both of the following contents of the statement are no longer appropriate:

(a) the estimate of the costs (including legal costs) to be incurred by the commission in conducting the investigation and preparing its reports;

(b) the time frame for the submission of the commission's final report.

(6) *Even though a commission's terms of reference are not amended, the specified Minister may, at the commission's request, revise the time frame for the submission of its final report to the extent consistent with the objective of having the investigation conducted and the report submitted as expeditiously as a proper consideration of the matter referred to the commission permits.*

(7) *The specified Minister shall ensure that, as soon as possible after a commission's terms of reference are amended or the accompanying statement is revised or both of those things are done, the amended terms, the revised statement or both, as the case may be, are published in—*

(a) Iris Oifigiúil, and

(b) each newspaper or other publication in which the original terms were published under section 5(2)(b).

Interpreting the terms of reference

- 2.4 The scope of the mandate of this statutory investigation is determined by its terms of reference. The commission is bound by its terms of reference: it does not have authority to investigate any matter outside its statutory mandate. To investigate any matter outside of its terms of reference would be *ultra vires* the Commissions of Investigation Act 2004 and contrary to the specific and expressed intention of the Government in formulating the boundaries of this statutory investigation.
- 2.5 The commission conceives its function to be the thorough investigation of the matters set out in its terms of reference. That does not, in the commission's view, extend to a re-investigation of the Dublin and Monaghan bombings of 17 May 1974. The task of re-investigating the Dublin and Monaghan bombings of 17 May 1974 would be a far greater undertaking than that with which the commission is charged, and one that this commission is not equipped to perform.
- 2.6 The commission interprets its terms of reference as directing it to investigate, to the fullest extent that it can, two separate but related areas.

2.7 The first area concerns a number of specific aspects of the Garda Síochána investigation into the Dublin and Monaghan bombings of the 17th May 1974. These matters are as follows:

- “1) *Why the Garda investigation into the Dublin and Monaghan bombings was wound down in 1974?*
- 2) *Why the Gardaí did not follow-up on the following leads:*
 - i. *information that a white van, with an English registration plate, was parked outside the Department of Posts and Telegraphs in Portland Row and was later seen parked in the deep sea area of the B & I ferry port in Dublin, and the subsequent contact made with a British Army officer on a ferry boat leaving that port;*
 - ii. *information relating to a man who stayed in the Four Courts Hotel between 15 and 17 May, 1974 and his contacts with the UVF;*
 - iii. *information concerning a British Army corporal allegedly sighted in Dublin at the time of the bombings.”*

2.8 The second area of investigation required of the commission relates to documentation arising from the Garda investigation into the bombings. The issues raised in this area are as follows:

- “3) *In relation to the missing documentation:*
 - i. *the exact documentation (Departmental, Garda intelligence and any other documentation of relevance) that is unaccounted for;*
 - ii. *the reasons explaining why the documentation went missing;*
 - iii. *whether the missing documentation can now be located; and*
 - iv. *whether the systems currently in place are adequate to prevent a re-occurrence of such documentation going missing.”*

- 2.9 The commission takes the phrase “*of relevance*” in paragraph 3(i) of its terms of reference as meaning, “of relevance to the Garda investigations into the Dublin and Monaghan bombings of 17 May 1974.”
- 2.10 The commission interprets paragraph 3 of its terms of reference as requiring it to establish, as best it can, the documentation that was or was likely to have been generated in relation to the investigation of the Dublin and Monaghan bombings of 1974, and whether or not such documentation can now be located. This includes any documentation that specifically relates to the criminal investigation of these crimes, any related security and intelligence documentation and information, and any items of physical evidence, such as potential exhibits which might have been used in a criminal prosecution, had any such prosecutions resulted from the investigations into the bombings. It also includes any documentation in the possession of any government department which relates or may relate to the Dublin and Monaghan bombings investigations.
- 2.11 The terms of reference contain a certain number of assertions of fact. An example is the assertion in paragraph 2 of the terms of reference that the Garda Síochána “...*did not follow-up...*” certain leads in their criminal investigation into the Dublin and Monaghan bombings.
- 2.12 The commission considers itself bound to read the assertions of fact in its terms of reference in the light of the evidence available to the commission, and to make up its own mind independently of the assertions made in the terms of reference.
- 2.13 To proceed otherwise would, in the view of the commission, be a breach of the provisions of section 9 of the Commissions of Investigation Act 2004 which require the commission to be independent in the performance of its functions.
- 2.14 In carrying out this investigation the commission is required by its terms of reference:
- “To take account of investigative work already undertaken into the Dublin and Monaghan bombings of 1974, including the Report of the Independent Commission of Inquiry, the Final Report of the Joint Committee on Justice, Equality, Defence and Women's Rights, Inquest Statements and the Internal Garda Investigation.”*
- 2.15 In taking account of these materials, the commission does not consider itself bound by any statements of fact or conclusions of fact made in those reports and documents. To do so would be to disregard the commission’s independence. Neither does the commission interpret the requirement to take those reports and documents into account as in any way inhibiting the commission from examining other relevant material. The commission is free,

in the commission's considered opinion to make up its own mind and to reach its own conclusions. The commission has given reasons in this report for the conclusions it reaches.

Evidence

- 2.16 The provisions of Part 3 of the Commission of Investigation Act 2004 require this statutory investigation to establish any facts relevant to its terms of reference by means of sworn evidence.
- 2.17 In relation to the relevance, admissibility and weight to be attached to any evidence tendered to the commission, the civil evidence test of 'the balance of probabilities' is the necessary threshold applied by the commission before it considered any fact to have been proved.

'Privilege' and the public interest

- 2.18 The matters which the commission has been tasked with investigating and reporting on are matters which the Government has declared to be "*of significant public concern*". There is, accordingly, a clear public interest in the commission seeking as much information relating to these matters as possible.
- 2.19 At the same time, the commission is subject to the rule of law in carrying out its investigative function. In seeking the disclosure of information, there are competing public interests which, in certain circumstances, may override the public interest in the possible publication of confidential material. Such material is said in law to be "privileged".
- 2.20 A claim of privilege can be properly made in relation to information which is confidential in nature only.¹⁴ This does not mean that all confidential documents are necessarily privileged, as Walsh J. stated in *Re Kevin O'Kelly* (1974) 108 I.L.T.R. 97 at 101:
- i. "The fact that a communication was made under terms of expressed confidence or implied confidence does not create a privilege against disclosure."*
- 2.21 In *Murphy v Dublin Corporation* (1972) IR 215 it was held by the Supreme Court that claims of privilege cannot be made in relation to a class or

¹⁴ *Smurfit Paribas Bank Ltd. v. AAB Export Finance Ltd.* [1990] 1 I.R. 469 at 473.

category of information or documentation. Walsh J., with whom the other members of the Court concurred, stated this in the following terms:

“Having regard to the nature of the powers of the courts in these matters, it seems clear to me that there can be no documents which may be withheld from production simply because they belong to a particular class of documents. Each document must be decided upon having regard to the considerations which apply to that particular document and its contents. To grant or withhold the production of a document simply by reason of the class to which it belongs would be to regard all documents as being of equal importance notwithstanding that they may not be.”

2.22 Section 21 of the Commissions of Investigation Act 2004 confers on the commission a power to determine whether privilege applies to any document or information which the commission has requested be disclosed to it under its terms of reference. Section 21(2) provides:

“Where a person claims to be entitled under any rule of law or enactment to refuse, on the grounds of any privilege or any duty of confidentiality –

to disclose any information required in the course of an investigation by a commission...or

to produce any document in the person’s possession or power that the person is directed under this Act to produce,

the commission may, subject to subsection (4) of this section, determine whether the privilege or the duty of confidentiality applies to that information or document.”

2.23 Subsection (4) of section 21 provides:

“A determination may only be made under subsection (2)(b) in relation to a document if the commission has-

(a) examined the document, and

(b) considered a written statement provided by the person concerned specifying the grounds for the claim, including the privilege or duty of confidentiality relied on.”

2.24 Where a claim of privilege has been made to the commission in relation to a specific document or item of information, the commission has used its powers under section 21 of its statute to consider the competing public interest factors in that instance and to determine whether privilege applies to that document or information.

2.25 The aspects of public interest which could, in certain circumstances, outweigh the public interest in publication and require the commission to uphold a claim of privilege in relation to a particular document include the following:

Protection of life

The State has a heavy obligation to protect human life. The possibility that publication of certain information could place the lives of individuals at risk is a factor to be considered in certain instances.

National security

Maintaining the security of the State is a vital aspect of the State's continued existence, and thus a matter of considerable public interest. Circumstances may arise in which the public disclosure of certain information could adversely affect the security of the State to the extent that a claim of privilege regarding that information should be upheld.

Prevention and detection of crime

The public has an interest in the effective functioning of the Garda Síochána where the prevention and the investigation of criminal activity is concerned. There may be circumstances in which publication of certain documents or information could significantly impair the ability of the Garda Síochána to carry out its duties in that regard.

International relations

The State has an obvious interest in maintaining good relations with other states and with certain international organisations. A situation could be envisaged in which ensuring the confidentiality of certain information or documentation derived from such sources was essential to the continuance of good international relationships and co-operation.

One example of relevance to this commission is the continuing co-operation between the Garda Síochána and the Police Service of Northern Ireland (PSNI), formerly the Royal Ulster Constabulary.

Protection of informers

The justification for claiming privilege in respect of documents which identify or might lead to the identification of informers springs from two areas of public interest mentioned above: the protection of life, and the

effective functioning of the Garda Síochána in preventing and detecting crime.

Sources of information

- 2.26 The commission set out to identify, contact and seek evidence from all likely sources of information relevant to its task. Sources of information within this jurisdiction included: the Garda Síochána, the Defence Forces and a number of Government departments
- 2.27 In each instance, the bodies concerned nominated a liaison officer to deal with the commission. The commission provided its terms of reference to those liaison officers and then requested documentation which was likely to contain material relevant to its terms of reference. The commission also inspected the locations and records management systems in which that documentation was held. The bodies in question disclosed to the commission copies of the documentation considered to be relevant to the investigation.
- 2.28 The commission sought also the assistance of various agencies and entities of the British Government. This matter is dealt with in the chapter which follows.
- 2.29 The evidence, documentation, and other material disclosed to the commission is now part of the archives of the commission and, under the terms of section 43(2) of the Commission of Investigation Act, 2004 was delivered into the secure custody of the Taoiseach before this final report was delivered to him.

Recommendations

- 2.30 The commission has no statutory power under the Commissions of Investigation Act 2004 to make recommendations.

Chapter three

THE COMMISSION AND THE BRITISH GOVERNMENT

- 3.1 When the commission refers in this section of the report to the British government, it is using the phrase in its broadest sense, encompassing all of the various agencies, entities, security forces, police and intelligence services that come, and at any relevant time came, under the authority of the British government.
- 3.2 The commission, after examining its terms of reference, formed the view that there were a number of matters raised in the commission's terms of reference concerning which the British government might possess relevant information. These matters were as follows:
- i) A significant aspect of the Garda investigation into the Dublin / Monaghan bombings concerned the exchange of information between the Gardai and the RUC. In order to answer the question raised in paragraph 1 of the commission's terms of reference concerning "*why the Garda investigation into the bombings was wound down in 1974*", it was necessary to obtain the fullest possible information concerning this extra-jurisdictional aspect of the Garda investigation.
 - ii) Paragraph 2 (i) of the commission's terms of reference makes reference to "*contact made with a British Army officer on a ferry boat*" at the B. & I. ferry port in Dublin.
 - iii) Paragraph 2 (iii) of the commission's terms of reference relates to "*information concerning a British Army corporal allegedly sighted in Dublin at the time of the bombings.*"
 - iv) Paragraph 2(ii) of the commission's terms of reference concerns "*information relating to a man who stayed in the Four Courts Hotel between 15 and 17 May 1974 and his contacts with the UVF.*"
 - v) Paragraph 3 of the commission's terms of reference concerns documentation which is relevant to the Garda investigation into the Dublin and Monaghan bombings and which is currently unaccounted for. The commission considered that the British government might be in a position to assist in determining whether or not all documentation or information exchanged between the British government and the equivalent persons, agencies and

entities of this State has been accounted for.

3.3 On 19 July 2005 the commission, having considered its terms of reference and having formed a preliminary view on the likely British government sources of evidence, documentation and information relevant to its terms of reference, wrote directly to the following British persons, agencies and entities seeking their co-operation:

1. The Prime Minister
2. The Secretary of State for Northern Ireland
3. The Secretary of State for Foreign and Commonwealth Affairs
4. The Secretary of State for the Home Department
5. The Secretary of State for Defence
6. The Attorney General for England and Wales
7. The Chief of the General Staff of the Army
8. The Government Communication Headquarters
9. The Secret Intelligence Service (MI6)
10. The Security Service (MI5)
11. The Police Service of Northern Ireland

The commission has no power to compel the production of information or documentation outside of the jurisdiction of this State. In this situation, therefore, the commission had to depend on the voluntary co-operation of the British government.

3.4 In a letter dated 23 August 2005 and received by the commission on 26 August 2005, the Private Secretary to the Secretary of State for Northern Ireland informed the commission that the commission would be receiving “...a collective response on behalf of all individuals within the British Government ...” to whom the commission had written. The letter of August 2005 also indicated that it would take “...a little time to respond to your request for papers falling within your commission’s terms of reference, due to parliamentary recess.”

3.5 The commission wrote again to the Secretary of State for Northern Ireland on 3 October 2005, requesting specific information on matters relating to paragraphs 2 (i) and 2 (iii) of the commission’s terms of reference.

3.6 In a letter dated 25 October 2005 and received by the commission on 1 November 2005, the Secretary of State set out the position of the British government in relation to the requests for assistance made by the commission to the British Government. The Secretary of State's letter referred to information previously provided by the British government to the Hamilton / Barron Inquiry, stating:

“When Justice Barron’s original Inquiry was set up, the UK Government carried out a search which identified information that was considered to be of relevance to the Dublin and Monaghan bombings. This information was collated into a submission which was passed to his Inquiry. The breadth of material contained in this submission [to the Hamilton / Barron Inquiry] means that it may contain some information of relevance to your investigation. I attach a copy which I hope you may find useful. At the time of Justice Barron’s Inquiry, the PSNI provided him with a copy of the material they had identified as relevant to the Dublin and Monaghan bombings in a separate submission. I attach a copy of the PSNI submission also.”

3.7 In relation to the specific issues which fall to be considered by this commission, the Secretary of State outlined the position of the British government in the following terms:

“We have considered, collectively, whether any of the bodies that you wrote to is likely to hold information, additional to that which we provided to Barron, which might relate to the specific issues set out in your terms of reference and in your letter of 3 October. Following correspondence and discussion with representatives of each of these bodies, it became clear that there were only a few who might even conceivably hold information of that nature.

As part of their searches for material for the purposes of Justice Barron’s Inquiry, the Security Service [MI5] prepared a number of research files relating to the Dublin and Monaghan bombings. They have reviewed these and they do not contain any material relevant to the issues you have identified. This view has been corroborated through consultation with those who were engaged in the extensive research which was carried out by the Security Service into the Dublin and Monaghan bombings at the time of Justice Barron’s Inquiry.”

3.8 The Secretary of State's letter went on to state that the British Ministry of Defence *“has given careful consideration to your terms of reference and to the very specific questions you raised in your letter of 3 October.”* A positive answer was then given to one of the specific questions asked by the commission in its letter of 3 October 2005. The Secretary of State also gave details of efforts made to answer the other specific question posed by the

commission – efforts which, according to the Secretary of State’s letter, had failed to produce a positive result.

- 3.9 Having considered the Secretary of State’s response, the commission sought a meeting in private with representatives of the British government to further this investigation. The central purpose of the proposed meeting, from the point of view of the commission, was to explain and expand upon the nature of the assistance being sought by the commission from the British government. The commission also hoped by such a meeting to gain some understanding of the nature of the searches that had informed and determined the collective view of the British government in relation to its capacity to assist the commission.
- 3.10 In late December 2005 the British government offered the commission an opportunity to meet with officials from the Northern Ireland Office, the British Ministry of Defence and the British Security Service [MI5]. In making that offer the British government made clear their view that “...*we firmly believe that we have provided you with all the material relevant to your terms of reference.*”
- 3.11 A meeting between the commission and these officials took place on 9 February 2006 in London.
- 3.12 At the conclusion of the meeting, the commission took the view that the best hope of progressing the relevant aspects of its investigation lay in seeking further evidence, documentation or information in relation to the specific matters detailed in paragraph 2 of the commission’s terms of reference. The commission communicated this view to the British government and they, for their part, indicated a willingness to expedite certain inquiries on the commission’s behalf in relation to these specific matters.
- 3.13 Following further correspondence from the commission on these matters, the British government furnished the commission with the fruits of its inquiries. In these targeted areas of investigation the British government has, over a period of time, materially assisted the commission by disclosing material relevant to certain of the matters under investigation by the commission.
- 3.14 Amongst the material disclosed to the commission by the British government during this period was a photocopy of a redacted portion of a document. The portion of this document disclosed to the commission was clearly relevant to the Garda investigation into the Dublin and Monaghan bombings. The Hamilton / Barron Inquiry did not have knowledge of, or access to, any portion of this document.
- 3.15 On 19 April 2006 the commission wrote to the British government seeking an opportunity to view the original intelligence document from which the portion disclosed to the commission had been photocopied. The following

response was received in a letter dated 12 May 2006:

“The redacted part of the document is sensitive because it covers the processes used to deal with the intelligence material. But [I have been advised] that the redacted part of the document would not provide any further information relevant to your investigation. Against that background I am not able to make arrangements for your Commission to see the original document.”

3.16 The commission commenced its correspondence with the British government in July 2005. The last piece of information disclosed to the commission by the British government was obtained in May 2006. The commission does not criticise the British government for the length of time it took to furnish the commission with the information disclosed by it to the commission. For its part the commission did everything in its power to encourage the British government to deliver all relevant material as soon as was possible.

3.17 The Hamilton / Barron report on the Dublin and Monaghan bombings summarised the co-operation between the British government and the Hamilton / Barron Inquiry as follows:

“Correspondence with the Northern Ireland Office has undoubtedly produced some useful information; but its value has been reduced by the reluctance to make original documents available and the refusal to supply other information on security grounds. While the Inquiry fully understands the position taken by the British Government on these matters, it must be said that the scope of this report is limited as a result.”

3.18 This commission’s terms of reference are not as wide-ranging or extensive as those of the Hamilton / Barron Inquiry. Nonetheless, the commission considers that it too has been limited in the scope of its investigation by not having access to original security and intelligence documents in the possession of the British government.

Chapter four

THE GARDA SÍOCHÁNA ORGANISATION OF A CRIMINAL INVESTIGATION IN 1974

Introduction

- 4.1 Although the investigation of crime is not, by any means, the only function of the Garda Síochána, it constitutes a significant part of the force's duties.
- 4.2 In August 1946, a document described as "*the first official Manual of Criminal Investigation*" was issued by the then Garda Commissioner to all members of the Garda Síochána. The aim of the work is described in the preface as follows:

"The author does not claim that this Manual is exhaustive; the subject dealt with is too big for that. Neither does he claim that it is a book for experts or technicians. His aim in writing it has been, rather, to present in a concise and simple manner such knowledge concerning modern police methods of investigating crime, and matters directly pertaining thereto, as the ordinary policeman requires to possess. Whilst indicating clearly, in appropriate cases, the nature and extent of the assistance which the expert and the technician may be expected to be able to render, and the precautions that must be taken by the policeman to ensure that such assistance is not rendered impossible by incompetency or improper handling on his part, the author has deliberately excluded all details of technical processes which are not of practical concern to the policeman. He has, too, excluded all matter of a purely administrative nature."

- 4.3 The preface concludes:

"Every member of the Force will be expected to be familiar with the contents of this Manual, and will be required, when participating in the investigation of crime, to act in conformity with the instructions it contains."

- 4.4 The Manual of Criminal Investigation was superseded in July 1979 by a new Garda document bearing on the investigation of crime, entitled "*Crime Investigation Techniques*". At the time of the investigation into the Dublin and Monaghan bombings in 1974 and thereafter, however, it appears that the 1946 Manual was the only published protocol bearing on the relevant instructions and investigative practices then available to the Garda Síochána.
- 4.5 The Garda Code also contains rules and procedures relating to the investigation of crimes. The edition of the Code in force at the time of the

bombings in 1974 was first published in October 1965. Additions or updates to the Code were affixed to the relevant sections by means of adhesive strips. Chapter 44 of the 1965 edition of the Code is headed “Crime Investigation” and begins as follows:

“Every serious crime presents its own problems and it is impossible to provide for every contingency. As a general rule, however, standard modes of procedure, if properly and effectively followed, meet most difficulties and when combined with a little forethought, planning and common sense, should ensure the efficient initiation and subsequent successful follow through of an investigation.”

- 4.6 The Code goes on to deal with a variety of matters relating to the investigation of crime including the services provided by the Technical Bureau; the use of fingerprints, photographs and photofits; the protection and care of criminal records, and the services of the State Pathologist and State Analyst.

The Technical Bureau

- 4.7 In 1974, the Technical Bureau was the branch of the Garda Síochána which was concerned with the forensic, ballistic and technical aspects of criminal investigation. In 1974 and thereafter, it consisted of ballistics, fingerprints, photography and mapping sections. Section 44.2(1) of the Garda Code (1965 edition) provides:

“The services provided by the Technical Bureau are available for the investigation of crime of a serious, complicated or technical nature anywhere in the State and the fullest use should be made of [these services].”

Subsection (2) provides:

“When the Gardaí become aware of a case where murder is suspected investigations should be started forthwith. To assist the investigation any necessary technical assistance should be requisitioned from the Bureau [meaning the Technical Bureau] without delay.”

- 4.8 There was also attached to the Technical Bureau a specialised investigation unit, known colloquially as ‘the Murder Squad’, which comprised some of the best and most experienced crime investigators in the Garda Síochána. This unit was based at Garda Headquarters in Dublin, but the services of the unit were available on request to district officers of the Garda Síochána investigating a serious crime anywhere in the State. Section 44.2(3) of the Garda Code (1965 edition) provides:

“Outside Dublin Metropolitan Area if a case of murder is not capable of immediate solution the divisional officer, after consultation with the district officer, will (by telephone) ask Commissioner ‘C’ for the services of an investigating officer from Headquarters... The district officer will be responsible for the direction of the investigation pending the arrival of the investigating officer, who will then, in conjunction with the district officer, be responsible for its direction. It will be the duty of the district officer to assist him [the investigating officer from Headquarters] in every way.”

- 4.9 In 1974, the reference to the “investigating officer from Headquarters” would have been understood to refer to a detective from the Technical Bureau’s Investigation Unit (‘the Murder Squad’).

Structures of command

- 4.10 Concerning the question of which member of the Garda Síochána should be in charge of any criminal investigation, section 44.1(8) of the Garda Code (1965 edition) states:

“In Dublin Metropolitan Area [D.M.A.] the Chief Superintendent in charge of Crime will be responsible for directing the investigations into all serious crimes. In addition to the district officer who is responsible for his district, he will have as his assistant(s) one or both of the crime superintendents attached to the North and South Divisions. He will also consult with the officer in charge D.M.A. and request Commissioner ‘C’ for the services of an investigating officer from Headquarters where necessary, and such investigating officer on arrival will collaborate with the Chief Superintendent in charge of Crime in the investigation.

Outside Dublin Metropolitan Area the district officer, with the investigating officer from Headquarters if called in, will be primarily responsible for the proper team work and cohesion of various units of any enquiry.

As the investigation proceeds the officers responsible for directing it must ensure that every aspect of it is thoroughly and fully performed.”

- 4.11 As the above passage indicates, the primary responsibility for the conduct of a criminal investigation outside the Dublin Metropolitan Area lay with the district officer for the area in which the crime took place, and the investigating officer from Garda Headquarters, if one had been requested. The divisional officer for the area had a supervisory role in relation to the overall functioning of the investigation, but not in relation to the details, as the following passage from section 44.2(4) of the Garda Code (1965 edition) makes clear:

“The divisional officer should ensure that all investigations are pursued promptly but should not unnecessarily interfere in the details of the investigation. The evening conference normally held after each day’s investigation will show what has been accomplished and what remains to be done. It will also provide the divisional officer with an opportunity to ensure that the plans for the following day are harmoniously arranged. If at any stage he [the divisional officer] considers that the investigation is not being properly conducted the divisional officer will inform Commissioner ‘C’ setting out fully his reasons for thinking that the investigation is not being properly conducted. He should not do this, however, without first informing the district and investigating officers of his intention [to do so].”

- 4.12 Immediately following the bombings on 17 May 1974 it was decided by the Garda Síochána that the investigation into all three Dublin bombs should be conducted by a specially established investigation team, drawn from both the uniformed and detective branches of the Garda Síochána and commanded by Detective Chief Superintendent John J. Joy, Crime Ordinary (C1) with the assistance of Detective Chief Superintendent Anthony McMahon, Technical Bureau (C4) and Detective Superintendent Dan Murphy, also of the Technical Bureau. The commission is satisfied that much of the day-to-day responsibilities for the investigation rested upon D/Supt Murphy. These three officers were very experienced and capable detectives.
- 4.13 Unfortunately all three officers had died before this commission was established: C/Supt John Joy retired in June 1979 and died in May 1982; C/Supt Anthony McMahon retired in September 1979 and died in February 1996; and D/Supt Dan Murphy died, still a serving member, in June 1986.
- 4.14 A member of the Technical Bureau’s Investigation Unit, Detective Sergeant F.O.C. Browne was sent from Dublin to assist the district officer in Monaghan to carry out the investigation there. D/Sgt Browne, later promoted to the rank of Detective Inspector, died on 11 January 2005.
- 4.15 An Incident Room was set up in Monaghan Garda station to be the headquarters of the Monaghan investigation. The divisional officer in Monaghan, Chief Superintendent J. P. McMahon, kept in contact with the Monaghan investigation team but did not take part directly in the investigation.
- 4.16 The relationship between the Dublin and Monaghan investigation teams is not set out explicitly in the documentation disclosed or in the evidence given to the commission. The fact that the Monaghan team produced a separate investigation report (dated 9 July 1974 and signed by the acting District Officer) suggests that the Monaghan investigation team was operationally

independent of the Dublin team, although there is no doubt that sharing of information took place.

- 4.17 The fact that most of the senior personnel in both investigations are now dead means that the precise details of how these two teams co-ordinated their efforts cannot now be ascertained. However, in his evidence to the Coroner given on 14 May 2004, the former D/Sgt F.O.C. Browne stated that to the best of his recollection, he spoke to C/Supt Joy in Dublin every second day or so during his time with the Monaghan investigation.¹⁵ D/Sgt Browne was regarded within the Garda Síochána as a very talented criminal investigator.

The Incident Room

- 4.18 The Incident Room is not just at the heart of any major criminal investigation, but is its heart. It is a room (or number of rooms) specially set aside, where all information relating to the investigation is collected, collated, reviewed, preserved and maintained; where conferences of investigating officers take place; where decisions are made about existing lines of inquiry and where new lines of inquiry are identified and assigned to individual officers of the Garda Síochána to follow up and report back upon.

- 4.19 Normally, the Incident Room is set up in the Garda station nearest to where the crime under investigation was committed. In the case of the Monaghan bombing, the investigators based themselves at the Garda station in Monaghan town. In the case of the three Dublin bombings, which were being treated by Gardaí as one investigation, it was decided that a common Incident Room should be based in Dublin Castle and it was. The room is now, we are told, part of the traffic division of the Garda Síochána.

- 4.20 In large investigations the task of maintaining the integrity of the documentary record in a manner that allowed easy access to the most complete, accurate and up-to-date information available was usually assigned to one or more specific Gardaí. This was a crucial aspect of the investigation. The Manual of Criminal Investigation, issued from Garda Headquarters in 1946 (and still the primary text for criminal investigations in 1974), gave the following outline of the duties involved:

“If an investigation appears likely to result in long or numerous reports, or necessitates the taking of many statements, it will be necessary to employ a suitable experienced member to take charge of the clerical work. This member should be made responsible for:

- (a) *the typing and copying of reports and statements;*

¹⁵ Transcript of Inquest into the Dublin and Monaghan bombings of 1974, day 13 (14 May 2004).

- (b) *the preparation of the necessary number of files which may be required;*
- (c) *the arrangement of the investigation file, the files of statements and the indexes thereto;*
- (d) *the preparation of any other indexes, timetables etc., which may be necessary, the keeping of an index of exhibits, etc.*

He [the suitable experienced member] should also analyse the progress made and make notes of any matters which may require attention, such as points requiring further investigation, conflict of or lack of evidence on certain points, ambiguity regarding certain particulars, omissions, etc.

He should carefully check copies of statements word by word against the original, and note any defects which he may find in the statements taken. He should cross-index statements which refer to the same matter. In important cases, special care should be taken to ensure that the clerical work is kept abreast of the progress of the investigation. When necessary, extra clerical assistance should be detailed for this purpose.”

- 4.21 The clerical work done in the Incident Room serves not only to assist with the investigation: it is also of vital importance should the time come to submit a file to the Director of Public Prosecutions (or prior to the establishment of the office of DPP, to the Attorney General). If a case remains unresolved and no immediate prosecution is possible, the work of the clerical members is, if anything, even more important: without a properly maintained, adequately indexed documentary record, the chances of successfully re-activating an investigation after any significant lapse of time will, inevitably, be seriously compromised.

Conferences

- 4.22 A conference, in the context of a criminal investigation, is a meeting of the investigation team, held for the purpose of furthering the investigation. This involves collating information, keeping everyone concerned in the investigation up-to-date on the progress of the investigation in its various aspects, outlining and discussing potential lines of inquiry, and distributing tasks (known as ‘jobs’ or ‘flyers’) to various members of the investigation team.
- 4.23 The Manual of Criminal Investigation (1946 edition) advocates the regular holding of conferences in “difficult or protracted cases”:

“At a conference, the progress made should be reviewed, difficulties discussed and new lines of enquiry decided. Apart from ensuring the

effective control of an investigation, conferences are useful in affording an opportunity for the interchange of information between members assigned to the enquiry and for eliminating the risk of the duplication of work.”

- 4.24 In the early days of a major inquiry, such conferences were usually held on a daily basis. This was the case in both the Dublin and Monaghan investigations.

Dublin

- 4.25 Amongst the documents disclosed to the commission by the Garda Síochána is a hardback notebook marked “CONFERENCES”, which contains notes taken at conferences held on a daily basis by the Dublin investigation team between 18 May and 4 June 1974. The commission interviewed the Detective Garda whose name appears on the front cover of the notebook, and who has since retired from the Garda Síochána. This Detective Garda stated to the commission that, to the best of his recollection, the notebook was kept by him as a personal *aide memoire* and was not the official record of what took place at the conferences.

- 4.26 According to this Detective Garda, one member of the Garda Síochána would be assigned the responsibility for conducting the conference – preserving order and continuity, and ensuring that all relevant matters were raised and appropriately dealt with. This person was assisted in this task by the officer who had been assigned the task of looking after the records generated by the investigation. The commission has not been able to establish the identity of the Garda officers who were given this recording task in relation to either the Dublin or the Monaghan investigations.

Monaghan

- 4.27 As far as the Monaghan investigation is concerned, no record of the minutes of any conferences held has been disclosed to the commission. Such a record may have existed but if it did, it is no longer available and the commission has not had sight of it.
- 4.28 The Garda documentation which has been disclosed to the commission indicates that conferences were held by the Monaghan investigation team up to and including 25 May 1974. Further conferences may have taken place after that date, but if they did take place, no record of those meetings has been disclosed to the commission.
- 4.29 Any tasks which were assigned to members of the investigation team at such conferences were required to be recorded in a book, known as a ‘jobs book’, which was kept by the Monaghan investigation team. The ‘jobs book’,

however, was exclusively a record of 'jobs' allocated and was not intended to record any information other than the allocation of 'jobs' and the results of such 'jobs'.

'Jobs' and 'job flyers'

- 4.30 The word 'jobs' refers to the various individual tasks identified as needing to be pursued in furtherance of the investigation. Information came into the Incident Room, where it was discussed and reviewed. Jobs arising from such discussion and review were then assigned to individual members of the Garda Síochána for action by those members.
- 4.31 Information relating to jobs was recorded in a 'jobs book' or on individual pages known variously as 'job sheets', 'message sheets', 'flyers' or 'job flyers'. These 'flyers' were detachable carbonized sheets, contained in message pads in triplicate form: a blue original, followed by a white and a green carbon copy.
- 4.32 Job flyers are and were fundamental to the criminal investigative process of the Garda Síochána. The job flyers marked the first, and frequently the only systematic recording of information obtained by the investigation team.
- 4.33 At the top of the standard job flyer, spaces were provided in which the following information was required to be filled in: (1) the message number (usually assigned by the Garda member responsible for record-keeping in the Incident Room); (2) the name, address and telephone number of the person from whom the message was received; (3) the time and date of the message; and (4) the name of the person who received the message. Underneath this was a space in which the message or information itself was required to be written.
- 4.34 At the bottom of each job flyer was a section headed: "Instructions Given or Action taken". Clearly, this was there to ensure that any further inquiries made on foot of the message or information contained in the job flyer would be noted. The job flyers, properly written up and taken together, would act as a history of the progress of an inquiry, from beginning to end, insofar as the investigation proceeded by way of individual assigned tasks and the ensuing reports on the result of the assigned tasks.

No.....

MESSAGE

FROM
Name Address

Tel. No. Time Date

Received by

SUBJECT.

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Instructions
GIVEN or
Action taken

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02779 CES106 E00D-J-171 WSMF CES

[example of job flyer as used in Dublin and Monaghan bombings investigations]

Dublin

4.35 The commission has seen only one job book relating to the Dublin investigation. It contains notes on jobs numbered 1 to 164 inclusive. Job 1 notes the time and place of the three explosions; job nos. 2-57 consist of brief notes of facts learned and jobs done or to be done between 5.45 p.m. and 10 p.m. on the night of the bombings on 17 May 1974. The commission is satisfied that these notes were created at, or prior to the first conference held in relation to the Dublin bombings, probably on the morning of 18 May 1974, at least partially as a retrospective record of things already done and decided before the first conference. This is completely regular. The commission is satisfied that this recording was done before the first conference in order to ensure that there was a record of Garda activities between the time of the explosions and the commencement of the first conference.

4.36 Job number 64 in the Dublin jobs book records that at an early stage in the investigation, message pads containing blank, standard form job flyers were distributed from the Incident Room to the following Garda stations:

1. Store St.
2. Fitzgibbon St.
3. Pearse St.
4. Harcourt Tce.
5. Kevin St.
6. Mountjoy.
7. Bridewell.
8. Whitehall.

Blank message pads were also sent to the Central Detective Unit, the Special Detective Unit and the Garda Communications Centre at Dublin Castle. Any information of relevance to the bombings that came into these locations was required to be transferred to a job flyer. Instructions were given to fill out each job flyer in triplicate. The blue original and the white carbon copy were then to be sent to the Incident Room at Dublin Castle: the green carbon copy was to be left in the pad and kept at the location where the information first came to the attention of the Garda Síochána.

4.37 When the blue and white flyers reached the Incident Room, they were numbered by the officer or officers in charge of records management in the Incident Room. One of these flyers (usually the blue original, but not always so) would be given to a Garda member to carry out any inquiry or task that needed attention. Once the inquiry or task was completed, that member was required to return the flyer to the Incident Room, either with a minute on the form itself detailing what he had done, or with accompanying documents such as reports or statements. The original job flyers, once returned, were

held loosely in folders marked “FLYERS”. The white carbon copies were kept at the Incident Room, fixed in lever-arch files.

- 4.38 The white carbon copies may have been intended as a back-up of the information contained on the original job flyers. If so, one might expect to find that any additional notes made on the top copy were added to the carbon copy, and that copies of any documents attached to the original job flyer would be made and attached to the carbon copy. In the case of the Dublin investigation, it appears that this was not always done: examples of omissions can be found in the sections of this report dealing with the matters raised in paragraphs 2(i) and 2 (iii) of the commission’s terms of reference.
- 4.39 Occasionally, a completed job would result in a supplementary flyer being sent out. These supplementary job flyers were given the same number as the original job, followed by the suffix (Q). As with other jobs, the blue, original flyer was sent out with the Garda member to whom the supplementary task was assigned. The white carbon copy was retained in a folder marked “*Flyers sent out for further Q.*”

Monaghan

- 4.40 No message pads or collections of job flyers relating to the Monaghan investigation were disclosed to the commission. However, there was a hardback jobs book which contained jobs numbered from 1-369. Numbers 1-39 were written into the book by hand: thereafter, most of the jobs in the book were recorded by means of segments of blue or white flyers pasted into the book. By and large, these segments contained the details of the incoming message or information itself – no mention is made of the date on which the message was received, the source of the message, or the name and location of the Garda member who received it.
- 4.41 Any action taken and any results from such action were noted by hand on the facing page of the book. The date on which a job was completed or reported upon was required to be noted. This was not done in some instances.

Statements

- 4.42 Following the initial receipt of information at conference, members of the investigation team might be tasked with the job of taking a written statement from the person who had given the information to the Gardaí in the first place, or from other potential witnesses mentioned in the original information and likely to have further relevant information. Such statements were usually handwritten: a small number of these statements were typed and later signed by the person making the statement.

- 4.43 As statements came into the incident room they were given a number and filed. Any subsequent statement made by the same witness was given the same number, with the suffix 'a', 'b' and so on through the alphabet. An index of all statements was kept in the Dublin incident room and this index was disclosed to the commission. No such index for the Monaghan investigation has been disclosed to the commission.
- 4.44 As the investigation progressed, one or more Gardaí in the Incident Room were given the task of typing out copies of the statements from the handwritten originals. These typed versions were not signed by the makers concerned. Usually, several typed copies of statements were made.
- 4.45 Not all statements were retyped. For example, 160 handwritten statements relating to vehicles seen in Dublin with English or Northern Ireland registration plates were neither typed nor numbered.

Reports

- 4.46 The commission has considered the contents of a variety of reports by members of the Garda Síochána relating to various aspects of the Dublin and Monaghan bombing investigations. These reports range from simple, one-line reports to relatively lengthy documents such as the reports of 7 July 1974 and 9 August 1974, which are referred to by the Garda Síochána as the Monaghan and Dublin investigation reports, respectively.
- 4.47 It is not possible to establish the number of reports, if any, that are missing. A number of Garda documents disclosed to the commission contain requests for further reports on particular matters; or refer to reports which were expected to be created. One such instance is referred to at paragraph 7.38 of the commission's report. In the absence of a comprehensive indexing system for documents sent and received by the Garda Síochána in the course of the investigation, it is not possible to establish whether such reports were in fact ever created. No evidence of such an indexing system has been disclosed to the commission.
- 4.48 What can be said is that a request for a report would not always result in the creation of a new document: the response may have been verbal, with no written record; or it may have taken the form of a note added to a copy of an existing letter, job sheet or other document. Sometimes such notes were handwritten on the reverse side of the document, rather than on its face.

Investigation reports

- 4.49 The final report, usually made at the conclusion of an investigation and often referred to as "the investigation report", was the responsibility of the district

officer for the area where the crime was committed. Section 44.2(7) of the Garda Code (1965 edition) states:

“Whether or not the investigating officer [from Headquarters] remains until the conclusion of the investigation, the district officer will be responsible for reporting the case to Commissioner, C.1 and to the State Solicitor for presentation in court. While the investigating officer remains in the district, the district officer will have his assistance in preparing his reports.”

In the case of a serious crime committed in the Dublin Metropolitan Area, responsibility for the final report lay with the Chief Superintendent in charge of Crime, who in 1974 was Chief Superintendent Joy.

- 4.50 The report contemplated in the Garda Code (1965 edition) relates to a situation where the investigation has identified a suspect or suspects and where a file is sent to the Attorney General or, after the coming into force of the Prosecution of Offences Act 1974, to the DPP to direct charges or to decline to do so. The Garda Code (1965 edition) makes no provision for a report where sufficient evidence has not been forthcoming to warrant charges. Such was the case in relation to the Dublin and Monaghan bombings investigations.
- 4.51 According to the material made available to the commission, the investigation report into the Monaghan bombings was completed on 7 July 1974. The commission is satisfied that this report was drafted substantially by D/Sgt Browne, the investigating officer from the Technical Bureau who had been assigned to assist with the Monaghan investigation. The report was signed by the district officer in Monaghan, in accordance with the formalities laid down in s.44.2(7) of the Garda Code (1965 edition).¹⁶
- 4.52 A report which has come to be referred to as the Dublin investigation report was completed one month later, on 9 August 1974. It was signed by Chief Superintendent Joy.

Exhibits

- 4.53 In addition to keeping control of all documentation received and generated by the investigation team, it is also necessary for those engaged in the investigation of serious crime to maintain careful and accurate records of any physical item discovered in the course of the investigation which the investigators considered would, if the case were to go forward for trial, be required as an exhibit in such a trial. The Manual of Criminal Investigation (1946 edition) states:

¹⁶ See para. 4.49 above.

“In the case of articles which are likely to be used as exhibits in Court proceedings, it is essential that a careful record be kept of the transfers of the articles from the possession of one member to another. In such cases a transfer record should be kept for each article, under the following headings:

- name of article*
- description thereof and name of owner (if known)*
- date, time of transfer*
- from*
- to*

When a transfer is made, the member handing over an article should obtain and carefully preserve a receipt for the article.

When articles are sent to an expert for examination a list of the articles so forwarded, with a report indicating the nature of the examination required, should also be sent to him...

For Court proceedings, proof must always be available of the continued safe custody and possession or charge of each exhibit.”

Dublin

4.54 Under the heading, “Exhibits”, the Dublin investigation report states:

“All exhibits relating to the three scenes were taken charge of by Inspector [name given], Bridewell Station and his report and list of exhibits are in Appendix ‘O’.”

4.55 The report of the Garda Inspector who was placed in charge of the exhibits, which was attached to the Dublin investigation report and has been disclosed to the commission, is in the form of a table with the following headings:

Item	Description of Exhibit	Where found and date	By whom found	Passed to and date	Passed to and date	Passed to and date

4.56 The items listed came either from the bomb scenes or from the city morgue. The list contains personal items, shrapnel, pieces of metal and other objects, but does not include items taken from the scene by members of the ballistics section for forensic examination, such as the remains of the bomb cars themselves. It would seem that exhibits relating to the ballistics, photography, fingerprint and mapping sections went directly to those sections and were retained there, bypassing the exhibits officer.

Monaghan

- 4.57 There is no reference in the Monaghan investigation report, or in any other document disclosed to the commission, to the appointment of an exhibits officer for the Monaghan investigation. Nor has a list of exhibits relating to the Monaghan investigation been disclosed to the commission.
- 4.58 The failure to appoint an exhibits officer would plainly be a serious shortcoming in a criminal investigation. So also would be a failure to establish and maintain a list of potential exhibits. Such a list of exhibits is an essential record in any investigation and is necessary for the proper control of the possession and safe keeping of potential real evidence.
- 4.59 Based on the information disclosed to the commission, it could not be established whether or not an exhibits officer or a list of exhibits were created for the purposes of the Monaghan bombing investigation.

Chapter five

THE GARDA SÍOCHÁNA AND INTELLIGENCE

Introduction

5.1 Paragraph 3 of the commission's terms of reference, which concerns missing documentation, specifically mentions intelligence material as one of the categories of documentation to be examined by the commission. On a more general level, the commission is satisfied that none of the issues raised in the commission's terms of reference could be adequately addressed without first gaining an understanding of the following aspects of 'intelligence':

- i) The meaning or meanings of what is referred to in Garda, Army and other relevant documents as "intelligence";
- ii) The role of intelligence in a criminal investigation by the Garda Síochána in 1974; and
- iii) The functioning of that section of the Garda Síochána specifically concerned with intelligence – Crime & Security branch, also known as C3.

The Garda Síochána and State security

5.2 Since the founding of the State the Garda Síochána has operated a security function presumably as an adjunct to, or an aspect of its police function. It is difficult to reach any firm view about the origin or legal basis of the security function prior to the coming into force of the 2005 Act. However the Garda Síochána undoubtedly exercised such a function.

5.3 The Garda Síochána Act 2005 is the first piece of legislation to define comprehensively the functions and objectives of the Garda Síochána. Section 7 (1) of the Act provides:

"7.-(1) The function of the Garda Síochána is to provide policing and security services for the State with the objective of-

- (a) Preserving peace and public order,*
- (b) Protecting life and property,*
- (c) Vindicating the human rights of each individual,*
- (d) Protecting the security of the State,*

- (e) *Preventing crime,*
- (f) *Bringing criminals to justice, including by detecting and investigating crime, and*
- (g) *Regulating and controlling road traffic and improving road safety.”*

Definitions of intelligence

- 5.4 In order to discharge its functions effectively, the Garda Síochána must collect and process a wide range of information, some of which is or can be described as “intelligence”.
- 5.5 The concept, definition and practical parameters of what constitutes “intelligence” has been and continues to be the subject of a great deal of research and discussion in many jurisdictions.
- 5.6 In the first place, a distinction can be made between “raw” intelligence material – that is to say, information (or misinformation) that has not been processed or analysed in any way – and “processed” intelligence.
- 5.7 Some raw intelligence comes to the Gardaí from “open shelf” sources. Such sources include the print and broadcast media, members of the Garda Síochána carrying out their day-to-day functions and members of the public.
- 5.8 To add to their fund of information in serious cases where, for one reason or another, open shelf information is inadequate or suspect, the Garda Síochána may turn to secret or covert sources for further information. This information is obtained against the wishes and usually without the knowledge of the persons or organisations who are the originators and possessors of the information. Examples of such secret sources include paid informants, surveillance, and telephone tapping pursuant to the Interception of Postal Packets and Telecommunications Messages (Regulation) Act 1993.
- 5.9 The process of converting raw intelligence material into processed intelligence involves the following steps:

Validation

Having received the raw intelligence material the first step in the process of turning the raw material into intelligence is to seek to validate the material. Before the content of an intelligence report can be considered the validity of the process which led to the writing of the intelligence report must be examined. Raw intelligence may be second, third or fourth hand by the time it reaches C3. Each step in the chain of transmission must be objectively examined. Has the alleged source of the information in the intelligence report

furnished material before? Did it turn out to be correct? To what extent is the informant motivated by financial reward? Is the source facing prosecution himself and hoping to curry favour with the Gardai in the hope of having charges dropped? Is the source being manipulated by others? Does he have a personal grudge against the subject matter of the report? Does he or someone close to him stand to gain by passing false information to the Gardai? Is the content of the intelligence report internally consistent?

Analysis

At the analysis stage the factual material in an intelligence report is examined and placed in the context of other material accumulated over time and available to C3 dealing with the same or related subject matter. Analysis can be carried out meaningfully only by persons who are experts in the subject matter under consideration. This may have been a source of difficulty for C3 in attempting to analyse Northern Ireland material. Writing of the period with which the commission is concerned, Professor Eunan O’Halpin, Professor of Contemporary History at Trinity College, Dublin opines that;

“The RUC and British police forces needed access to Garda intelligence, and the Irish Government was plainly dependent on British and other friendly countries for information about arms smuggling and other republican activities outside Ireland, because it had no significant capacity itself to gather intelligence abroad. Similarly, the Irish authorities had little information on loyalist paramilitaries, who from time to time carried out cross-border bombings, and had no choice but to rely on the RUC for information.”¹⁷

Assessment

The assessment stage of the intelligence process is the stage when judgments have to be made on the appropriate conclusions to be drawn from the totality of the material being assessed. Where an intelligence report, as often happens, does not fit into an established pattern or extends the prior held picture in the unexpected way judgments fall to be made as to why this is so and whether new or newly interpreted material should be excluded from the picture or downgraded in importance. The utmost care must be taken as this stage to judge each element of the emerging picture by the same standard; not to allow judgments to be unduly influenced by a disposition, normal in human thinking but inappropriate in intelligence assessment, to judge or assess material, to select or prefer assessments that favour earlier conclusions. Both analysis and assessment of intelligence material requires not only a high

¹⁷ O’Halpin, *Defending Ireland: the Irish State and its enemies since 1922* (Oxford, 1999), p.330.

measure of expertise in the area of activity which is being assessed but a deep appreciation of the pitfalls which beset the analyst and assessor.

Distribution

Having been gathered, validated, analysed and assessed, the result of the process is made available to any section of the Garda Síochána or any unit within the Garda Síochána whose Garda function is likely to be enhanced by the product. In appropriate cases, it is made available to divisional officers and district officers of the Gardai and it may also be made available, subject to conditions as to onward disclosure, to other police forces, to the Government via the Department of Justice, and by way of contribution to EUROPOL's analytic work files.

Intelligence and the Garda Síochána

- 5.10 The primary Garda Síochána documents governing the conduct of a criminal investigation in 1974 were the Garda Code (1965 edition) and the Manual of Criminal Investigation, published in 1946. Neither the Garda Code nor the Manual of Criminal Investigation contain a definition of what constitutes intelligence material. However, the manual recognised the necessity for an effective system of liaison and exchange of information between the Gardaí involved in crime investigation and those Gardaí concerned with other policing duties and functions. The manual provides that:

“... members are usually detailed to particular duties upon which they concentrate their interest and energy. This specialisation often tends to make them ignore the fact that, irrespective of the duties upon which they may be employed, the detection and prevention of crime must always be regarded as a fundamental police duty in which each member should assist whenever it may be possible for him so to do. It is important that this primary responsibility should frequently be brought to the notice of those engaged in special duties, so that each member thus employed may realise the necessity of being on the alert for information likely to be of assistance in the prevention and detection of crime and so that he will transmit promptly to the appropriate persons any such information which he may obtain.”

- 5.11 The manual requires that this system of liaison and information *“... should always be regarded as of primary importance”* and should be *“...well organised and constantly supervised in order to ensure that it is efficiently and sufficiently utilised.”*

- 5.12 A key requirement of the intelligence gathering duty is the requirement to maintain a close watch over criminals and suspects, including the areas in which they reside or places to which they might have resort. The Gardaí were required to be discreet in this area of their duties, and these duties were to be carried out frequently.
- 5.13 The Gardaí were also required to cultivate relationships with persons who may have sources of information that might assist in the prevention or detection of crime.
- 5.14 On 3 December 1973, the then Garda Commissioner issued a circular to the Deputy Commissioner for the Dublin Metropolitan Area and to each divisional officer throughout the country which dealt with “*the acquisition and classification of information, in other words, intelligence work*” in the context of “*subversive activities that threaten the very foundation of the whole system under which we live.*” The circular exhorted all members of the Garda Síochána to engage in gathering intelligence material:

“Each member of the Force has the opportunity and should endeavour to acquire information on every aspect of activity in his area. Every member should be convinced that he has a role to play and that he is expected to make a genuine effort in this regard, particularly at the present time. Every bit of information gleaned or activity observed, no matter how insignificant it may appear, should be reported or recorded so that a general overall picture may emerge...

All ranks should be exhorted to make a determined effort to build up a sound intelligence system. Information gleaned will, through reports to Headquarters, be a basis for a National Information Pool which must lead to greater efficiency within the Force... Divisional Officers should regard it as an important part of their work to build up an efficient intelligence service within their respective Divisions, to collate and assess the information gathered and to pass on what is important to Headquarters.”

- 5.15 A useful summary of the structures for intelligence gathering in the Garda Síochána in 1974 is found in the third report of the Inquiry into State Security, chaired by Mr Justice T.A. Finlay, then a judge of the High Court. Under the heading “*Organisation and working of Garda intelligence*” the report (dated 26 February 1974 and referred to in this report as the Finlay Report) states as follows:

“Outside the Dublin metropolitan area the responsibility for Intelligence work in each Division (there are seventeen) is that of the Chief Superintendent who must, through his divisional force, compile all available information on illegal organisations and subversive activities generally within his area. Each member of the force, irrespective of rank,

is expected to make his contribution and all are reminded regularly by their officers of their responsibilities in this regard.

In addition to the uniformed Force, there is a Detective Unit in each Division under a Detective Sergeant. In Cork East Riding and Limerick Divisions the Unit is headed by a Detective Inspector...

All members [of the detective units] are expected to travel through their respective areas keeping in close touch with the uniformed Force, establishing and maintaining their own contacts and co-relating all information collected...

The Divisional Officer receives reports from members of the uniformed force and Detective Branch Unit through the local Superintendents. Having examined and evaluated same he reports to C-3. In addition each Divisional Officer submits a comprehensive report, known as the monthly confidential report in which is embodied all information regarding subversive organisations and their activities together with other information e.g. strikes, trade disputes, agrarian troubles etc. of interest to C-3.

Outside the Dublin Metropolitan Area members of Detective Units are dual purpose police. They are prime investigators of ordinary crime, and their strength, apart from Cork ER, Limerick and Louth / Meath has remained static over the years.

In the Dublin Metropolitan Area the responsibility for this work rests with the Chief Superintendent in charge of the Special Detective Unit (S.D.U.)... ”

Crime & Security (C3)

5.16 The passage from the Finlay Report quoted at paragraph 5.7 above envisages a hierarchical structure in which intelligence is passed from Gardaí on the ground to their superiors at district and then divisional office level. From there, if deemed of sufficient importance, the intelligence material is sent to Garda Headquarters, to be processed by the branch of the Garda Síochána known in 1974 as Crime & Security (C3). The Finlay Report summarised the main responsibilities of C3 as being:

- 1) *All matters relating to subversive and allied organisations mainly IRA / Sinn Féin, Saor Éire, Communist other Republican / left wing and student groups and in recent times foreign guerrilla organisations now operating on an international scale – also Northern Ireland extremist groups, U.V.F., U.D.A. etc.*

- 2) *To assess, evaluate, co-relate and distribute information concerning the personnel and different fields of activity of these organisations.*
- 3) *To direct preventive measures and Garda action to deal with anticipated problems arising out of the activities of these organisations.*
- 4) *To ensure the maintenance and effective operation of the different aspects of the Garda Intelligence System.*
- 5) *To examine investigation files, crime reports and court files concerning outrages, crimes, incidents etc., carried out by members of these organisations.*
- 6) *Liaison and co-operation with other intelligence agencies in connection with subversive activities and[the] security of the State, i.e. Army Intelligence or intelligence branches of other police forces.*
- 7) *To co-relate and assess reports from all sources including newspapers and periodicals so that a true picture of subversive activities or general trends throughout the country may be readily seen and suitable advice and instruction issued to the force as called for.*
- 8) *Completion of records, recording and circulating information regarding movements and activities of members of subversive organisations, suspect cars etc.*
- 9) *Implementation and direction of all Garda duties and counter-measures necessary for security, protection of President, Ministers of State, visiting V.I.Ps., foreign Ambassadors and Embassies, Government Buildings, prisons etc. etc.*
- 10) *Security arrangements for Ministers travelling to England and Northern Ireland necessitating close touch with counterparts in London and Belfast.”*

5.17 As can be seen from the above list, the primary task of C3 in 1974 was to collate, co-relate, assess, evaluate and distribute appropriately, intelligence on subversive threats to the State. A secondary, related task was to monitor and review the effectiveness of Garda intelligence gathering practices.

5.18 Members of C3 did not go out themselves to gather intelligence material. They were reliant on other branches of the Garda Síochána – principally the Special Detective Unit and other detective units around the country – to provide them with such material. It was therefore of great importance to C3

and to the nation at large that all intelligence material with potential subversive connections be conveyed to C3.

5.19 A circular dated 11 July 1974 from the Commissioner, Crime Branch to each divisional officer indicates a serious concern with the limited volume of intelligence material being submitted to C3 from the divisional offices. The circular states:

“Despite the exhortations and appeals in this office circular of 3rd December 1973 for an all-out effort by the Force to seek for and report items of information regarding subversive activities, it is very disappointing to note that the amount of information reaching Crime Branch is but a mere trickle and falls very far short of what the situation would be if every member was making a genuine effort in this regard. The lack of flow may not be due to apathy on the part of members generally but rather to a failure to assess and evaluate properly particular items of information coming to hand. For instance, snippets of information may come to the notice of members in different areas, none of which in itself might appear of sufficient significance to justify a report to Headquarters but which might indicate a definite trend when correlated. To avoid missing out on an opportunity such as this, it must accordingly, again be impressed that all items having a subversive or unusual background, irrespective of whether they appear logical to a particular member, should be reported immediately for the information of this Branch.”

Garda manpower and resources

5.20 In addition to securing the co-operation of all members of the Garda Síochána as far as gathering information is concerned, the maintenance of an effective supply of intelligence material is also dependent on having the necessary manpower and resources to do so. The Finlay Report concluded that, as at February 1974, the manpower and resources available to the Garda Síochána for intelligence gathering were inadequate. The reasons for this conclusion were expressed in the report as follows:

“The efficiency of Garda intelligence against subversives depends on certain fundamental factors, that is to say:

- 1. A sufficient number of personnel exclusively or almost exclusively concerned with subversive activity or constant surveillance duty.*
- 2. A good flow of information from uniformed members of the Gardaí sufficiently well acquainted with their own particular area and persons residing there, to be alert to subversive activity and the movements and activities of subversive persons.*

3. *A full system of filing and indexing all information collected from every source with a sufficient and ready method of reference and cross reference.*
4. *A sufficient opportunity for experienced intelligence officers freed from other duties to review and co-relate the information so obtained as a constant task.*

In my view the present strength, structure and organisation of the Special Detective Unit, the Detective Force outside the metropolitan area and the Hqs. of C-3 Branch fails adequately to provide these factors.

This failure is not in my view due to any lack of dedication or skill amongst the personnel of any of these sections of the Garda. On the contrary, my opinion is as a result of my investigation that in the last three years these units with a very small increase of strength have dealt with the greatly increased workload extremely well.

What has however, caused this inadequacy is the following circumstances:

1. *With regard to the Special Detective Unit...*

Having regard to the size of the Dublin Metropolitan area as now constituted and to the known number of subversives contained in it, I am satisfied that the number of members of the S.D.U. on this type of surveillance and inquiry duty, is insufficient for the maintenance of a sufficiently good flow of intelligence with regard to subversive activity in the area.

2. *... For the gathering of intelligence concerning subversive activities, the Detective units outside the metropolitan area are even more dependent upon information obtained from the uniformed force than in the city.*

Certain factors have inevitably made the uniformed force a less effective intelligence collection agency than they previously were...

These factors coupled with the strength and organisation of the Detective force outside the metropolitan area make it a less effective Intelligence Unit against subversives than is desirable...

I am satisfied that the total staff available to the Headquarters of C-3 Branch for dealing with the increased tasks thus arising which is 14 including the Chief Superintendent in charge, is inadequate and that as a result the filing, indexing and co-relation of information obtained has fallen below the adequate and proper standard.

3. *By reason of the work load at present imposed both on the Chief Superintendent in charge of the C-3 Branch and upon the Assistant Commissioner in charge of C-3 who is also in charge of C-1 Branch dealing with ordinary crime, C-2 Branch dealing with legal offences, C-4 Branch dealing with technical bureau, C-5 Branch dealing with weights and measures, it is not possible for either the Assistant Commissioner concerned nor for the Chief Superintendent to make anything like sufficient visits by way of inspection or observation outside the metropolitan area or to carry out sufficient or adequate supervision of the Detective units working in those areas. I am satisfied that the Garda Síochána are conscious of the shortage of manpower at present existing in the units to which I have above referred and that there are at present active proposals for increasing the strength and altering and improving the organisation.*

...The prime importance of an intelligence service within the Garda Síochána capable of identifying subversive activity and its threats in my opinion makes absolutely essential a reorganisation and increase in the strength of these units...

I conclude and recommend that this strengthening and reorganisation should take place without delay and that in particular it should not be held over until additional new recruits now being introduced into the Garda Síochána have been fully trained and made operative.”

5.21 This report of the Inquiry into State Security was delivered to the Taoiseach by Mr. Justice Finlay on 26 February 1974. The commission has been unable to establish whether this strengthening or reorganising of the Garda Síochána as recommended by Mr. Justice Finlay had taken place by the time the Dublin and Monaghan bombings occurred on 17 May 1974.

5.22 The efficiency of the Garda intelligence system as a whole is dependent not only on the supply of intelligence material, but also on having the necessary manpower to process and evaluate such material. The Finlay Report had the following to say concerning the resources available to C3 as of February 1974:

“To deal with all the duties and responsibilities of C-3 there is a staff of 1 C/Supt, 1 Supt, 1 D/Insp, 2 D/Sergts and 9 D/Gardaí – out of which two Gardaí (and very often three) are whole time typists. The Chief Supt and Supt occupy the same office. The remainder of the staff all work in one large room.”

5.23 The Judge noted that in the year 1970 C-3 had opened 55 new files, in 1971 that number had risen to 89 new files, in 1972 the number of new files opened was 1595, and in 1973 the number of new files was 1575. The Judge

concluded generally that “...the filing, indexing and co-relation of information obtained has fallen below the adequate and proper standard.” The Judge expressed his view that “[the] prime importance of an intelligence service within the Garda Síochána in my opinion makes absolutely essential a reorganisation and increase in the strength of [C-3].”

5.24 The judge was also seriously concerned with the working conditions of those Gardaí who were working in C-3 stating:

“A minor but not unimportant feature of the type of re-organisation which I have in this part of the report recommended is that significantly better office facilities should immediately be made available particularly to the headquarters of C-3 Branch so that working conditions may be improved which would facilitate an increase in efficiency.”

5.25 The judge also expressed concern at the shortage of Gardaí available to carry out the related, but quite separate task of reviewing and co-relating security and intelligence material in C-3 files. Mr Justice Finlay (as he then was) expressed the view that the efficiency of Garda intelligence depended fundamentally on:

“A sufficient opportunity for experienced intelligence officers freed from other duties to review and co-relate the information so obtained as a constant task.”

5.26 Based upon the findings of the Finlay Report, the commission is satisfied that in the months leading up to the Dublin and Monaghan bombings of 17 May 1974 the security and intelligence filing aspect of the Garda Síochána was under-resourced, badly organised, operating in sub-standard facilities, and failing to meet an adequate and proper standard.

5.27 The commission is satisfied that these identified deficiencies in the security and intelligence function of the Garda Síochána had been made known to the State in the months before the Dublin and Monaghan bombings of 17 May 1974.

5.28 The commission is not satisfied that the identified deficiencies in the filing systems of C3 were rectified, either at the date of the Dublin and Monaghan bombings on 17 May 1974, or during the subsequent criminal investigations into those bombings.

5.29 The commission considers that it is probable that this serious organisational deficit in C3 branch provided an inadequate standard of security and intelligence support to those Gardaí involved in the criminal investigations into the Dublin and Monaghan Bombings.

Chapter six

THE DUBLIN AND MONAGHAN BOMBING INVESTIGATIONS

Introduction

6.1 In its terms of reference, the commission is asked to take account of:

“Investigative work already undertaken into the Dublin and Monaghan bombings of 1974, including the Report of the Independent Commission of Inquiry, the Final Report of the Joint Committee on Justice, Equality, Defence and Women’s Rights, Inquest Statements and the Internal Garda Investigation.”

6.2 What is meant by *“the Internal Garda Investigation”* is unclear. The final report of the Oireachtas Joint Committee on the Dublin and Monaghan bombings makes reference to an internal inquiry established by the then Garda Commissioner at the request of Judge Barron, to seek to ascertain why the original investigations ceased when they did. However, as the Hamilton / Barron Report makes clear, there have been a number of other reviews and inquiries conducted by the Garda Síochána at different times in the years since the bombings. The commission believes it must take all of these into account, insofar as they are relevant to the questions raised in its terms of reference.

6.3 With this in mind, it is necessary to summarise, in chronological order, the various stages of the Garda investigations into the bombings, from 1974 until the present time.

The Garda investigations

6.4 The Garda investigations into the Dublin and Monaghan bombings began immediately after the bombs had been exploded on 17 May 1974, and continued for some months in both Dublin and Monaghan.

6.5 The completion of what are referred to by the Garda Síochána as the Monaghan and Dublin investigation reports, on 7 July and 9 August 1974 respectively, may be taken to mark the end of a certain phase of the investigations, although they do not mark the end of all Garda inquiries in relation to the bombings.

6.6 The Hamilton / Barron report details a number of additional inquiries and investigations that were carried out by the Garda Síochána at various times between August 1974 and January 1979. These inquiries did not arise from

any review of the existing information available to Gardaí, but each was prompted either by new information received from confidential sources, or by new sightings in the State of possible suspects for the bombings. The commission has considered these inquiries in the context of the question raised in paragraph 1 of its terms of reference – “Why the Garda investigation into the Dublin and Monaghan bombings was wound down in 1974?” – which is addressed in chapter 7 of this report.

- 6.7 The commission is satisfied that between 1980 and 1987, no new information relevant to the Dublin and Monaghan bombings investigation was added to the Garda files disclosed to the commission concerning that investigation.

Information from a former British Army officer

- 6.8 In May 1984, over three consecutive issues, the *New Statesman* (a London periodical) published an article on a former British Army Captain Fred Holroyd. Captain Holroyd was also interviewed for two television programmes which were broadcast around this time.
- 6.9 Captain Holroyd had served in Northern Ireland as a Military Intelligence Officer from January 1974 until May 1975, when he was removed from his post and from Northern Ireland. He later resigned from the British Army. The circumstances of his removal from Northern Ireland, and the reasons for it, have been the subject of a continuing dispute between Captain Holroyd and the British Army.
- 6.10 In the print and broadcast media, Captain Holroyd contended that during his time in Northern Ireland, elements of the British security forces in Northern Ireland had been involved in subversive activity both in Northern Ireland and in this jurisdiction. He referred to a number of incidents which he stated supported this claim. These allegations were the subject of a report by the Garda Síochána.
- 6.11 In January 1987 an *Irish Independent* article on Captain Holroyd repeated his allegations about “dirty tricks” by the British security forces in Northern Ireland. The *Irish Independent* article further claimed that Captain Holroyd and other British Army officers had been in regular contact with certain Gardaí on the border during the mid-1970s. These Gardaí were said in the newspaper article to have supplied the British Army with information and to have diverted security away from border areas in order to allow British soldiers to make incursions into the State and to conduct operations there, before returning to Northern Ireland. A Garda report on these allegations expressed the view that there was no substance in them. However, following a request by the Department of Justice, the Garda Síochána decided to

interview Captain Holroyd himself. The interview took place over three days in May 1987, and was the subject of a third Garda report.

- 6.12 In the course of being interviewed by members of the Garda Síochána in May 1987, Captain Holroyd at this stage claimed to have information concerning the Dublin and Monaghan bombings.
- 6.13 Following the interview with Captain Holroyd, the Garda Síochána made certain enquiries of the RUC concerning the material provided by Captain Holroyd to the Gardaí. The Garda Síochána report, which followed the interview with Captain Holroyd, stated that further enquiries were being undertaken by the Garda Síochána.
- 6.14 The Garda documentation disclosed to the commission does not establish the nature of the “further enquiries” or any results of these unspecified further inquiries.
- 6.15 The commission is satisfied, from the material disclosed to it, that the information provided by Captain Holroyd was not added to the Dublin and Monaghan investigation file; nor was it added to any Garda intelligence file disclosed to the commission and relating to the Dublin and Monaghan bombings.

Questions on the status of the investigation

- 6.16 No information or document disclosed to the commission gives any indication that investigative work was being carried out by the Garda Síochána into either the Dublin or Monaghan bombings between 1980 and 1991, with the sole exception of whatever inquiries may have been undertaken into former British Army Captain Fred Holroyd’s allegations in May 1987.
- 6.17 On 2 April 1993 a relative of one of the victims of the Dublin bombings wrote to the then Minister for Justice, asking if the case was closed on the Dublin bombings and what, if any, was the outcome of the investigations carried out by the Gardaí. This letter was forwarded to the Garda Síochána by the Department of Justice. On 6 May 1993, the Garda Síochána replied as follows:

*“The car bombings in Dublin city on 17/5/1974, in which [name given] died, were the subject of intense Garda investigations over a protracted period of time.
Responsibility for the bombings was claimed by a Northern Ireland loyalist organisation called ‘The Red Hand Brigade’.
The RUC assisted the Gardaí in the investigation.*

*The culprits have never been apprehended.
The files in this matter remain open and any new evidence coming to light is thoroughly investigated.”*

6.18 On 11 June 1993, the Minister wrote to the person who had written the letter of 2 April 1993, stating:

“The Garda authorities – to whom I referred your letter – inform me that the Dublin bombings were the subject of intensive Garda investigation over a protracted period. All possible leads were investigated. No charges have been brought in connection with the bombings but the Garda authorities have confirmed that their files on the case remain open and that any new information which becomes available will be thoroughly investigated.”

6.19 It is clear that the contents of the Minister’s letter are derived from information provided by the Garda Síochána to the Minister.

6.20 On 6 July 1993, Yorkshire Television broadcast a programme on the bombings entitled ‘*Hidden hand – the forgotten massacre*’. The programme named a number of individuals from Northern Ireland, whom it said were or should have been suspects for the bombings. The programme contained allegations that the Garda investigation team had met with a lack of co-operation from the RUC and queried whether the Irish and British governments had done everything in their power to expedite the Garda investigation. It also aired opinions from former members of the Garda Síochána, the Army and the British Army to the effect that the successful carrying out of an operation such as the Dublin and Monaghan bombings was beyond the capacity of loyalist subversive groups in Northern Ireland at the time of the bombings.

6.21 On the day following the broadcast, the then Minister for Justice was asked in the Dáil for her views on the issues highlighted in the programme, and whether she would make a statement on the matter. In the course of her reply in the Dáil, the Minister said:

“It has never been the practice to report to the House on the progress or findings of an ongoing Garda investigation but I can say that I have been assured by the Garda authorities that their files on these cases remain open. The Gardaí are at present considering the contents of last night’s programme with a view to assessing whether there are any matters which require further investigation.”

6.22 On 27 July 1993, meetings took place between the Minister for Justice and relatives of people killed in the Dublin bombings. A note of the meeting, disclosed to the commission by the Department of Justice, states:

“The Minister said that the Garda Commissioner had watched the Yorkshire Television programme a number of times, had gone over all the files (they had never been closed) and had completed the first half of his report. This had been submitted to the Secretary of the Department last week who, having studied it, will present a report to her. The Garda Commissioner had appointed a Detective Superintendent to investigate the programme and interview the programme makers. He was to gather together all the information that was available. His aim would be to try and secure evidence that would stand up in court.”

Inquiries arising from the Yorkshire Television programme

- 6.23 The Detective Superintendent appointed by the Commissioner to review the contents of the ‘Hidden Hand’ programme completed his final report on the matter on 25 November 1993. In that report he described his appointed task as follows:

“...to view the tape of the programme and to re-examine the files on the investigation and if necessary to interview the makers of that t.v. programme.”

- 6.24 A copy of the Detective Superintendent’s final report on the matter was sent by the Gardaí to the Department of Justice on 9 December 1993.

- 6.25 On 10 February 1994, the Secretary of the Department of Justice wrote to the then Garda Commissioner, raising a number of points concerning the information contained in the Detective Superintendent’s report. The letter contains the following passage:

“I want to stress that the examination of [the Detective Superintendent’s] report in this Department has not been done as a nit-picking or fault-finding exercise but merely to ensure that the report is such that the families could be assured that everything possible was done to bring the perpetrators to justice.”

- 6.26 The letter continued:

“As you will see one of the points raised is the desirability of referring the papers to the Director of Public Prosecutions. Although clearly you [the Garda Commissioner] are not in a position to recommend a prosecution to the Director of Public Prosecutions, it might, in the Minister’s view, offer some reassurance to the families and to the public generally to know that the Director has looked at the papers, agrees that all possible avenues of enquiry have been followed and is fully satisfied that there is not the required evidence to mount a prosecution...To save time you might

consider referring [the Detective Superintendent's] report (and earlier papers if necessary) to the Director at this stage in advance of whatever views you may be forwarding on the points raised."

6.27 Having considered the Minister's view, the then Garda Commissioner wrote to the DPP on 21 March 1994, stating:

"The Secretary, Department of Justice has now conveyed the Minister's proposal that [the Detective Superintendent's] report be referred to you with a view to you giving consideration to certain aspects of the matter. These aspects are contained in his letter of February 10, 1994 to the Commissioner, and in Departmental observations which accompany that letter.

Apart from the consideration mentioned I would appreciate knowing if you have any information which would indicate whether or not any papers regarding the bombings were ever submitted to your Office at any time since it was established.

I attach a copy of each of the following:

- *Letter from the Secretary [of the Department of Justice] of February 10, 1994.*
- *Departmental analysis, including observations, of [the Detective Superintendent's] report.*
- *[the Detective Superintendent's] report.*
- *Memorandum – Summary of Dublin and Monaghan bombings on the 17th May, 1974. (Prepared by Commissioner [name given], from the investigation files, for the Minister's information; December 9, 1993).*
- *Original investigation files (two)."*

6.28 From the material disclosed to the commission by the Director of Public Prosecutions, the commission is satisfied that the "*original investigation files*" provided to the DPP in March 1994 did not comprise the entirety of the Garda investigation papers on the bombings, but consisted of copies of the Garda reports of 9 August 1974 and 7 July 1974, concerning the Dublin and Monaghan investigations respectively.

6.29 The Garda Commissioner's letter and enclosures were received by the DPP on 22 March 1994. On 18 April 1994, the DPP wrote to the Garda Síochána, confirming that this was the first time any papers from the Garda investigation into the Dublin and Monaghan bombings had been sent to the DPP's office:

“After extensive checking we have been unable to trace any record of any papers relating to the above matter having been submitted to this Office at any time. Even without checking, I was satisfied that no such papers had come to my personal attention and it would be almost inconceivable that a file on such a matter would not have been referred to me if received here.”

6.30 Concerning the prospects for a prosecution in the case, the DPP wrote:

“I can state without hesitation that there is no evidence on which a prosecution could now be initiated. Neither is there any further line of enquiry which occurs to me which might alter this situation. I think it proper to add, lest the word ‘now’ in the second last sentence be misconstrued, that there was not, at any time since 1974, anywhere near sufficient evidence to warrant proceedings against any person.”

6.31 On 9 May 1994, the Department of Justice wrote to the Garda Commissioner expressing concern at the decision by the Detective Superintendent who had been appointed by the Garda Commissioner to review the contents of the ‘Hidden Hand’ television programme not to interview a number of specific persons who were named or featured in that programme. The Garda Commissioner reviewed the matter and directed that interviews with the persons in question should take place. This task was given to another Detective Superintendent in the Garda Síochána, who arranged for the interviews to be conducted. He reported the results to the Garda Commissioner in a document dated 13 June 1994. His report concluded:

“Having interviewed [the persons concerned], no new evidence has come to notice which would enhance investigations concerning the Dublin and Monaghan bombings of 1974.”

6.32 On 20 June 1994, the Garda Síochána wrote to the Department of Justice enclosing a copy of the Garda report of 13 June 1994. The letter from the Garda Síochána expressed agreement with the conclusions in that report, in the following terms:

“What [the persons interviewed] had to say or suggest did not in any way assist in developing the investigation of the Dublin / Monaghan bombings of 1974.”

He continued:

“In conclusion, I don’t see how we can, at this time take this investigation any further. It will, of course, remain an open case subject at any time to re-activation if any realistic developments occur.”

6.33 On 17 May 1995, a new Minister for Justice met with representatives of those killed and injured in the Dublin and Monaghan bombings. Following the

meeting, the Minister issued a statement which referred to the 'Hidden Hand' programme, the resulting Garda inquiries, and the views expressed by the DPP and by the Garda Síochána. The Minister's statement referred to the work done by the Garda Síochána following the Yorkshire Television programme as "new inquiries" and "the new Garda investigation", but also referred to the bombings in terms which suggested that the original investigations had not been closed:

"The Commissioner has also indicated that the crimes will, of course, remain an open case subject at any time to re-activation if any realistic developments occur..."

Garda files on these murders remain open, and if any lead should emerge which might bring the culprits to justice, it will be pursued rigorously."

Allegations of former RUC officer John Weir

6.34 John Weir is a former RUC Sergeant. From 1980 until 1992 he served a prison sentence for his role in the murder of one William Strathearn, who was shot at his home near Ahoghill, Ballymena on 18 April 1977.

6.35 On 3 January 1999 John Weir made a written statement in which he alleged that collusion between certain loyalist paramilitaries and certain elements in the security forces in Northern Ireland had resulted in a number of bombings and shootings which took place in Northern Ireland and in this jurisdiction during the mid-1970s. It also alleged that this group of individuals, which included members of an RUC Special Patrol Group to which Weir himself belonged in 1975/76, used a farm at a named location belonging to a named individual as a base for their operations.

6.36 In relation to the Dublin and Monaghan bombings, Weir stated:

"The explosives for both attacks had been provided by [a named UDR officer]. The bombs had been assembled at the farmhouse in [location given] which was owned by [a named RUC officer]. The main organiser of both attacks had been a loyalist paramilitary and UDR captain, [name given] from ... Co. Armagh. The bombs had been transported in cars from the farmhouse, with [3 named persons] taking part in the Dublin attack and [a named person] taking responsibility for the one in Monaghan. [This person] later told me, at a meeting in [the] farmhouse, that he had intended to place the Monaghan bomb outside a different bar in the town but that the Gardaí (police), who were completely unaware of what his gang was doing, had not allowed them to park at that location. Although these two bombings were among the worst atrocities of the Irish troubles, those responsible for them were never even questioned by the RUC, even

though both the RUC and Army Intelligence knew, within days of the bombings, the identities of the culprits.”

- 6.37 A copy of this statement by John Weir was passed by the RUC to the Garda Special Detective Unit on 6 March 1999. A Detective Chief Superintendent and a Detective Superintendent were given the task of investigating those of Weir’s allegations which pertained to crimes which had been committed in this jurisdiction.
- 6.38 On 24 March 1999, the Detective Superintendent in question completed a report entitled, “*Review of the Dublin and Monaghan bombings and other crimes of suspected loyalist origin in the Republic of Ireland.*” It contained summaries of the Garda investigations into the following crimes:
- the Dublin and Monaghan bombings on 17 May 1974;
 - the murder of John Francis Green at Comaghy, Castleblayney on 10 January 1975;
 - the bombing of Kay’s Tavern, Dundalk on 19 December 1975; and
 - the bombing of the Three Star Inn, Castleblayney on 7 March 1976.
- 6.39 Consequent upon this Garda report of 24 March 1999, John Weir was interviewed by Gardaí on 15 April 1999. Following the interview, Mr. Weir made a written statement in which he repeated his allegations concerning crimes committed by loyalist paramilitaries in this jurisdiction, though he admitted having “*no first-hand knowledge or evidence relating to any of the crimes committed in the Republic of Ireland.*”
- 6.40 On 13 June 2000, Gardaí completed a further report on John Weir’s allegations entitled: “*Review of the Dublin and Monaghan bombings and other crimes of suspected loyalist origin in the Republic of Ireland – formal RUC report.*” This further report concerned inquiries carried out into John Weir’s allegations by the Garda Síochána and by the RUC.
- 6.41 Following on from these inquiries, at the request of the Garda Síochána, a number of persons were detained and questioned by members of the RUC over a number of days in August 2000. The results of these interviews were reported to the Garda Síochána on 24 October 2000. Further inquiries by the RUC led to the questioning of another person by the RUC on 11 December 2000.
- 6.42 A subsequent Garda report dated 16 February 2001 summarised the results of the RUC interviews of August and December 2000.
- 6.43 The Garda report of 16 February 2001 ended with a recommendation that two other persons be interviewed. Again, a request was made to the RUC, who interviewed the persons concerned on 6 June and 5 July 2001 respectively.

The information obtained from these interviews did not further the investigation into the Dublin and Monaghan bombings.

- 6.44 There is a further Garda report disclosed to the commission which relates to the allegations made by John Weir. Signed but not dated, it appears to have been written some time in 2003. The report refers to a person who resided outside the jurisdiction, who was believed to visit the State frequently and whom the Gardaí wished to question in relation to John Weir's allegations. The Garda report gives the registration number and a description of the car used by the person concerned on these trips, stating:

“Discreet distribution of this number to specialist units working in the border areas have failed so far to locate this vehicle on a visit to the State. I recommend that this number be circulated to all operational units in Cavan / Monaghan and Louth / Meath as a ‘vehicle of interest to Crime and Security in furtherance of investigations into subversive activity’ with the instructions to stop, search and identify the occupants and to contact this author or an appropriate officer in the Division of Cavan / Monaghan before releasing them.

I request that the Divisional Officers in Drogheda and Monaghan be briefed about this strategy.”

- 6.45 The documentation disclosed to the commission shows that the relevant Divisional Officers were so briefed, but there are no further developments recorded or reported on this matter.

Investigations prompted by the Hamilton / Barron Inquiry

- 6.46 The Hamilton / Barron Inquiry, began work on the 1 February 2000. The Inquiry was not established under the Tribunals of Inquiry (Evidence) Act 1921, and had no powers to compel the disclosure of evidence or the attendance of witnesses. Its work was conducted in private, without public hearings. The Hamilton / Barron Inquiry submitted its report on the Dublin / Monaghan bombings to the Taoiseach in December 2003.

- 6.47 The terms of reference of the Hamilton / Barron Inquiry were as follows:

“To undertake a thorough examination, involving fact finding and assessment, of all aspects of the Dublin / Monaghan bombings and their sequel, including

- the facts, circumstances, causes and perpetrators of the bombings;*

- *the nature, extent and adequacy of the Garda investigation, including the co-operation with and from the relevant authorities in Northern Ireland and the handling of evidence, including the scientific analyses of forensic evidence;*
- *the reasons why no prosecution took place, including whether and if so, by whom and to what extent the investigations were impeded; and*
- *the issues raised by the Hidden Hand T.V. documentary broadcast in 1993.*

The ‘Dublin / Monaghan bombings’ refer to

the bomb explosions that took place in Parnell Street, Talbot Street and South Leinster Street, Dublin, on 17 May, 1974

the bomb explosion that took place in North Street, Monaghan, on 17 May, 1974.”

6.48 From the outset, the Hamilton / Barron Inquiry received assurances of co-operation from the Garda Síochána, who appointed a liaison officer to deal with any requests the Inquiry might wish to make of the Garda Síochána. The work of the Hamilton / Barron Inquiry led to further work by the Garda Síochána in three principal areas relating to the bombings:

- (1) Requests from the Hamilton / Barron Inquiry to see all documentation relevant to its terms of reference resulted in a series of searches by the Gardaí at Garda Headquarters and local stations. These searches revealed gaps in the Garda documentary record, and also pointed up inadequacies in the manner in which the investigation papers had been filed and stored since 1974.
- (2) At a meeting with the Garda Commissioner on 5 December 2000, Judge Barron asked for a report from the Garda Síochána on the question of why the investigations into the Dublin and Monaghan bombings closed when they did. On 27 April 2001, the Garda Síochána completed a report entitled: *“Ongoing review of the Garda investigation into bombing incidents which occurred in Dublin and Monaghan on 17th May 1974 and Dundalk on 19th December 1975.”* The report gave detailed results of interviews carried out with 12 former Garda members during April 2001. Concerning the question asked by the Barron Inquiry, the report stated:

“All persons interviewed were asked why the enquiries were wound up so quickly and they expressed no view on the matter

except to say that a large number of Gardaí were employed on these investigations.”

- (3) In November 2000, following information received from a retired member of the Garda Síochána, the Hamilton / Barron Inquiry requested that Gardaí find and interview a named person who is mentioned in Garda documentation arising from the investigations into the Dublin and Monaghan bombings.

6.49 The publication of the Hamilton / Barron report into the Dublin and Monaghan bombings, and the related hearings and reports of the Oireachtas Joint Committee on Justice, Equality, Defence and Women’s Rights, formed part of a process which led to the establishment of this commission and the formulating of its terms of reference. The commission now turns to examine the issues raised in those terms of reference, beginning with the question asked in paragraph 1, namely: *“Why the Garda investigation into the Dublin and Monaghan bombings was wound down in 1974?”*

Chapter seven

WHY THE GARDA INVESTIGATION INTO THE BOMBINGS WAS WOUND DOWN IN 1974

Introduction

7.1 The question asked in paragraph 1 of the commission's terms of reference is:

“Why the Garda investigation into the Dublin and Monaghan bombings was wound down in 1974.”

7.2 It is not clear whether the phrase “wound down” in this context refers to the closing down of the investigation altogether, or simply to a gradual lessening of intensity in the Garda investigation.

7.3 As with all matters in the terms of reference, the commission is asked to take account of investigative work already undertaken into the Dublin and Monaghan bombings of 1974, including the report of the Hamilton / Barron Inquiry, the Final Report of the Oireachtas Joint Committee on Justice, Equality, Defence and Women's Rights, the Inquest statements and the Internal Garda Investigation.

Primary stage of the investigation (May-June 1974)

7.4 The Garda Manual of Criminal Investigation (1946 edition) divides the investigative process into primary and secondary stages. The manual describes the primary stage of an investigation as consisting of:

- (1) The preliminary investigation which usually is conducted at the scene of the crime;
- (2) The immediate action taken for the apprehension of the offender from information obtained at the scene of the crime or otherwise; and
- (3) If no result is achieved by the immediate action taken, the preparation of an ‘Information’ for transmission to other police units to obtain, when necessary, their assistance.

7.5 The secondary stage is described as follows:

“When the primary stages of an investigation have been concluded, and it appears that no immediate success is likely to be achieved, the facts of the

case should be reviewed, the evidence analysed and further lines of enquiry determined. Personnel should then be allocated to each of these lines of enquiry.”

7.6 The investigations into the Dublin and Monaghan bombings can clearly be described in those terms. The first phase consisted of the immediate efforts to apprehend the perpetrators (through road blocks, checks on vehicles and such like), followed by the gathering of as much evidence as possible in order to build up a comprehensive picture of what happened, how it happened, and who might have been responsible.

7.7 This evidence-gathering phase of the investigation was heavily labour-intensive, as the following list of tasks accomplished immediately after the bombings demonstrates:

- identifying the dead and the injured victims of the bombings;
- collecting, recording, storing and examining items taken from the bomb scenes (such as debris, clothing and other personal items);
- making enquiries at all houses and businesses in the vicinity of the bomb scenes;
- tracing, interviewing and taking statements from eyewitnesses;
- tracing the ownership and movements of all cars parked near the bomb scenes;
- inquiring into the movements of all English and Northern Ireland-registered vehicles in Dublin and Monaghan between 16-18 May 1974;
- investigating all information received concerning suspicious persons or vehicles seen before or after the bombings;
- making lists of all persons who stayed in hotels, guest houses, bed-and-breakfasts etc. in the Dublin and Monaghan areas between the 16-18 May;
- taking evidence from traffic wardens on duty in Dublin on 17 May, regarding vehicles with Northern Ireland or British registration numbers parked in the city;
- recording and following up on information received from members of the public;
- approaching intelligence sources in the State and in Northern Ireland for information as to who might have been responsible for the attacks.

- 7.8 Carrying out these tasks quickly and efficiently required a large number of Gardai in both Dublin and Monaghan. In the case of Dublin, the inquiries were necessarily spread over an area far wider than the limited part of central Dublin where the bombs exploded, as the getaway route used by the bombers was unknown: they could have left the city in any direction; by car, bus, train or through the air and sea ports.
- 7.9 The evidence available to the commission suggests that this primary phase of gathering information was completed thoroughly and with great speed in both Dublin and Monaghan. To take one example: Garda records show that more than 80% of the 1152 statements collected by the Dublin investigation team were obtained within a fortnight of the attacks. A similar percentage applies to statements obtained in Monaghan.

The Dublin investigation

- 7.10 Clearly, it was necessary to have a large pool of officers attending conferences during the first few weeks of the Dublin investigation in order to co-ordinate the efforts of the Gardai carrying out the initial investigations. According to a Garda notebook entitled 'CONFERENCES', meetings were held by the Dublin investigation team on a daily basis from 18 May onwards.¹⁸ At the first conference, 43 officers are named in this notebook as having been present. This included representatives from a large number of Dublin Metropolitan Area stations, as well as members of the Central Detective Unit, the Technical Bureau and the Traffic Department.
- 7.11 Once this primary phase had been completed, there was no further need for many of the officers attached to local stations to continue attending the daily conferences. At a conference on 4 June 1974, the following note was recorded:

“Reduced staff to attend Conference from 5.6.74 and who will be available as required:

‘B’ District – D/Insp or Rep

‘C’ District – D/Insp or Rep

D/Insp. [name given]

D/Sgt [name given]

D/Gda [name given]

D/Sgt [name given] S.D.U.

Insp. [name given]

¹⁸ See para. 4.22 above.

D/Sgts. [name given] and [name given]

D/Inspr [name given] and D/Supt [name given] should attend conferences until such time as their particular enquiries are completed.

The staff in 'B' and 'C' Districts presently engaged in house to house check should continue until this aspect of enquiry is completed.

In the event of new developments which may require more staff the original members attached to the investigation will be recalled."

This decision was approved by Chief Superintendent Joy on 5 June 1974. It appears to mark the end of the primary stage of the Dublin investigation.

The Monaghan investigation

- 7.12 The Monaghan investigation followed a similar pattern to that in Dublin. A team of Gardai was assembled (the precise number is not known). Jobs were assigned and progress reviewed at daily conferences held in the incident room at Monaghan Garda station.
- 7.13 The Monaghan job book, which records jobs assigned from 18-25 May 1974, gives an indication of the kinds of jobs that were undertaken in the primary phase of this investigation. Reports were sought from customs, police and army checkpoints and patrols on both sides of the border; house-to-house inquiries were conducted in Monaghan town; statements were taken from eyewitnesses and others, and inquiries were made concerning all vehicles in the vicinity of the bomb scene. Instructions were also given that all members of the Provisional IRA in the town and surrounding area be interviewed, to ascertain if they knew anything about the bombing. The last date on which jobs to be done were entered in the Monaghan job book was 25 May 1974.
- 7.14 The precise date on which this primary phase of the Monaghan investigation was completed cannot be established from the information available to the commission, but it seems reasonable to conclude that by early June, all of the most labour-intensive inquiries had been completed. That being so, one would expect many, if not most of the Gardai assigned to the investigation team to return to their ordinary duties; leaving the detectives to carry out the next phase of the investigation. If additional manpower was needed for any new line of inquiry, it could always be requisitioned.
- 7.15 As a matter of evidence, there is nothing in the Garda material disclosed to the commission to show that the Monaghan investigation team did undergo a reduction in numbers.

Secondary stage of the investigation (June-August 1974)

7.16 According to the Manual of Criminal Investigation (1946), a criminal investigation enters the secondary stage if it appears, following the conclusion of the initial, labour-intensive stage of gathering evidence, that no immediate success is likely to be achieved. The tasks involved in the secondary stage of a criminal investigation are as follows:

- (1) To assemble and maintain the available evidence in a form that facilitates further detective work;
- (2) To review that evidence, identifying leads meriting further inquiry and assigning members to carry out those inquiries;
- (3) To build a profile of all suspects for the crime, gathering as much information as possible about them;
- (4) If possible, to detain and question suspects, holding identification parades where appropriate.

The kind of work involved at this stage of an investigation is best done by a relatively small team of experienced detectives, with the assistance of one or more members to preserve and manage documentation. It does not require the same numbers of rank-and-file Gardai as would have taken part in the initial phase of the investigation.

Analysis of documentation

7.17 When one speaks of reviewing or analysing the evidence obtained during the primary phase of the investigation, there are two aspects to be considered. The first task involves identifying gaps in the evidence. This could entail getting more detailed information from a witness; getting corroboration from other witnesses, conducting background checks on vehicles and their registered owners or seeking information on the location, movements and associates of potential suspects. Most of the jobs created during the secondary stage of the Dublin and Monaghan investigations related to inquiries of these types.

7.18 The second, more complex form of analysis involves drawing together information received from a variety of sources, in order to assess the totality of the evidence available against a given suspect or group of suspects, and also in the hope that new lines of possible inquiry might emerge from this process.

7.19 An example of this kind of analysis can be found in an undated, unsigned memo from a file entitled “*Misc. Dublin Bombs*”, disclosed by the Garda Síochána to the commission, which deals with three items of information received from three separate sources. The memo outlines the extent of Garda investigations in all three instances; draws attention to possible links between the three items of information and suggests some further inquiries which, in the view of the person writing the memo, should be made.

7.20 The commission found very few written examples of this kind of analysis in the papers disclosed to it by the Garda Síochána. But this does not mean that such analysis was not being done. In the first place, there may have been other, similar documents created in 1974 but which are now lost or destroyed. Secondly, the evidence before the commission suggests that this type of analytical work usually took the form of discussions amongst the members of the investigation team. The Manual of Criminal Investigation (1946) recommended this practice, but is silent about whether the contents or the results of such discussions should be recorded in writing. The Manual states:

“If satisfactory progress is not being made, the evidence should be reviewed at a conference of the members who are involved in the investigation, with a view to seeking new angles of approach and discovering any defects in the line of enquiry previously followed. An effective discussion may lead to a new line of action. The member in charge should not hesitate to explore the possibilities of a new line of investigation. This indeed is a feature which merits the closest attention.”
[emphasis added]

7.21 It may be (and appears to be the case from the material disclosed to the commission) that in 1974, the contents of such discussions were rarely noted, save to the extent that they might result in new job flyers being sent out, or in a letter being sent from the investigation team to the Garda Commissioner or other senior officers, informing those parties of decisions made. Even the current Garda manual on Crime Investigation Techniques (1994 edition) considers it sufficient to have “*brief notes*” taken of the matters dealt with at conferences.

Gathering information on suspects

7.22 The current Garda manual on Crime Investigation Techniques (1994), mentions two types of document relating to suspects, which should be kept by an investigation team. The first such document is a Suspect List, containing each suspect’s name, address, age, and the reasons why each is deemed to be a suspect. The second is a Suspect Elimination Form: this contains the same information as the Suspect List, with the addition of the name of the Garda

member who nominated the person as a suspect. The results of all enquiries made regarding the suspect and all statements pertaining to each of them are required to be attached at the back of the Form. A brief summary of the stage of elimination reached should be entered on the front of the Form and initialled and dated by the investigator concerned. The passage concludes:

“No suspect should be finally eliminated until the Officer in charge of the investigation and the investigator concerned, are satisfied beyond all doubt that [the particular suspect] could be safely eliminated.”¹⁹

7.23 In his oral evidence to the commission, the Garda Commissioner also referred to the current investigative practice of creating “suspect files”, stating:

“...early on in the stages you go along and take all the statements. You bring them in. They are collated then. They are read. If there are extra jobs to go out on them... that goes out to the investigators again... the suspects come in as a result of the intelligence gathered. Then a suspect file is given to investigators. Now what the investigator has to do then is to rule that person in or out of the crime. If the individual was not involved in the crime, you go into great detail... Not alone do you satisfy yourself, the investigator; you must convince those... officers leading the investigation that you have put that individual out of the equation in relation to that investigation, beyond doubt. If you cannot do that, someone else may very well be given the job.”²⁰

7.24 However, it is unclear to the commission whether the creation of such “suspect files” was an investigative practice in 1974. The Manual of Criminal Investigation (1946) did not require that any particular form of documentation in relation to nominated suspects should be generated. The commission has been unable to establish whether files on individual suspects were created by either the Dublin or the Monaghan investigation teams. There are intelligence files, originating with Crime and Security (C3) branch on some of the Dublin / Monaghan suspects, but none of these files were opened at the time of the original Garda investigation in 1974. The material contained in these intelligence files, together with the dates on which they were first opened, shows that it was not information relating to the Dublin or Monaghan bombings which led to C3 opening the files on these individuals.

7.25 What can be said is that a number of suspects were identified in the Dublin and Monaghan investigation reports, based on eyewitness statements and intelligence information received. Virtually all of these suspects were known or believed to reside outside the jurisdiction, although a small number of them were believed to travel into this jurisdiction from time to time. None of

¹⁹ Ibid.

²⁰ Transcript of evidence given by Garda Commissioner Mr. Noel Conroy to the commission, 20 December 2005.

the suspects appear to have been arrested by Gardai until August 1975, when one person was arrested, detained and questioned at Monaghan Garda station in relation to the Dublin and Monaghan bombings.

This person was not then, and has not since, been charged with any offence in connection with the Dublin or Monaghan bombings.

- 7.26 The original Garda investigations in Dublin and Monaghan did not lead to a prosecution, and no file was prepared for either the Attorney General or the DPP. This has been confirmed to the commission by the offices of both the Attorney General and the Director of Public Prosecutions.
- 7.27 A detailed report was completed by the Monaghan investigation team on 7 July 1974, and a report was completed in respect of the Dublin investigation on 9 August 1974. The reports summarised the progress of the investigations up until those dates. They are frequently referred to in later Garda documents as “the investigation reports”. For ease of reference, the commission has adopted this nomenclature, though it is somewhat misleading: the Garda investigations into the bombings did not end with the completion of these reports. On some occasions the reports have been referred to by Gardai as “the investigation file” – an even more misleading description, insofar as it implies that all documentation arising from the investigation is contained in or annexed to the reports.
- 7.28 The Dublin investigation report contains references to a number of continuing inquiries, some of which were not concluded until several months after the report itself was completed. These further inquiries include requests made to the RUC and in one instance, to the North Wales police force for information on a number of named suspects.
- 7.29 The Monaghan investigation report makes no reference to any ongoing enquiries, but Garda documentation disclosed to the commission shows that at least one further lead was followed up by Gardai in Monaghan after the Monaghan report had been completed.
- 7.30 The material disclosed to the commission by the Garda Siochana shows a marked diminution in Garda activity relating to the Dublin and Monaghan investigations once the two investigation reports had been completed.
- 7.31 However, there is nothing in the material disclosed to the commission to suggest that the Garda investigation was ever *formally* brought to a close. The Dublin investigation report concludes by stating:

“This investigation will continue and developments will be reported.”

7.32 The Monaghan report is more final in its conclusions; but it appears the reason for this is not that the investigation was deemed to be over, but that responsibility for continuing the investigation thereafter lay with the Gardai in charge of the Dublin investigation. This was made clear by the then Chief Superintendent in Monaghan when he appeared before the Coroner's court in May 2004 at the re-opened inquest into the bombings:

“Q. In terms then of the pursuit of suspects, the [Monaghan] report was furnished to Dublin?”

A. Yes.

Q. In terms then of deciding what action, if any, to take or to request, did that rest with Dublin or did it rest with the Garda Division in Monaghan?”

A. It rested in the main with Dublin. The bombings in Dublin and Monaghan were deemed to be interlinked.”

7.33 Detective Sergeant Colm Browne, who had managed the day-to-day operation of the Monaghan investigation and had written most of the Monaghan investigation report, gave evidence at the inquest to the effect that his own role in the investigation had effectively ceased once the Monaghan report was sent to Dublin:

“Q. As far as you are aware, the report you prepared was signed off and sent to Dublin?”

A. That is so.

Q. Any further action on that report you were no longer responsible for pursuing that investigation. Is that as I understand the matter?”

A. Well, I couldn't go any further with it.

Q. No, I can appreciate if you were assigned to other duties following the first four weeks, I am asking did you carry any ongoing responsibility for that file or had it passed from you?”

A. It would have passed from me then, yes.

Q. So the decisions devolved to others?”

A. They would have, yes.”

Winding down the investigation

- 7.34 As was explained in the previous chapter of this commission's report, there were two stages to a major criminal investigation in 1974. The primary stage was characterised by large numbers of Gardai carrying out the following kinds of essential investigative work – interviewing eyewitnesses, making house-to-house enquiries and the like. Once that work was completed, there was no need for as many Gardaí to remain assigned to the case: the investigation then became the province of a smaller group of experienced detectives.
- 7.35 The documentation disclosed to the commission indicates that the primary stage of the Dublin investigation was completed by the beginning of June 1974, and that a decision was taken at that point to reduce the number of Gardaí on the investigation team. Given the limited manpower at the disposal of the Garda Síochána and the workload which the Gardai bore at that time, this decision was, in the considered view of the commission, sensible, practical and in line with the standard procedures for a major criminal investigation.
- 7.36 Amongst the documents disclosed by the Garda Síochána to the commission is a note from Chief Superintendent Joy dated 9 July 1974 in which he writes:
- “The investigation unit engaged in the car bombings of 17.5.74 have returned to their stations.”*
- 7.37 The note is typed onto a copy of a letter from Crime & Security (C3) to C/Supt Joy, informing C/Supt Joy of a specific piece of confidential information received by Crime & Security concerning the Dublin bombings of 17 May 1974. C/Supt Joy's note is addressed to the Superintendents in charge of 'C' and 'D' districts, asking them to follow up on this information and to report back any results, *“negative or otherwise.”*
- 7.38 In writing that the investigation unit had returned to their stations, C/Supt Joy may have been referring to the reduction in manpower which took place at the end of the primary stage of the investigation, or possibly to the closure of the Incident Room in Dublin Castle. The commission does not have sufficient information to establish which explanation is correct. In particular, there is nothing in the material disclosed to the commission to indicate precisely when the Dublin or the Monaghan incident rooms were vacated by the investigation teams, or what happened to the documentation amassed by the investigation teams when each of the incident rooms was closed.

Why the investigation was wound down

- 7.39 In his statement to the commission, the Garda Commissioner made the following comments concerning this aspect of the commission's terms of reference:

“It is apparent to me in reading the investigation files into these atrocities that a great deal of energy and commitment from a large force of Gardai was expended during the course of these investigations. As with every major investigation there comes a point when the substantive portion of enquiries has been exhausted. It is often the case that enquiries cannot be taken any further at a particular point...”

In such circumstances senior officers in charge of investigations make a determination as to the scaling down of personnel associated with the enquiries. This is a matter of judgment based on experience and professionalism. The senior officer in charge of each investigation will, having considered the extent of enquiries carried out, the results of outcomes and the likelihood, if any, of progressing matters further will make a determination on scaling down such investigations, or not. There are many cases where thorough investigations are carried out by the Gardai and through no fault of theirs they are not in a position to provide evidence to support a prosecution or to submit a file to the law officers for consideration. From reading the Garda investigation files into the Dublin and Monaghan bombings, at this point in time, a reasonable view would be that they fall into this category.”

- 7.40 Put briefly, the Garda Commissioner's view as expressed to the commission was that the investigation was wound down because, in the opinion of the senior officers in charge, nothing else that could be done with the information then available to the Garda Síochána was likely to further the investigation.

- 7.41 This was also the view taken by the Detective Superintendent who was appointed to re-examine the Garda files on the investigation in July 1993, following the broadcast of the Yorkshire Television documentary, 'Hidden Hand, the forgotten massacre'. In his final report on that matter, dated 25 November 1993, the Detective Superintendent writes:

“I have found that the outrages were thoroughly and efficiently investigated and were pursued in so far as the available evidence would warrant.”

- 7.42 However, this view is not shared by the Hamilton / Barron Inquiry. The Inquiry's report on the Dublin and Monaghan bombings criticises the Garda handling of certain aspects of the investigation, stating:

“The Garda investigation failed to make full use of the information it obtained. Certain lines of inquiry that could have been pursued further in this jurisdiction were not pursued. There were other matters, including the questioning of suspects, in which the assistance of the RUC should have been requested, but was not.

The State was not equipped to conduct an adequate forensic analysis of the explosions. This was because the importance of preservation, prompt collection and analysis was not appreciated. The effect of this was that potentially vital clues were lost. For instance, if it could have been definitively established that the Dublin bombs were made purely from commercial explosives, that would have not have been typical of a loyalist paramilitary bomb.

Even if further evidence had become available, the ability to mount a successful prosecution would have been hampered. No proper chain of evidence exists either in respect of the forensic samples or in respect of the photographs. This is because records have been lost. It cannot be known at what point the chain was broken, but that in itself is indicative of a carelessness which reflected a belief that no one was ever likely to be brought to account for the bombings. This loss is all the more disappointing when one considers some of the other, much less important material which still exists.”

7.43 At paragraph 2.45 of its Final Report concerning the Dublin and Monaghan bombings, the Oireachtas Joint Committee on Justice, Equality, Defence and Women’s Rights recommended that an Inquiry with statutory powers be set up to inquire into the question which now constitutes paragraph 1 of this commission’s terms of reference.

7.44 The Oireachtas Joint Committee’s reasons for this recommendation appear to be based on the above-mentioned conclusions of the Hamilton / Barron report, as the following passage from the Oireachtas Joint Committee’s report demonstrates:

“The Barron Report at page 275 details certain specific criticisms relating to the Garda investigation. Nothing the Sub-Committee has heard detracts from these conclusions. They are:

- (i) That the Garda investigation failed to make full use of the information that it obtained, notably in relation to lines of enquiry and seeking to interview suspects.*
- (ii) That the State was not equipped to conduct an adequate forensic analysis of the explosions. Vital clues were lost by the failure to act promptly in the collection and preservation of evidence.*

- (iii) *That no proper chain of evidence was maintained and / or recorded in relation to the forensic samples or photographs. Critical forensic samples and photographs have as a result been lost or mislaid.*

As was pointed out repeatedly during the course of our deliberations by almost all of the interested parties, the Dublin / Monaghan bombings represent the single biggest atrocity in the history of this State. Despite this fact, the investigation was wound down in August 1974 at a time when it appears that the investigation teams were aware of:

- (i) *the size and probable composition of the bombs;*
- (ii) *the names of several persons whose photographic identities had been recognised with greater or lesser degrees of certainty by witnesses. They either connected them with the bomb cars or believed them to have been acting suspiciously, so that it was reasonable to infer that they may have been in some way involved in the bombings;*
- (iii) *the names of several persons whom the Garda authorities and other official sources, both here and elsewhere, believed to have been involved in the atrocities.”*

7.45 The issue which arises for consideration by the commission from the above passage from the Oireachtas Joint Committee’s report is whether the following factors might have contributed to the winding down of the Garda investigations in 1974:

- (i) A perceived failure to pursue certain inquiries in this jurisdiction;
- (ii) A perceived failure to pursue inquiries outside this jurisdiction through the assistance of the RUC;
- (iii) The flawed handling of the forensic aspects of the investigation; and
- (iv) The loss of Garda documentation, including the photograph albums shown to eyewitnesses with a view to identifying potential suspects.

Garda inquiries within the State

7.46 The commission is not asked to conduct its own investigation into the bombings, but to review the investigative work carried out by the Garda Siochana investigation teams.

- 7.47 The principal difficulty faced by the commission in that regard is that the information made available to the commission is not a comprehensive record of every inquiry carried out by the Garda Síochána concerning the Dublin and Monaghan bombings. This is partly due to the loss of an unquantifiable amount of Garda documentation in the years since the bombings took place, and partly due to the fact that some Garda inquiries, activities and discussions may not have resulted in a written record. Therefore, in every circumstance where a line of inquiry appears to have run into the sand, one cannot rule out the possibility that further developments did take place but were not recorded; or that a proper record was made but the record was subsequently lost.
- 7.48 Aside from the difficulties presented by inadequate documentation, there are other factors which adversely affect the commission's ability to review the investigative work carried out by the Garda Síochána into the bombings. In the first place, the detectives who carried out the bombing investigations had the opportunity of observing and assessing many witnesses in the flesh, whereas the commission is entirely dependent on an incomplete written record.
- 7.49 Secondly, the commission does not have enough information about the circumstances in which decisions were made by the investigation team to be able to judge them fairly. It is important to remember that Garda time and manpower were not unlimited; nor were the bombings the only significant demand placed on the Garda Síochána at the time. The months before and after the bombings were characterised by turmoil, political uncertainty and sectarian outrages on both sides of the border. The prevention of further attacks was an important concern and demand on the Gardai.
- 7.50 The detectives involved in the investigation of the Dublin and Monaghan bombings were obliged to follow every line of inquiry as far as possible, without knowing in advance whether anything of value would emerge. In practice, this meant assigning priority to certain tasks over others, and making decisions which in the circumstances could only be little more than professional guesses as to what leads might turn out to be significant.
- 7.51 To give a full account of every lead followed by the Dublin and Monaghan investigation teams would be beyond the scope of this report. The job flyers and job books record many hundreds of enquiries pursued by An Garda Síochána, most of which turned out to be fruitless. This is quite normal for a major criminal investigation.
- 7.52 That said, the Hamilton / Barron Report on the Dublin and Monaghan bombings identified a number of lines of enquiry which, on the basis of the information available to Judge Barron, convinced the judge that certain matters might not to have been pursued to the fullest extent possible. Three of these leads form the subject of paragraph 2 of the commission's terms of

reference, and are considered elsewhere in this report. However, in the interests of establishing why and when the Garda investigation came to an end, the commission has reviewed the information available to it on a number of other lines of enquiry which appear to have ended inconclusively.

7.53 From the information available to the commission, only one case stands out in which a significant number of enquiries could have been carried out within the jurisdiction, but apparently were not: it concerns information from an anonymous source about a lorry and three men sighted near the border at around 6.30 p.m. on the evening of the bombings. The details of the information were described at page 72 of the Hamilton / Barron report as follows:

“On 19 May 1974, a 999 telephone call was received at 10.30 p.m. The caller stated that he was employed as a long distance lorry driver. He said that at 6.30 p.m. on 17th May, 1974 after coming across the border at Carrickcarnan, Co. Louth [on the main Dundalk-Newry road] he saw a lorry parked on the roadway. He named the company who owned the lorry. He said that a Transit minibus pulled up in front of it and reversed back close to the cab. Three men jumped out of the minibus and got into the cab of the lorry. He thought they were changing their clothes. He was unable to describe the men, the minibus or the lorry, but claimed that the drivers for this particular haulage firm “were all in the UVF”.

The RUC were asked to investigate. Statements were obtained from the firm owner and from all his drivers with the exception of one, who was based in Dublin. The RUC report incorrectly said that this driver “does not operate on the Northern side.” In fact, though living in Dublin, he crossed the border regularly in the course of his work. On 17 May, customs records showed his lorry crossing the border from the Northern side at 2.30 p.m.

The Dublin investigation report stated that all of the drivers “including one who resides in Dun Laoghaire” were interviewed. This is also incorrect. There is no note or statement from the Dublin-based driver in the Garda files, and his name does not appear in the index to the jobs books.

One of the drivers interviewed admitted he was parked in a lay-by north of Dundalk between 4.30 and 8 p.m. He was singled out for mention in the Dublin report, but no comment was made.”

7.54 The Garda material disclosed to the commission on this matter contained a number of details which could have formed a basis for further inquiries by the Garda investigation team. Examples of such enquiries were set out in the Hamilton / Barron Report as follows:

“Unlike other instances where the Garda investigation team could do no more than to ask the RUC to act on their behalf, in this situation there were a number of leads to be followed up within this jurisdiction:

- (1) The driver in question crossed the border regularly in the course of his work. It would have been a simple matter to interview him in relation to his statement and if necessary, arrest and detain him. The same is true of all the other drivers of that company. This was not done.*
- (2) Finding (or at least confirming the existence of) the American girl whom he claimed was with him from 3 p.m. on 17 May until around 9 a.m. the following morning seems an obvious and key task. Yet neither the driver in question nor anyone else who may have met the girl were asked for a detailed description.*
- (3) From the first driver’s statement, there were a number of people who might have been able to confirm or deny the existence of his female companion. They included:*
 - the three drivers from his company whom he claimed to have met while in her company;*
 - staff at the pub where one of the drivers was supposed to have met him and the girl;*
 - staff at Beegin’s Customs Clearance and the Four Counties filling station;*
 - the English driver who ate with them in the Express Café;*
 - staff at the Express Café (in particular the named woman who gave the girl an address for possible lodgings)*
 - the named woman from whom the girl may have sought lodgings.*

All of these people either resided in or regularly visited the State, yet there is no record of any of them having been questioned by Gardaí.

The failure of Gardaí to question the driver who met them in the Crowing Cock pub is particularly mystifying. This man lived in Dun Laoghaire, Co. Dublin; he was the only driver from the company not to have been interviewed by the RUC; and he had allegedly spent half an hour or more in the company of the first driver and the girl.

- (4) *Appeals for other sightings of the driver, his vehicle and the girl could have been made via local and national media. An appeal could also have been made for the girl herself to come forward, in case she was still in the country. It seems this was not done.*”

- 7.55 An appeal could also have been made for the anonymous informant to contact Gardai again about the incident, with a view to getting more detailed descriptions from him of the persons and vehicles involved. This course of action was recommended in an unsigned, undated memo found in the Garda material disclosed to the commission, but the commission was unable to establish whether any action was taken on foot of this memo.
- 7.56 It is possible that a decision was made by the Garda investigation team not to pursue this line of inquiry further, but there is no evidence of such a decision in the material disclosed to the commission. Nor is it evident why such a decision would be taken.

Garda inquiries and the RUC

- 7.57 A central element of the criminal investigation of the Garda Siochana into these bombings was a belief on the part of the Gardai, based on information which they had, that most, if not all, of those responsible for these crimes were living outside the State and within the jurisdiction of the British courts.
- 7.58 The Irish Constitution at Article 3.1 provides that the territorial jurisdiction of Irish law extends only to the limits of the territory of the Irish state. Similarly, British law extends only to the territorial limits of Great Britain. The application of Irish law in the territory of Great Britain, if it arises at all in relation to the matters with which we are concerned, depends solely on the law of Great Britain.
- 7.59 This principle of territorial jurisdiction meant that the Garda Siochana, in attempting to investigate the circumstances of the Dublin and Monaghan bombings, were reliant on the voluntary co-operation of the police force in Northern Ireland to further any cross-border inquiries that the Gardai considered it appropriate to make. The Gardai had no power to enter Northern Ireland and conduct investigations on their own account.
- 7.60 The full extent of communication and co-operation between the Garda investigation teams and the RUC cannot be established, because of the inadequacy of the Garda documentary record. All that can be said is that in the documentation disclosed to the commission by the Garda Siochana, there are a number of instances when Gardai requested and received assistance from the RUC in relation to the Dublin and Monaghan bombing investigations.

- 7.61 For the most part, those requests fell into one of two categories: (i) inquiries about vehicles registered in Northern Ireland, and (ii) requests for further information about suspects or possible suspects for the bombings. Inquiries of the first kind were usually answered promptly; the same was not always true for inquiries of the second kind. Sooner or later, however, a reply was received. On receipt of a reply, the Garda investigation team might then decide to do any one of the following:
- (1) make further inquiries in this jurisdiction;
 - (2) make further inquiries of the RUC;
 - (3) do nothing further, on the basis that the particular line of inquiry was no longer relevant to the investigation;
 - (4) do nothing further, on the basis that all means of furthering the particular line of inquiry had been exhausted, at least for the time being; or
 - (5) do nothing further, because the likelihood of gaining any more substantive information from the RUC on the particular matter was not sufficiently high to justify a further request.
- 7.62 This last possibility emerges when one considers the investigation in the context of a broader, ongoing relationship between the Garda Síochána and the RUC. It seems clear that the RUC were the primary source of Garda information on subversives resident in Northern Ireland – particularly loyalist subversives. In order to keep this channel of information open, it was of great importance for the Garda Síochána to maintain good working relationships with the RUC as an organisation, and with individual members of the RUC.
- 7.63 In 1974, the police force in Northern Ireland was faced with a far greater number of sectarian killings to investigate than the Garda Síochána, in an environment where the police themselves were being actively targeted by subversive groups. In those circumstances, Gardai had to balance the likely value of any information sought against the possibility that repeated requests for information without a compelling evidential basis might place a strain on the Garda-RUC relationship, and thus risk reducing the prospect of future co-operation.
- 7.64 The main criticism made in the Hamilton / Barron report concerning Garda inquiries outside the jurisdiction, relates to the apparent failure to request that certain suspects be detained and questioned by the RUC on behalf of the Garda Síochána. The information available to the commission shows that in at least one instance, a decision was taken by the Dublin investigation team to attempt to arrest and interview a named person in this jurisdiction, rather than to request the RUC to arrest and interrogate him in Northern Ireland, although

the person in question ordinarily lived in Northern Ireland. There may have been other such instances, but the documentary record is unclear in this regard.

7.65 According to a memo of C/Supt Joy dated 25 February 1975 (cited in the Hamilton / Barron report), Gardai had received information that a named person, who was suspected by Gardai of having been involved in the Dublin bombings, occasionally crossed the border into the State. For this reason, and because both the RUC and the Gardai believed that little would be gained by interviewing this person in Northern Ireland, it was decided not to ask the RUC to question this named person. The Hamilton / Barron report continues:

“It seems that no further developments occurred. If [the named person] did cross the border again, he did so without the knowledge of Gardai stationed there.

A internal Department of Justice memo, written following the Garda review of the ‘Hidden Hand’ programme was rightly critical of this decision. It stated:

‘With regard to the Gardai’s hope that [the named person] could be detained in the State a number of points can be made. The first point is that while so hoping they could in the meantime have, with the RUC, interviewed [the named person] in the North – the two courses of action were not necessarily alternative. Secondly, this hope of interviewing [the named person] in the South was based on unconfirmed information that he occasionally visited Monaghan, Castleblayney and Dundalk. The third point – and more important – is that there is no indication that the decision to wait was ever reviewed – it became an indefinite wait.’

The reliability of identification evidence diminishes with the passing of time. The longer the delay, the more difficult it becomes to secure a reliable identification. This ‘wait-and-see’ tactic on the part of senior Gardai was flawed. C/Supt Joy records that Garda officers on the border were given [the named person]’s photograph; but there is no evidence that this was accompanied with any sense of urgency, of the importance of interviewing [the named person] as soon as possible.”

7.66 The commission does not accept the criticism of the Garda decision not to have this person interviewed by the RUC in Northern Ireland. The RUC themselves had told the Gardai that they (the RUC) were of the opinion that to interview the person in Northern Ireland would not be profitable. Gardai were entitled to take the view that such an interview would serve to forewarn the person in question of Garda suspicions and to inform him, in the course of the interview, of the material on which those Garda suspicions were based.

- 7.67 Nor was there any possibility of seeking this person's extradition from Northern Ireland: the law did not and does not permit extradition merely to question a suspect, and the Gardaí in 1974 did not have sufficient evidence to bring charges against this individual or, for that matter, against any other person in connection with the Dublin and Monaghan bombings.
- 7.68 In addition to these considerations, the law of extradition applicable in this jurisdiction and in Northern Ireland in 1974, and thereafter until the decision of the Supreme Court in *McGlinchey v. Wren* (1982 I.R. 154), would have made extradition from Northern Ireland to this jurisdiction highly unlikely were the 'political offence exception' to extradition to be raised. This exception to extradition applied where the offence on foot of which extradition was sought was, in the language of the Extradition Act 1965, "*a political offence or an offence connected with a political offence.*"
- 7.69 The question of whether sufficient resources were devoted to the task of arresting this person in this jurisdiction cannot be answered by the commission, because there is not enough information in the material disclosed to the commission to allow the commission to reach a conclusion as to what was or was not done by Gardai in this regard. Similarly, it is not possible to say what reviews, if any, of the decision not to have him interviewed by the RUC took place after the initial decision to forego a Northern Ireland arrest and questioning.
- 7.70 As for other incidents in which the RUC's assistance was requested, it is not possible to say with certainty what decisions, if any, were taken by the Garda Síochána in response to the information received as a result of the Garda requests for assistance from the RUC. The available material suggests that in some cases at least, nothing further was done by the Gardai following the receipt of information from the RUC, but this cannot be proven. Even if one could show beyond doubt that a decision not to act on a particular lead was taken, the reasons for that decision would remain obscure. Such reasons were rarely committed to paper, and the officers who directed the Dublin and Monaghan bombing investigations are all now dead.

The forensic investigation

- 7.71 The Hamilton / Barron Report made the following observations concerning the handling of forensic evidence in 1974:
- "*It is clear that forensic science was in its infancy in the Republic at that time. The State did not have a dedicated Forensic Science Laboratory until 1975. Prior to that, Dr Donovan was attached to the State Laboratory, which provided a wide range of services for different agencies including Customs and Excise and Agriculture. His forensic*

work for An Garda Síochána was undertaken in addition to his usual duties, and prior to May 1974 was limited to confirming the content of explosives seized by Gardaí.”

- *“D/Sgt Tom O'Connor (later Detective Inspector) was the officer in charge of the Ballistics Section. As both he and the officers in charge of the overall investigation are deceased, it is not possible to get a full picture of how the forensic investigation was conducted.”*
- *“The evidence ... suggests that a rigorous search for traces of the bomb mechanisms was conducted on the 17th and 18th May at each of the Dublin sites ... That no such traces were found is regrettable, but it does not necessarily reflect on the competence of the officers concerned.”*
- *“There is no doubt that the delay in delivering samples for forensic analysis fatally compromised the forensic investigation.”*
- *“It is now impossible to reconstruct an unbroken chain of custody for the debris which was sent to Belfast for forensic examination. But there is no evidence before the Inquiry to suggest that Gardaí in 1974 would have been unable to trace possession of the debris samples, in the event of anyone being charged with the bombings.”*
- *“As for the remaining debris, it appears that once the investigation was wound down, no particular attention was paid to it. The fragments that are still in the possession of the Gardai were found in an unmarked cupboard in Garda HQ, following an extensive search of the premises for documentary material relating to the bombings.”*

7.72

In his statement to the commission, the Garda Commissioner expressed the following view concerning the forensic aspects of the Garda investigation:

“In 1974 forensic science was in its infancy in this jurisdiction and consequently there was less forensic awareness or, indeed, facilities in existence within the State Laboratory. The Forensic Science Laboratory, now operating under the Department of Justice, Equality and Law Reform, had not yet been established. I am aware that reference has been made to the fact that, had the bomb materials reached the Forensic Science Service in Belfast within six hours, it may have been possible to have made certain comments regarding the type of explosives used and may have identified the [paramilitary] group associated with this type of explosive. I can readily identify with the absolute Garda priority to render immediate assistance to the injured in these types of atrocities and given the magnitude of the deaths and injuries sustained in these attacks, coupled with the immediate available resources, the transmission of materials

within such a tight timeframe to Belfast could not be regarded as reasonable or achievable, in all the circumstances.”

- 7.73 The commission has reviewed all the evidence available to it concerning the collection, handling and forensic analysis of material collected at the Dublin and Monaghan bomb scenes.
- 7.74 The gaps in the Garda record, the death of relevant Garda members and the limited value of such forensic findings as were made, mean that it is impossible to say whether a properly handled forensic investigation would have resulted in lines of inquiry which might have prolonged the life of the investigation.

Missing Garda documentation

- 7.75 It has been apparent since, at the latest, November 1993, when it was reported by a Detective Superintendent to the Garda Commissioner, in the context of allegations made by the Yorkshire Television programme ‘Hidden Hand,’ that documents were missing from the Dublin and Monaghan investigation papers. Further work in uncovering what documents were or appeared to be missing was carried out by the Garda Siochana at the request of the Hamilton / Barron Inquiry and the Oireachtas Joint Committee.
- 7.76 The third part of this commission’s terms of reference deals specifically with the issue of missing documentation. The commission’s findings in relation to what documents are missing and how they came to be missing will be dealt with in the section of this report which deals specifically with that aspect of the commission’s terms of reference.
- 7.77 In the present context, it is sufficient to note that the commission has been unable, on the basis of the information disclosed to it, to identify the time at which any given item of material generated or collected in the course of, or for the purpose of the Garda investigations into the Dublin and Monaghan bombings went missing. It is therefore impossible to say with any degree of confidence whether the loss of any document or documents affected the winding down of the Garda investigation in 1974.

Allegations of collusion and the winding down of the Garda investigations

- 7.78 The commission has received submissions from interested persons which included assertions of the existence of collusion on the part of persons in this State and persons in the United Kingdom in relation to certain aspects of the terms of reference of this investigation. In these submissions it has been argued that the commission should investigate whether or not there was

collusion that adversely affected the Garda investigations into the bombings in Dublin and Monaghan in May 1974.

- 7.79 The approach of the commission to this matter is the same as that adopted by the commission in relation to the other areas of this investigation. The commission proceeded from a position of keeping an open mind in the investigation, and has sought out evidence relevant to the matters detailed in the terms of reference.
- 7.80 The commission has made findings of fact only where such findings can reasonably be supported by evidence obtained in the investigation. The commission similarly has arrived at conclusions of fact based solely on such evidence.
- 7.81 An allegation of collusion is a very serious allegation and is a conclusion of fact that may only be properly made where it is supported by proven facts.
- 7.82 The commission is satisfied that there is no evidence available to it which is capable of establishing any connection between the collusion alleged and the ‘winding down’ of the Garda investigations into the Dublin and Monaghan bombings.

Conclusions

1. It is accepted by the commission and by the Garda Commissioner in his evidence to the commission that the investigation was “wound down” in 1974, in the sense that a substantial number of Gardai who had taken part in the early stages of the investigation were stood down, certainly from the Dublin investigations and probably from the Monaghan investigation, and returned to their stations of normal posting, subject to recall if investigative developments so required. However, the commission has seen no evidence of any formal or informal decision by the Garda Síochána to close down the investigations into the Dublin and Monaghan bombings.
2. The commission could not establish the dates on which the Dublin or the Monaghan investigation teams were finally disbanded, or the dates on which the incident rooms in Dublin or Monaghan ceased to be occupied or used for the purposes of the Dublin or the Monaghan investigation.
3. The Monaghan investigation report, dated 7 July 1974, appears on its face to have been intended as the final report of the Monaghan investigation team. Thereafter, responsibility for further investigation into the Monaghan bombing appears to have been transferred to the Gardai investigating the Dublin bombings.
4. The Dublin investigation report, dated 9 August 1974, may not have been intended as the final report of the Dublin investigation team. In fact, however, it

- was the last comprehensive Garda report on the investigation into the Dublin bombings.
5. In the latter stages of the investigations, decisions as to whether and how far to pursue a given line of inquiry were matters for the senior Gardai in charge of the investigations. Those decisions were made by experienced officers, who had to rely on their own judgment as to how best to further the overall investigation, given the limited information and resources available to them at the time.
 6. In attempting to assess whether the Garda investigation teams took all reasonable steps to pursue all appropriate lines of inquiry, the commission is hampered by inadequate information. This results from:
 - a. the loss or destruction of an unquantifiable amount of Garda documentation relevant to the Dublin and Monaghan bombings investigations and assembled for the purposes of those investigations;
 - b. a practice in the Garda Siochana in 1974 and thereafter of not committing decisions made in the course of an investigation to writing;
 - c. the fact that many of the key Garda personnel involved in the Dublin and Monaghan bombings investigations have died or have been unable to assist the commission due to old age, illness or failing memory; and
 - d. the unreliability of memory, due to the passage of more than thirty years since the bombings took place.
 7. Having reviewed the evidence available to it, the commission has identified only one 'lead' in which a significant number of enquiries could have been carried out in this jurisdiction but were not. This 'lead' concerns the alleged sighting by an unknown informant of a lorry and three men near the border on the evening of the bombings. The reasons why the enquiries identified by the commission were not carried out (assuming that they were not in fact carried out) could not be established.
 8. The full extent of communication and co-operation between the Garda investigation teams and the RUC cannot be established, because of the inadequacy of the Garda documentary record.
 9. Concerning the decision by the Garda investigation team not to have a particular suspect interviewed by the RUC in Northern Ireland,²¹ the commission concludes that there were good and adequate reasons for making such a decision at the time, and that it is highly probable that the Gardai made that decision with those reasons in mind, having considered all of the relevant factors.

²¹ See para. 7.63 above.

10. Concerning the forensic aspect of the investigations into the Dublin and Monaghan bombings, it is impossible to say, on the basis of the evidence made available to the commission, whether a properly handled forensic investigation would have resulted in lines of inquiry which might have prolonged the life of the investigation by helping the Gardai to advance further towards identifying and bringing to justice those responsible for either bombing.
11. Because the commission cannot identify the date on which any given item of documentation relating to the Dublin and Monaghan bombings went missing, it is impossible to say whether the winding down of the investigation in 1974 was affected by the loss or destruction of relevant documentation.
12. The commission is satisfied that there is no evidence available to it which is capable of establishing any connection between the collusion alleged and the 'winding down' of the Garda investigations into the Dublin and Monaghan bombings.

Reasons for conclusions

1. The commission has based its conclusions on the evidence, documentation and information provided to it by the Garda Síochána, as well as on all relevant submissions received by the commission, and also on the evidence provided to the commission by serving and retired members of the Garda Síochána.

Chapter eight

WHY THE GARDAÍ DID NOT FOLLOW UP ON CERTAIN LEADS

Introduction

- 8.1 The commission is required by paragraph 2 of its terms of reference to undertake a thorough investigation and make a report on the following specific matters considered by the Government to be of significant public concern:

“Why the Gardaí did not follow-up on the following leads:

- i. information that a white van, with an English registration plate, was parked outside the Department of Posts and Telegraphs in Portland Row and was later seen parked in the deep sea area of the B & I ferry port in Dublin, and the subsequent contact made with a British Army officer on a ferry boat leaving that port;*
- ii information relating to a man who stayed in the Four Courts Hotel between 15 and 17 May, 1974 and his contacts with the UVF;*
- iii information concerning a British Army corporal allegedly sighted in Dublin at the time of the bombings.”*

- 8.2 The commission is also required by the terms of reference to take account of investigative work already undertaken into the Dublin and Monaghan bombings of 1974, including the Hamilton / Barron Report on the bombings, the Final Report of the Oireachtas Joint Committee on Justice, Equality, Defence and Women’s Rights, the Inquest statements and the internal Garda investigation. Where these reports and materials contain statements or conclusions of fact the commission has similarly kept an open mind.

Interpreting the terms of reference

- 8.3 This element of the terms of reference is unusual in that the commission is required to proceed on the factual basis that the Garda Síochána did not follow up on the leads identified in paragraph 2 of the terms of reference when conducting their criminal investigation into the Dublin and Monaghan bombings of the 17th May 1974.

- 8.4 The commission has proceeded on the basis that *prima facie* this statement of fact is correct.
- 8.5 Nonetheless, the commission considers that it has a duty to retain an open mind on the question of whether or not this assertion of fact is correct in the light of the evidence available to the commission and on the balance of probabilities. If, after carrying out a thorough investigation, the commission is satisfied that the evidence available to the commission does not support the assertion of fact in paragraph 2 of the terms of reference then the commission considers that it has a duty to report that conclusion and will do so.
- 8.6 To suggest that the three leads in question were not followed up *at all* would be incorrect. The Hamilton / Barron Report made it clear that all three leads were investigated to some extent, and the material disclosed to the commission confirms this.
- 8.7 Having taken into account the findings of the Hamilton / Barron Report and the proceedings of the Oireachtas Joint Committee (from whose final report the language used in the commission's terms of reference is clearly derived), the commission understands paragraph 2 of the terms of reference to imply the following tasks:
- (1) To establish where and when the Garda investigations into these three 'leads' came to an end;
 - (2) To establish the reason or reasons why those inquiries stopped when they did; and
 - (3) To assess what additional steps, if any, could reasonably have been taken by An Garda Síochána to bring those inquiries beyond the point at which they stopped.

Problems of investigation

- 8.8 The Dublin and Monaghan bombings occurred more than thirty-two years ago. The pace of the commission's investigation has been dictated to a significant extent by the absence of potentially relevant documentation and information that the commission considers ought to have been available; the non-availability of material witnesses due to death, old age and illness; difficulties of recollection on the part of material witnesses due to efflux of time even in instances where there were contemporaneous witness statements or records; the absence of relevant collateral evidence and information concerned with the criminal investigations into the bombings, and quite remarkably, the absence of any effective and independent administrative, legal or statutory systems of accountability in relation to security and intelligence material.

- 8.9 The commission considers that it would be unfair and unjust to suggest that the Garda Síochána were solely responsible for the shortcomings that are identified in this investigation. The State had, and has, continuing constitutional and human rights obligations to the victims of these bombings, which were, and are, material to this investigation. The State also had, and still has, a duty to support and to be accountable for the discharge by the Garda Síochána of its policing functions.
- 8.10 It would be especially unfair and unjust to suggest that any shortcomings that are identified in this investigation are solely within the area of “operational” discretion and responsibility of the Garda Síochána and not matters properly of concern to the wider State. The Garda Síochána then and now operate in an administrative structure that was and is known to the State, in a constitutional and statutory context defined by the State, and within financial and other resource limits fixed by the State.
- 8.11 Finally, it is important to remember that decisions taken by the Garda investigation team in relation to the three leads specified in paragraph 2 of the terms of reference should not be viewed in isolation. These were not the only lines of inquiry being pursued at the time; nor were the Dublin / Monaghan bombings the only crime being investigated by An Garda Síochána in May 1974. The time, personnel and resources available to conduct investigations were not unlimited. This is not to minimise the human and political significance of the Dublin / Monaghan bombings: the calculated savagery of the attacks or the appalling cost to the victims. It is important nonetheless that any retrospective analysis of Garda actions take account of the circumstances as they then were, not as one might wish them to have been.

The role of the commission

The commission has been asked “*To undertake a thorough investigation and make a report*” on the matters specified in its terms of reference. It has not been asked to re-open the Garda investigation into the bombings, or to engage in work which is properly the sole province of the Garda Síochána. The commission does not possess any expertise or experience in detective work. Where the commission has pursued lines of inquiry, it has done so for two reasons:

- (i) To obtain the maximum factual information relevant to its terms of reference; and
- (ii) To seek evidence as to what the Garda investigation team in 1974 could reasonably have been expected to do in the way of investigating the ‘leads’ referred to in the commission’s terms of

reference, having regard to best Garda practices and standards of policing at that time.

Chapter nine

INFORMATION RELATING TO A WHITE VAN WITH AN ENGLISH REGISTRATION PLATE

Introduction

Paragraph 2 (i) of the commission's terms of reference requires the commission to undertake a thorough investigation and make a report on the following matter:

“Why the Gardai did not follow-up on the following leads... information that a white van, with an English registration plate, was parked outside the Department of Posts and Telegraphs in Portland Row and was later seen parked in the deep sea area of the B & I ferry port in Dublin, and the subsequent contact made with a British Army officer on a ferry boat leaving that port.”

This paragraph of the terms of reference links two pieces of information which may or may not be linked in actuality: the first is the sighting of a white van at Portland Row and later at the B. & I. ferry port in Dublin; the second is the alleged contact said to have been made with a British Army officer on a ferry boat the B. & I. ferry port in Dublin. Having examined all of the relevant information made available to it, the commission has reached a decision that these two matters warrant separate consideration by the commission.

As with all other matters in the terms of reference, the commission is asked to take account of investigative work already undertaken into the Dublin and Monaghan bombings of 1974, including the Report of the Independent Commission of Inquiry, the Final Report of the Joint Committee on Justice, Equality, Defence and Women's Rights, Inquest Statements and the Internal Garda Investigation.

The Hamilton / Barron Inquiry

The report of the Hamilton / Barron Inquiry into the Dublin and Monaghan bombings gives the following information about the matters referred to in this part of the commission's terms of reference:

“At lunchtime on the day of the bombings, Gardaí received a phone call concerning a white van with an English registration parked outside the Department of Posts and Telegraphs on Portland Row. The caller was worried that it might be a bomb. Garda records show that details of the alleged registration were taken but those numbers were shown later not to

have been issued. At around 5.10 p.m, they received a second call from the same person, and agreed to send somebody down to look at it. When two Gardaí arrived at the scene, they were met by the witness, who told them a man had driven the van away towards Sheriff Street. Shortly afterwards, the bombs went off. The witness called Gardaí several more times and at 6.30 p.m. a Garda car arrived and asked him to accompany them to the docks area. The witness saw the same van parked in the Deep Sea area of the B& I ferry port. Gardaí searched the van and found a British Army uniform. According to an Irish Army intelligence report, a British Army officer was subsequently taken off the boat by Gardaí and weapons were found in his bag. No reference to this appears in Garda records, and no further developments were reported.”

The Oireachtas Joint Committee

The language used in paragraph 2 (i) of the commission’s terms of reference is a direct quotation from a recommendation by the Joint Oireachtas Committee in its Final Report on the report of the Hamilton / Barron Inquiry into the Dublin and Monaghan bombings, published in March 2004. The recommendation occurs at the end of a section entitled “*Adequacy of the Garda investigation*”, under the heading, “The view of the Sub-Committee”. Aside from this recommendation, there is no reference anywhere else in the Joint Oireachtas Committee’s report to the specific matters raised in paragraph 2 (i) of the commission’s terms of reference.

The Inquests

The inquests into the Dublin and Monaghan bombings, which had been adjourned in 1974, were formally re-opened on 27 April 2004 by the Dublin City Coroner, Dr Brian Farrell. In the course of the inquests, the Coroner received written and oral evidence from the person who first alerted Gardai to the presence of the white van on Portland Row. This person has also given evidence to the commission.

The white van

Eyewitness information

In 1974, the person who alerted Gardai to the existence of the white van was an employee of the Department of Posts and Telegraphs. In his evidence to the commission, this witness described in detail how on Friday 17 May 1974 he was working in Aldborough House, Portland Row, North Strand, Dublin 1. At around 1 p.m. the witness left the building to go on his lunch break. He walked out the front gate, turned right and began to walk towards the Five

Lamps road junction. He noticed a large white van, with what he took to be British or Northern Irish registration plates, parked about three or four car-lengths down from the gate of Aldborough House in the direction of the Five Lamps. The van was facing away from the Five Lamps junction and towards the North Circular Road.

Conscious of the then regular requests by Gardai for members of the public to report strange or suspicious vehicles, this person decided to telephone the Garda Siochana to report the registration number and location of the van. He made the telephone call using the emergency number 999, told the Gardai about the van and continued on his lunch break. When he returned to Aldborough House from his lunch break the van was still in the same position as it had been when he first noticed it.

At 5 p.m. the witness went out for a break before beginning an overtime shift and the van was still in the same position as that in which he had last seen it. On this occasion he noticed that the roll-down door on the pavement side of the van, which he recalls as having been closed at 1 p.m., was now slightly open at the bottom.

The witness crouched down and looked in through the gap between the bottom of the roll-down door and the floor of the van. According to his account to the commission, the van contained nothing except 10-12 empty egg boxes, stacked behind the driver's seat. He went back into Aldborough House and dialed 999 again. He was told that Gardai would come and take a look at the van. He offered to keep the van under observation until the police came. He did so, but the Gardai didn't arrive.

At about ten or fifteen minutes past five, the witness saw a man come into his view, coming around the corner from the direction of Amiens Street and the Five Lamps. He described the man as aged 25 to 30 years, athletic, with a very short haircut. The man was well groomed and wore a dark suit and a white shirt. He was carrying a copy of the *Evening Press* and a *Switzer's* bag. The man walked past the roll-down door which, according to the witness, was still ajar. The man went around the front of the van to the driver's side. He then got into the van and drove off in the direction of the North Circular Road. A short distance up the road the van turned into the entrance to a block of flats, reversed out and drove back down past Aldborough House to the road junction at the Five Lamps, where the van stopped. The witness, who saw all of this take place, walked towards the Five Lamps and saw the van going towards Sheriff Street. The van drove out of his sight.

Within minutes of the van disappearing from his view, a marked Garda car with two uniformed Gardai arrived on the scene. The witness told the Gardai what he had seen concerning the van and its driver. In his evidence to the commission, he stated that he gave these Gardai a piece of paper on which he had written the registration number of the van. The Gardai (or one of them) suggested

that the van driver might be going back to England on the ferry. Having concluded their inquiries, the Gardai then left.

The witness returned to Aldborough House. He recalls hearing two explosions within a couple of minutes of the Garda car leaving. He and his work colleagues tried to get news of the explosions on RTE radio. There was no mention of explosions on RTE. The witness and his fellow workers then tuned into BBC radio where they heard a news flash saying that bombs had gone off in Dublin. At about 5.45 p.m. the witness again rang 999 and told the person who answered his call of his suspicions that the van driver might have had something to do with the recent explosions. The witness stated in evidence to the commission that:

“There was a lot of commotion in the background that I could hear from the controls and they assured me that they would contact me and they would send somebody down.”

In his evidence to the commission, the witness stated that he called 999 yet again at 6 p.m. and also at 6.15 p.m. and received similar assurances that someone would come to talk to him.

At about 6.30 p.m. two uniformed policemen, who were not the Gardai the witness had met and spoken to earlier, arrived at Aldborough House in a marked Garda car. The witness got into the Garda car and explained to the Gardai what he had seen in the course of the day concerning the van and its driver. He told these Gardai the registration number of the van and asked if they could bring him to the docks, where he believed that the van was heading when he last saw it. The Gardai agreed to do so and they drove first to the departure area of the B. & I. ferry, where a large number of cars were lined up, waiting to board the ferry for Liverpool. The ferry was scheduled to depart at 10.15 p.m.

The white van which the witness had previously observed near Aldborough House was not in the line of cars at the departure area of the B. & I. so the witness suggested looking in what he referred to as “the deep sea area”, where trucks and lorries waited in lines to board the ferry. About halfway down a line of vehicles in this area of the port there was a white Bedford van, which the witness pointed out to the Gardai who were with him. In his evidence to the commission, the witness stated that the registration number of this van was the same as that noted by him outside Aldborough House earlier in the day. He gave the following account to the commission as to what happened next:

“One Garda stopped with the van and was starting to search it and I went off with the other Garda to the B. & I. Booking Office. I happened to know the clerk at the time to see and I gave him the number of the van. He

checked the manifest sheet and told me that this van was ready to sail and had been booked to sail that night.

At this time, there was no sign of the driver. The Garda whom I was with and I both looked around outside the Booking Office to see if we could see the driver. We then went back up to the van and the other Garda had at that stage opened a suitcase and found a uniform. The Garda told me that the uniform was a British Army officer's uniform and there was also a Sam Browne belt beside it. I saw these myself. The Garda asked me to keep an eye out whilst they were still searching the van. I had walked approximately five or ten yards away from the van and walking up towards me was the driver of the van. This time he was dressed differently in a black, polo-neck type jumper and dark slacks. I informed the Gardai that I noticed that this was the man that I had seen getting into the van in Portland Row. He approached the Gardai and was annoyed that they had been searching his van and had opened his suitcase. The man, I noticed, had a distinct English accent.

At this point, I noticed that the suit that I had seen this man wearing earlier that evening was on the seat beside the driver's seat. I overheard this man telling the Gardai that he was a captain in the Territorial Army. The Gardai asked him why he had the uniform with him. He said he was going on manoeuvres the next day. He also asked them had they got him under observation when he came off the boat yesterday in Dun Laoghaire. The Gardai replied that they were there to ask questions and he was there to answer them.

At that juncture, one of the Gardai went to the squad car and used the car radio. After a few minutes, another car arrived with two plain clothes Gardai.

The Gardai were questioning this man and I stood aside whilst this was going on. I asked the Gardai would they bring me back. It was nearly eight o'clock at this stage and I asked could I be brought home. I was anxious and concerned that my wife would be worried about me. The two uniformed Gardai drove me back to Aldborough House and left the man with the two plain clothes detectives. I do not know anything else that transpired on that evening."

The witness, in his evidence to the commission, stated that on the following Monday morning (20 May 1974), three or four detectives came to Aldborough House to interview him in relation to what he knew about the van and its driver. The witness states that he was not asked by Gardai to make a written statement. Later that same week, he called into Store Street Garda station, to see if there had been any developments in relation to the van and its driver. He complains that he was not given any information. He called again on another day, and this time he was told that if the Gardai wanted to get further information from

him they would contact him, but that in the meantime he should not contact them further.

Garda information

The Garda files disclosed to the commission do not contain any record of either of the phone calls made by the person who saw the white van at Aldborough House to the Gardai at 1 p.m. and 5 p.m. on 17 May 1974, before the bombings had taken place.

The Dublin bombings jobs book disclosed by the Gardai to the commission contains the following note, which may have been made arising from a phone call made by the same person to the Gardai after the bombs had been exploded:

“At 5.45 p.m... Pick-up truck [a registration number recorded] seen going from Aldborough House towards Sheriff St. – White Pick up.”

The commission cannot establish which member of the Garda Síochána received or recorded the information in this jobs book entry. It appears to the commission to be highly probable that this information is derived from an earlier record, which would have been made by the Garda who received and noted the phone call made to 999 at 5.45 p.m. by the person working at Aldborough House who had seen the white van. If the commission is correct in this view, an original note of this phone call should have been available to the Garda Síochána and should have been disclosed to the commission. No such document has been disclosed to the commission. Nor is there any record, in the Dublin jobs book or elsewhere, of the further phone calls made by this person at 6 p.m. and 6.15 p.m. respectively.

Nonetheless, the commission is satisfied from the documentation disclosed to it by the Garda Síochána that some information concerning the sighting of the white van at Aldborough House did reach the Dublin incident room and was recorded in the Dublin jobs book. The information as recorded in the jobs book does not identify the person who made the phone call or how they might be contacted. There is no note in the jobs book of any action taken or directed to be taken on foot of this information.

The next reference to information received by the Garda Síochána from the witness at Aldborough House is contained in a loose job flyer, numbered 495 and dated 20 May 1974, which records:

“From Ctl [Garda Communications Control Centre] – [name of witness]”

Post & Telegraphs, Aldborough House, Portland Row is anxious to contact members on Juliet 4 or 6 as he has some further information to give re a British Army uniform in a van there.

Garda [name given], Howth / Sgt [name given], Howth were on the car in question.

D/Sgt [name given] then interviewed 'him' and it would appear D/Sgt [name given] SDU would be the officer this man wants to see again."

The Garda Siochana have disclosed to the commission a number of folders containing original job flyers (blue in colour) and with five lever-arch files containing white carbon copies of job flyers. Attached to the original of flyer no. 495 is a handwritten report, addressed to a Detective Inspector at the Special Detective Unit, Dublin Castle, dated 24 May 1974 and signed by a Detective Sergeant. It appears from this report that the Detective Sergeant in question and a Detective Garda were the two plainclothes detectives who arrived at the dock area at about 8 p.m. on the evening of the bombings and took over from the uniformed policemen who had accompanied the witness to the docks from Aldborough House.

The Detective Sergeant's report was headed with the name of a captain in the British Territorial Army, and continued as follows:

"With reference to above, I am to state that with D/Gda [name given] I interviewed the above named at B. & I. Ferry Nt. Wall on Friday 17th inst at 8.30 p.m. as a result of a call from Radio Control.

[He] was driving a truck Bedford Model, property of [name and address of an English transport company given], of which he is a director in same. Subject's home address is [English address given].

Subject joined the Territorial Reserves, British Army in [year given].

[He] arrived in Dublin at 2 pm Wed 15th inst by sea-speed Ferry which is run by Irish Marine Management, 61 Lr Baggot St., with a lorry load of goods, which he delivered in Dublin. On the 15th inst. he stayed at Royal Marine Hotel, and on the 16th inst. he stayed at Avenue Hotel, Dunlaoire. His agent in Ireland is: [a named company]. [He] comes to Dublin on similar business every three months.

During a search of the truck, I saw a full British Army uniform and combat gear packed in a white suitcase in the cabin of the lorry.

[He] stated that he was due to return directly to a training course (Army Reserve) at Salisbury, England, hence the reason for bringing his equipment with him, since he would not have sufficient time to return home to collect same.

Subject produced documentary evidence to substantiate his explanation and I am satisfied that he was in no way connected with the bombing incidents of 17th inst.”

Having given a description of the man’s appearance, the report continues:

“With reference to attached file No. 495, dated 20/5/74, [name of witness] and [name of another employee] of P. & T. Aldborough House stated they observed a truck parked outside Aldborough House at 3.30 pm 17th inst. [The first-named witness] stated one side of the truck was open and he saw two suit cases in the back of the truck. He stated the truck was facing in direction of Nt. Cir. Rd and at 5.10pm a man, 5’10”, glasses, moustache wearing a blue shirt, black shoes, got into the truck and removed 2 suitcases to the cabin of the lorry. He drove the truck to Portland Pl., turned and drove towards the docks. [The first-named witness] informed Gardai, accompanied same to docks and pointed [out] truck + driver. I am satisfied that the driver of this truck was [the named British Territorial Army captain] and the truck described was [his].”

Checks of hotel registers carried out by Gardai in the Dun Laoghaire area on 18 May confirm that the man in question had been booked into the Avenue Hotel and the Royal Marine Hotel on the dates given by him to the detectives at the ferry port.

The Detective Sergeant who signed the report of 24 May 1974 concerning the encounter with the driver of the white van, acknowledged to the commission that he was the author of that report, but stated that he was unable to recall anything about the incident, or his own role in investigating it. The commission spoke with the Detective Inspector to whom the report had been addressed: he did not remember anything about the matter either.

The commission showed a copy of the report of 24 May 1974 to the Detective Inspector. The Detective Inspector told the commission that he would have forwarded a copy of that report to his superior officers, either with an annotation on the report itself or with a covering letter. The Garda Commissioner, in his evidence to the commission, accepted that this was the correct procedure to follow at that time. However, the only copy of the report of 24 May 1974 which has been disclosed to the commission has no annotations on it. Nor has the commission been provided with any covering letter or copy of a covering letter from the Detective Inspector concerning that report.

Nonetheless, the Garda material disclosed to the commission clearly shows that the report of 24 May 1974 on the white van and its driver found its way to the Dublin incident room. The job flyer number 495, to which the copy of the report disclosed to the commission was attached, states:

“Check should be made with the English authorities to establish verification of account given by [name of van driver]”

This supplementary job flyer does not make clear which Garda member, if any, was given the task of carrying out such checks. However, at the bottom of the flyer, in the section headed: “Instructions given or action taken”, a handwritten note reads:

“This account has been verified by English police.”

The commission does not know what aspects, if any, of the van driver’s account may have been verified, or by what means. The commission has not been furnished with any record of any contact between the Garda Siochana and any English authority, whether police or other, on the subject of the white van or its driver.

One important detail that is missing from the Detective Sergeant’s report of 24 May 1974 and from the job flyers 495 and 495(Q) is the registration number of the white van. The witness who alerted Gardai to the presence of the white van at Aldborough House and who assisted in locating the van at the docks says he furnished the number of the white van to several different members of the Garda Siochana, both orally and in writing, on 17 May 1974. Unfortunately but understandably, he no longer has any recollection of that registration number. It would appear that any written note or notes given by this person to a member or members of the Gardai is or are now lost.

There is only one Garda document disclosed to the commission in which a registration number is given for the white van: this is the entry in the Dublin investigation jobs book, referred to at paragraph 9.19 above. The same registration number does appear in a notebook, apparently compiled by the Dublin investigation team and entitled “Car Index”, furnished by the Garda Siochana to the commission; but the notebook entry does not associate the number with any particular vehicle. Written beside the registration number in this notebook are the words: “*Never issued*”. The commission has not been able to establish which member or members of the Garda Siochana made the entries in the notebook entitled “Car Index”, or where the information that grounded the “*Never issued*” annotation came from.

In August 2003, the Hamilton / Barron Inquiry asked the Garda Siochana to undertake further enquiries with the British government regarding the registration number given in the Dublin jobs book as being that of the white van. Judge Barron’s request was processed via Interpol London, who confirmed to

Gardai that there was no record of such a registration number ever having been issued.

On 4 October 2005, the commission wrote to the British Driver and Vehicle Licensing Agency (DVLA), inquiring whether the registration number given in the Dublin jobs book had ever been issued. The commission also requested information concerning any vehicles owned by either the British Territorial Army officer, or the company named in the Garda report of 24 May 1974, of which he was said to be a director. On 11 November 2005 the following reply was received from the motor registration agency:

“We hold no record for the above registration mark. This means that the mark has never been allocated to a vehicle and should not have been displayed on any vehicle. With regards to your request for any information on vehicles owned by [name of van driver]... unfortunately we are only able to access DVLA records by registration marks.”

The commission has now established to its satisfaction that the registration number as given in the Dublin jobs book is not the correct registration number for the vehicle seen at Aldborough House in Dublin on the day of the bombings and later that evening at the Dublin ferry port. The evidence on foot of which the commission arrived at this conclusion is set out below.

Information received from the British government and from a former British Territorial Army officer

On 3 October 2005, the commission wrote to the Secretary of State for Northern Ireland seeking verification of the identity, army number, rank and regiment of the van driver as recorded in the Garda report of 24 May 1974. A response dated 25 October 2005 stated:

“The MOD has given careful consideration to your terms of reference and to the very specific questions you raised in your letter of 3 October.

They have checked the name, rank and service number which Captain [name given] provided to the Garda in 1974 and can confirm that they are correct.”

On 25 January 2006, the commission was contacted by a man with the same name as that of the British Territorial Army officer mentioned in the Garda report of 24 May 1974. The man stated:

“I understand from the British Ministry of Defence (Tribunals & Inquiries Unit) that you wish to contact me. My address is [address given].

I confirm that I was then a Captain in [a named regiment], Territorial Army, based at [address given].

I have never served in Northern Ireland.

I am intrigued to know how I can help you..."

The commission wrote to the person concerned and received a written response. Further contact was made with this person: a meeting was arranged and subsequently took place in England. As a result of this meeting, the commission is satisfied that this man was the driver of the white van seen near Aldborough House on 17 May 1974 and subsequently at the Dublin ferry port on that same evening.

The man stated to the commission that for four years including 1974 he ran a small transport business. He identified the trading name of this business, (which differed slightly from that recorded in the Garda report of 24 May 1974).

The man provided photographs of the vehicle used by his business in 1974 - a 3 ton capacity Bedford box van, with a white cab, aluminium body and a side roller shutter. The registration number, clearly visible in one of the photographs, is different by one digit from the number recorded in the Dublin jobs book. The commission has reproduced a photograph of the van in the appendices to this report. The commission has caused the particulars of identification in the photograph to be removed, so as to minimise intrusion on the driver's privacy.

The commission wrote to the British Driver and Vehicle Licensing Agency (DVLA) on 7 February 2006, citing the registration number seen in the photograph. On 13 February, the following reply was received, endorsed in handwriting on the commission's letter to that agency:

"We hold no details for [the registration number] as it is a voided record."

An explanation of this answer was sought from the Secretary of State for Northern Ireland by letter dated 14 February 2006.

On 2 March 2006 the commission received a letter from the Permanent Secretary to the Northern Ireland Office (dated 27 February 2006) which contained information from the British Driver and Vehicle Licensing Agency not previously disclosed to the commission. This information included a photocopy of the registration book for the van which confirmed the registration number to be that shown in one of the photographs provided to the commission by the British Territorial Army officer who drove the van in 1974. The photocopy of the registration book also showed that the registered owner of the vehicle at the time of the bombings was the transport business of which the British Territorial Army officer was a director. The business retained ownership of the vehicle until January 1975. The commission received no explanation as to why the British Driver and Vehicle Licensing Agency had previously claimed to hold no details for that registration number.

Conclusions

1. From the information available to the commission, it is clearly incorrect to say that the Garda investigation team did not follow-up on the information provided by the person who alerted them to the presence of the white van near Aldborough House.
2. Having carried out inquiries at the dock area, including interviewing the driver of the white van, an experienced Special Branch detective reached the conclusion that the driver of the van in question “*was in no way connected*” with the bombings.
3. The Garda investigation team did not leave matters there: a further check was carried out with the police in England. The nature of the information received in response to that check, if there was any such information, is not recorded, but the commission is satisfied that the Garda investigation team believed it sufficient to let the matter rest there.
4. The commission is satisfied that the failure by the Garda Síochána to accurately record the registration number of the white van was a significant failure of police function in an important criminal investigation. This failure caused significant difficulties for the Hamilton / Barron Inquiry, the Oireachtas Joint Committee on Justice, Equality and Women’s Rights, and delayed the work of this commission significantly.

Reasons for conclusions

1. The material disclosed to the commission shows that the Garda Síochána did respond to the information provided to them by the man from Aldborough House and with his help, succeeded in finding the vehicle and driver concerned.
2. The driver of the white van was interviewed by uniformed officers and then by Special Branch detectives. He co-operated with both uniformed and Special Branch members to the satisfaction of both groups, giving verbal information as to his identity, home address, occupation, army rank, his reason for coming to Ireland, his movements while in the country and his reasons for having a British Army uniform in his possession.
3. The driver of the white van produced documentary evidence, the exact nature of which is unknown to the commission, to substantiate his account. The interviewing officers also had the opportunity of observing his demeanour during questioning, something which a written record cannot adequately convey.
4. The Gardai took the further step of making inquiries with the British authorities to confirm the account given by the driver of the white van.

5. The fact that the matter is not mentioned in the Dublin investigation report of 9 August 1974 supports the view taken by the commission that the Garda investigation team considered the matter closed as far as the investigations into the Dublin and Monaghan bombings were concerned.

Chapter ten

INFORMATION RELATING TO CONTACT MADE WITH A BRITISH ARMY OFFICER ON THE B & I FERRY BOAT

Introduction

- 10.1 This chapter relates to the second matter detailed in paragraph 2 (ii) of the commission's terms of reference. The paragraph reads as follows:

“Why the Gardai did not follow-up on the following leads... information that a white van, with an English registration plate, was parked outside the Department of Posts and Telegraphs in Portland Row and was later seen parked in the deep sea area of the B & I ferry port in Dublin, and the subsequent contact made with a British Army officer on a ferry boat leaving that port.”

- 10.2 As with all other matters in the terms of reference, the commission is asked to take account of investigative work already undertaken into the Dublin and Monaghan bombings of 1974, including the Report of the Independent Commission of Inquiry, the Final Report of the Joint Committee on Justice, Equality, Defence and Women's Rights, Inquest Statements and the Internal Garda Investigation.

In the interests of clarity, it should be noted that all references in this chapter to “the Army”, “the Defence Forces” or “Army Intelligence” refer to the Defence Forces of this State, unless otherwise stated.

Army information

- 10.3 The Intelligence HQ of the Defence Forces received a typed report from the then Intelligence Officer, Eastern Command dated 17 June 1974, which contained the following information:

“Dublin Car Bombings 17 May 1974

1. *Two reports on above have been received. These are:-*
 - a. *[not relevant to this aspect of the commission's terms of reference]*
 - b. *On the night of 17 May during a Garda search of the B & I car ferry a B.A. officer was taken off the boat and weapons found*

in his bag.

2. *Classification of source and information is NOT known, other than that both sources were military.”*

- 10.4 The only material which has been disclosed to the commission in relation to this aspect of its terms of reference is the single document set out above.
- 10.5 The date on which the material was first communicated to the Defence Forces is not disclosed. It could have been any date between 17 May and 17 June 1974 (the date borne by the record).
- 10.6 It is not possible to say whether the statement “*both sources were military*” in paragraph 2 of the record means that members of the Army claimed to have had first hand information which they passed on to the intelligence officer, or whether it means that members of the Army received information from another person or persons who claimed to have had first hand evidence to offer of the matters alleged, and then passed that information to the intelligence officer; or indeed that members of the Army were reporting material of even remoter origin.
- 10.7 One way or the other, paragraph 2 of the Army intelligence record shows that the intelligence officer was not in a position to furnish Intelligence Headquarters with any indication of the reliability of either the source or the information concerning the British Army officer allegedly taken off the B. & I. ferry.
- 10.8 The commission interviewed the intelligence officer concerned, who had no memory of who the source (in whatever sense the word is used) might have been.
- 10.9 There is no record of the Defence Forces having transmitted the material in the single record to the Garda Siochana or of the receipt of the material by the Gardai from the Defence Forces, or for that matter, from any other source.
- 10.10 There is no corroboration of the contention that a British Army officer was taken off the B. & I. Car ferry, or that weapons were found in any British Army officer’s bag on the night of 17 May 1974. By ‘corroboration’ the commission means credible information independent of the source of the alleged information contained in the record of the Defence Forces intelligence headquarters (whoever that may have been) which would support or tend to support the allegations of fact contained in the intelligence record .
- 10.11 There is nothing in the papers disclosed to the commission by the Defence Forces to indicate that any step was ever taken by either the Defence Forces to check the veracity or otherwise of the material contained in the intelligence record.

- 10.12 No information has been disclosed to the commission that would indicate that any person was questioned, inquired into, investigated, arrested or detained for or charged with the possession of firearms in Dublin on 17 May 1974, in the circumstances referred to in the Army intelligence record of 17 June 1974.
- 10.13 The commission has not been able to establish the existence of material from any other source, Garda or otherwise, which corroborates to any extent the material contained in the Army intelligence record of 17 June 1974.
- 10.14 An Army Intelligence document entitled “*Internal Security Guide*” dated October 1975 and disclosed to the commission by the Army has the following to say concerning intelligence reporting within the Army:
- “Imprecise wording of Int reports can lead to serious intelligence failures or confusion. Reporting Officers must check for clarity in the text and above all accuracy of the facts.”*
- 10.15 The intelligence report of 17 June 1974 concerning the Dublin bombings fails on all of these counts: the text of the report contains ambiguities, it is insufficiently specific as to the source and date of the information, and the report shows no evidence that any effort was made to check the accuracy of the facts contained in the intelligence received or to seek corroboration of the material.

Further information obtained by the commission

- 10.16 The commission contacted the Dublin Port authority, Customs & Excise, the Department of the Marine and Irish Ferries (the successor to B. & I.) requesting sight of any relevant records which they might have. Neither the Port authority nor Customs & Excise had any surviving relevant records.
- 10.17 On 23 November 2005 the commission wrote to the Department of Communications, Marine and Natural Resources seeking disclosure of all relevant documents in its possession. On 27 January 2006, the commission was provided by the said Department with the official log book for the ship M.V. Leinster, covering the first half of 1974. The M.V. Leinster was the ferry which sailed between Dublin Port and Liverpool at that time. The entry in the log for 17 May 1974 recorded the departure time of the ship as being 22:22. There is no reference in the log book to any unusual incident having taken place before or during the ferry crossing. Specifically, there is no mention of any incident such as that referred to in the Defence Forces’ intelligence record.
- 10.18 The archivist for Irish Ferries found and disclosed to the commission a contemporary diary kept by an official known as the Ships’ Controller at the Marine Department on Breakwater Road, Dublin. This document records that

the ferry boat M.V. Leinster departed North Wall for Liverpool on 17 May 1974 at its scheduled time. There is no reference in the diary to any incident having taken place on or off the boat prior to sailing, during the voyage or on arrival at Liverpool.

- 10.19 On 29 November 2005, the commission wrote to the Garda Síochána requesting a list of all Garda personnel detailed for duty at Dublin Port on 17 May 1974, together with a copy of any reports, statements or other documentation issuing from or to such officer or officers concerned. The commission has been informed by the Garda Síochána that no such records have been found.
- 10.20 A former member of the Garda Special Detective Unit (SDU) stated to the commission that during the period before, after and including 17 May 1974, there was a Detective Garda whose duty it was to attend at the ferry port every evening; to observe persons boarding and disembarking from the ferry and whose duty it was to report to his authorities on anything of note that he may have observed. One might reasonably expect that vigilance in this regard would have been particularly keen on the evening of the Dublin and Monaghan bombings. The commission was given the name of a former Detective Garda who performed this duty on a daily basis for many years and who, the commission is satisfied, was most probably the person performing this duty on 17 May 1974. However, according to a Garda report dated 2 December 2005 and disclosed to the commission, the Detective Garda in question is unable to recollect whether he was there on that day or not.

Conclusions

1. The commission has not found any information which corroborates the allegation recorded in the Army intelligence document.
2. The absence of any reference to such an incident in the material disclosed to the commission by An Garda Síochána, the Department of the Marine and Irish Ferries strongly suggests that the incident described in the Army intelligence document did not take place.
3. There is no evidence that the intelligence material referred to in the Army intelligence document was conveyed to the Garda Síochána.
4. Even if the Army had passed the intelligence material on to the Garda Síochána, it would have been reasonable for the Gardai to discount the allegations made in the material, given the lack of any corroborating evidence and the fact that the identity and reliability of the source was not known or established by Army Intelligence.

Reasons for conclusions

1. The commission bases its conclusions on the intelligence material provided by the Defence Forces, and on the lack of any corroborating evidence in the material disclosed to the commission by the Garda Síochána, the Department of the Marine and Irish Ferries.

Chapter eleven

INFORMATION RELATION TO A MAN WHO STAYED AT THE FOUR COURTS HOTEL AND HIS CONTACTS WITH THE U.V.F.

- 11.1 Paragraph 2 (ii) of the commission's terms of reference requires the commission to undertake a thorough investigation and make a report on the following matter:
- “Why the Gardai did not follow-up on the following leads... information relating to a man who stayed in the Four Courts Hotel between 15 and 17 May, 1974 and his contacts with the UVF.”*
- 11.2 Despite having spent a lot of time and effort in investigating this aspect of the terms of reference and seeking to formulate conclusions which are lawful, fair and balanced, the commission regretfully states that, having regard to the provisions of the Commissions of Investigations Act 2004, it cannot report under this heading of the terms of reference.
- 11.3 The difficulties which have resulted in the commission being unable, as a matter of law, to report under this heading of its terms of reference have been made known by the commission to the Taoiseach.

Chapter twelve

INFORMATION CONCERNING A BRITISH ARMY CORPORAL ALLEGEDLY SIGHTED IN DUBLIN

Introduction

- 12.1 Paragraph 2 (iii) of the commission's terms of reference requires the commission to undertake a thorough investigation and make a report on the following matter:

“Why the Gardai did not follow-up on the following leads... information concerning a British Army corporal allegedly sighted in Dublin at the time of the bombings.”

- 12.2 As with all other matters in the terms of reference, the commission is asked to take account of investigative work already undertaken into the Dublin and Monaghan bombings of 1974, including the Report of the Hamilton / Barron Inquiry, the Final Report of the Joint Committee on Justice, Equality, Defence and Women's Rights, the Inquest statements and the various relevant inquiries carried out by the Garda Síochána.

The Hamilton / Barron Inquiry

- 12.3 The relevant portion of the Hamilton / Barron Inquiry's report into the Dublin and Monaghan Bombings commences with the following paragraphs:

“Another line of inquiry was started by an anonymous source claiming to be a former soldier in the British Army. His evidence concerned a named NCO Corporal with whom he had trained in the Pioneer Recruit Training Depot at Wrexham, North Wales in the spring of 1960. He said the Corporal was an Australian who hated the Irish. After twelve weeks, the source was transferred from Wrexham and had no further contact with the Corporal. Almost five years later, he [the source] was posted to Derry, where he saw another NCO he recognised from Wrexham. In discussing this NCO with some of his squad, the Corporal's name came up. It was mentioned that he had been transferred from Wrexham to somewhere unknown.

The source said that two days before the bombs exploded at Liberty Hall and Sackville Place in December 1972 he [the source] saw the driver of a motor car at College Green whom he immediately recognised as the Corporal. The source – himself a deserter from the British Army -

assumed the Corporal was looking for deserters and thought no more about it. However, on Wednesday, 15 May 1974, he again saw the Corporal in Dublin, this time driving a new Ford Cortina (coloured ice green / light blue) along Lower O'Connell Street."

- 12.4 The Hamilton / Barron Inquiry's report goes on to detail inquiries carried out by Gardai in 1974 on foot of this information, and with later requests made by the Hamilton / Barron Inquiry itself of the British authorities for assistance in identifying the British Army corporal concerned.
- 12.5 The Hamilton / Barron Inquiry was unable, on the basis of the evidence available to it and the powers which it had, to confirm the identity, or even the existence of the British Army corporal. Nor was it able to interview the anonymous witness who had allegedly seen this officer in Dublin in November 1972 and May 1974, as the witness' identity remained unknown at the time the Hamilton / Barron Inquiry was carrying out its work.

The Oireachtas Joint Committee

- 12.6 The language used in paragraph 2 (iii) of the commission's terms of reference is a direct quotation from a recommendation by the Oireachtas Joint Committee in its Final Report on the report of the Hamilton / Barron Inquiry into the Dublin and Monaghan bombings, published in March 2004. The recommendation of the Oireachtas Joint Committee occurs at the end of a section entitled "*Adequacy of the Garda investigation*", under the heading, "The view of the Sub-Committee". Aside from this recommendation, there is no reference anywhere else in the Oireachtas Joint Committee's report to the matter raised in paragraph 2 (iii) of the commission's terms of reference.

The Inquests

- 12.7 The inquests into the Dublin and Monaghan bombings, which had been adjourned in 1974, were formally re-opened on 27 April 2004 by the Dublin City Coroner. There were no statements before the coroner which related to this part of the commission's terms of reference. The identity of the person who claimed to have seen the British Army corporal in Dublin was unknown to the coroner, and no statements were received from that person, or evidence given by him at the inquests.

Information obtained by the Garda Siochana

Job flyers

12.8 From the material disclosed to the commission by the Garda Siochana, it appears that the first information received by Gardai in relation to the matter set out in paragraph 2 (iii) of the commission's terms of reference is recorded on a loose job flyer numbered 410, relating to the Dublin bombings investigation. The job flyer records a phone call received at the Garda communications centre from an anonymous person at 4.30 p.m. on Sunday, 19 May 1974. The caller is recorded as having named a man who the caller said he had known in 1960, when the caller was a soldier in the British Army. The job flyer records the person making the telephone call as claiming to have seen this man in Dublin two nights before the bombings at Sackville Place and Liberty Hall on 1 December 1972, and again two days before the bombings of 17 May 1974. The person who had given this information to the Gardai on the telephone said he would make himself available for interview by the Gardai at a named public place at 7 p.m. on the evening of 19 May 1974. The task of meeting and interviewing the telephone caller was, according to the job flyer, assigned to a Detective Inspector at 5.10 p.m. on 19 May 1974.

12.9 A second job flyer numbered 548, also dated 19 May 1974, but with no time noted on it, records as follows:

“...D/Insp [name given] and D/O [name given], Coolock met him [the telephone caller] at the time and place. He is still anxious to remain anonymous...”

12.10 The information given by the anonymous telephone caller would appear to have been discussed at a conference of the Dublin investigation team on 21 May 1974: a note from that conference records an instruction to get a photofit of the man allegedly seen by the anonymous telephone caller. Such a photofit was duly made with the co-operation of the telephone caller. The commission, through absence of evidence, has been unable to establish whether this photofit was shown to any potential witness by the Garda investigation team.

Statement of anonymous informant

12.11 The anonymous person who had provided the information to Gardai over the telephone and subsequently at a meeting, made a written statement which is dated 21 May 1974. The Garda Siochana have disclosed to the commission a document which the commission is satisfied is a typed copy of this statement.

The original statement, the commission has been told by the Gardai, is missing. So, for that matter, are all original statements numbered 1 to 500 inclusive, relating to the Dublin investigation. The identity of the informant was not disclosed in the copy of the statement disclosed to the commission. The typed copy of the informant's statement reads as follows:

"I am [a] married man residing with my wife and three children. In January 1960 I joined the British Army in Omagh, Co. Tyrone. On the night I joined I was transferred to the Pioneer Recruit Training Depot at Wrexham, North Wales. I was stationed there for about 12 weeks. One of my N.C.O.'s was Corporal [surname given]. [He] was an Australian who hated the Irish. My sergeant was a fellow named [surname given]. I have no doubt that there are photographs of my squad hanging in the gymnasium in the Barracks at Wrexham and Corporal [surname given] would be included in the photographs. At that time Corporal [surname given] was training in the armed combat and karate as I know it now... When demonstrating his karate, Corporal [surname given] always picked an Irishman to demonstrate with. After about 12 weeks in Wrexham, I was transferred to [address given] in Wiltshire. Corporal [surname given] remained on in the Pioneer Corps Depot in Wrexham.

After 10 months in the British Army I went A.W.O.L. [absent without leave]. I then worked in London and Birmingham. I re-joined [sic] the Irish Fusileers about 3 ½ years afterwards... I joined with my proper surname but gave a false Christian name. I was sent immediately to Northern Ireland. I was attached to Eglinton barracks in Derry. While in Derry, I saw an NCO whom I recognized as having been in Wrexham in 1960. Some of the fellows in my squad in Derry were discussing this NCO and during the conversation Corporal [surname given]'s name came up, and it was mentioned that he had been transferred from the Pioneer Corps at Wrexham, to where I don't know. After a number of years, I got married and settled down in [a named city]. The Wednesday before the bombs exploded at Liberty Hall and Sackville Place [in 1972] I was on a 21 bus at the Bank of Ireland, College Green, travelling towards O'Connell Bridge. The bus I was on stopped on the outer lane directly opposite Trinity College gates. I was seated downstairs. I saw a motor car in the lane of traffic coming from Pearse Street direction. I looked at the driver and immediately recognised him as [the corporal]. I kept looking at him and had a clear view of him as he drove into Dame Street. I was wondering what he was doing in Dublin and thought that he might be here looking for British Army deserters. I did not think of him again until the following Friday night when the bombs exploded at Liberty Hall and Sackville Place, and I can't give an explanation why I didn't ring up and report this matter.

I forgot completely about him until last Wednesday, 15th May, 1974. At about 2.50 p.m. that evening I was a passenger in one of my employer's lorries. While stopped by the Traffic Garda at the junction of Eden Quay and Lower O'Connell Street, I saw an ice green and light blue motor car coming down O'Connell Street. I think it was the new Cortina model. I had a clear view of the driver as the traffic was moving slowly. I immediately recognised him as [the corporal]. He was driving in the nearest lane to where we were stopped. The lorry I was in was the first in the line of traffic in which we were in [sic]. There were no other vehicles in front of us. As far as I can remember he was dressed in light-coloured clothes. This was very much on my mind after the bombs on Friday last.

On Sunday, I read in the papers the description of a man who was speaking to a lady in O'Connell Street, just before the bombs exploded on Friday evening. On seeing the descriptions [sic] I immediately felt that it suited [the corporal] and I decided to get in touch with the Gardai.

I would describe [the corporal] as follows:

He is about 44 years of age now; as he was about 30 years when he was with me in Wrexham. He was about 5' 8" tall and was medium build then and very athletic; fleshy face, reddish cheeks, very smooth skin, square jaw with prominent cleft under front of chin; darkish brown hair covering forehead and v-shaped at centre of forehead which is wrinkled. I am sure it was parted at one side; short side-locks. His hair is average length. On Wednesday last he was dressed in light coloured clothes.

[He] was stationed at Wrexham for years before I was stationed there and for a time after I left. I am sure that he would be in any of [the] Platoon photographs in the gymnasium at Wrexham from about 1958 to 1962. When I was at Wrexham he was engaged to a girl from there. He was a career soldier and that would mean that his term of service would be 22 years."

- 12.12 It should be noted that the person who gave this statement to the Gardai was able to recall only the surname of the British Army corporal. He stated that he did not know the officer's Christian name.

Further inquiries

- 12.13 Taking into account the fact that the British Army corporal was stated by the anonymous informant to have been based for some years near Wrexham in North Wales, Gardai wrote to the police in North Wales on 29 June 1974, asking them to enquire into this British Army corporal's background, service history and current whereabouts.

- 12.14 By the time the Dublin investigation report had been completed on 9 August 1974, a reply had not yet been received from the police in North Wales. The Dublin investigation report sets out in brief terms the material given to Gardai by the anonymous informant and refers to the fact that further information on the British Army corporal named by that informant was being sought through the British police. The investigation report continues:

“...when we are in possession of this information further investigations, as appropriate, will be made. Developments in this matter will be reported.”

A typed copy of the statement made by the anonymous person who claimed to have seen the British Army corporal was one of the documents attached to the Dublin investigation report.

- 12.15 By letter dated 19 September 1974 the police service for North Wales replied to the Garda inquiry in the following terms:

“Thank you for your letter of 29th June 1974. At the outset let me apologise for the delay in replying but my enquiries have been rather protracted.

Extensive enquiries at Wrexham have met with negative result. There are no records maintained there and persons from the District who served at Wrexham in 1960 have been unable to assist.

Enquiries with Army records at Exeter and York have also been fruitless. The Authorities have been most helpful but they have informed me today that they regretfully have reached a dead end and cannot take their investigations further.

A search of the criminal index at this office has not revealed anything of interest.

Without further information it would seem that I cannot help you at this stage.”

- 12.16 No further record of any exchange of information between the Garda Siochana and any relevant English authority on the subject of the corporal has been disclosed to the commission from any source. Neither, it would appear, was any such record disclosed to the Hamilton / Barron Inquiry.

Evidence of another eyewitness

- 12.17 In the considered view of the commission, the mere presence of a British Army soldier in Dublin on 15 May 1974, two days before the Dublin and Monaghan bombings of 17 May 1974, is not proof that such a soldier was involved with the bombings. Neither would the soldier's presence in Dublin two days before the bombings on 1 December 1972 amount to evidence of

any involvement on his part in the bombings of 1972 or 1974. The person who gave the information to Gardai concerning the British Army corporal himself alludes to the possibility that the named corporal might have been in Dublin on the look-out for persons absent without leave from the British Army. If the corporal was in Dublin on 15 May 1974 he might have been there for a large number of legitimate reasons.

12.18 However, the informant in his statement to the Gardai had also made a connection between the soldier he said he had known at Wrexham and a newspaper description of a man seen in Dublin city centre in a car that might have been the Parnell Street bomb car, shortly before the bombings occurred on 17 May 1974.

12.19 The newspaper description which the anonymous informant stated resembled his former British Army colleague came from a woman who said that at 4.20 p.m. on 17 May 1974, she met a man at the corner of Westmoreland Street and D'Olier Street, from whom she sought directions to Dawson Street. The *Sunday Press* of 19 May 1974 recorded her account of the said encounter with the man as follows:

“The man told her how to get to Dawson St. ‘He was a very nice man and very helpful. I would say that he was aged between 40 and 45. He was very well built, about five feet ten inches in height, and was clean-shaven. His hair was brownish. He was wearing a light grey suit.’

[The lady witness], who almost ‘walked into’ the Talbot Street blast, said that the man was ‘very attractive and soft-faced.’

She added that he spoke with a ‘clear-cut English accent.’

As she was about to set off for Dawson Street around 4.30 p.m., she noticed the man getting into a kind of sea-green car which was parked close to a restaurant at Burgh Quay. Besides the colour of the car, her attention was attracted to its ‘mustard-coloured’ number plate which bore the letters: ‘DIA’.

At around 5.30 p.m. she was in the vicinity of Earl Street – on her way to Connolly Station – when she saw a green-coloured car stop momentarily at a set of traffic lights. The lights were at amber when the car headed off quickly in the direction of Parnell Street. While it was stopped she was able to catch a glimpse of the two men inside: one of them seemed to resemble the man she had spoken to an hour earlier.”

12.20 In a statement to Gardai taken in the course of the Garda investigation into the Dublin and Monaghan bombings of 1974, this female witness gave a similar description of her encounters with the man she first met on 17 May 1974. In her statement to the Gardai she described the man she met as being about 5’ 8” tall, well built and straight, about 40 years, clean-shaven, soft

featured, fresh complexion, with a good head of hair, brownish in colour. She said he wore a grey suit with stripes, looked very well dressed and carried a brief case in his hand. She was nearly certain that he had an English accent.

- 12.21 In her statement to the Gardai, the witness described her second encounter with the man whom she believed she had encountered earlier at the corner of Westmoreland Street and D'Olier Street. She said she was standing outside a shop on North Earl Street when she saw a car coming from up the street very fast:

“When it came to the lights, it braked hard and swung around me to its right into O’Connell Street. The next morning I realised the car should not have gone to its right as it is a one-way street. When it braked I got a glimpse of the man who was driving. It struck me that it was the same man who had given me the directions to Dawson Street. I noticed that the car was the same colour as the car he had got into at Burgh Quay. The colour was the same and the letters of the number [sic] was DIA. I was only a few feet from it when it stopped. There was another man beside him in the passenger’s seat. This man looked smaller and thinner and was crouched down in the seat. I did not see his face, his clothes seemed to be dark coloured.”

- 12.22 This witness was not asked to create a photofit picture, but she was shown photograph albums of loyalist subversives from Northern Ireland by the Garda investigation team. She picked out two photographs of a particular, named individual from those albums as resembling the man she saw.

Information obtained by the Hamilton / Barron Inquiry

- 12.23 The Hamilton / Barron Inquiry first wrote to the Secretary of State for Northern Ireland concerning the identity of the British Army corporal on 12 July 2002. The Hamilton / Barron Inquiry received the following reply from the Secretary of State on 9 June 2003:

“The Ministry of Defence has conducted a thorough search of Army records and has been unable to identify the existence of any such person from the information provided.”

- 12.24 Judge Barron responded in a letter dated 30 June 2003, in the following terms:

“It is noted that records do not appear to be able to identify the existence of a Corporal [surname given].”

I repeat the essential information which has already been provided...

In [our] letter dated 12th July 2002, [we] asked, in the event that the records provided a negative answer, for a complete list of all persons who served in the Pioneer Corps recruit training depot at Wrexham in 1960. Obviously this is too wide. However, it is unlikely that there would have been many Australians of NCO rank serving at the depot in 1960. Accordingly, I would ask for the names of any NCOs of Australian or New Zealand origin serving at that time in the depot.”

12.25 On 26 September, Judge Barron received the following reply:

“The MoD are unable to provide the information you are looking for in respect of NCOs at Wrexham in 1960. Records from that period are not kept in a way that enables this information to be recovered. They will not be able to uncover any other material on [the corporal] without further information such as date of birth or regiment.”

12.26 The regiment to which the corporal was said to have belonged (the Pioneer Corps) had already been notified to the Secretary of State for Northern Ireland.

Information obtained by the commission

Affidavit from witness

12.27 On 23 September 2005, the commission received from ‘Justice for the Forgotten’ an affidavit sworn by the person who claimed to have seen the British Army corporal in Dublin before the bombings of 1 December 1972 and 17 May 1974. A meeting between the commission and this person subsequently took place on 14 November 2005: Mr Greg O’Neill, solicitor for the person concerned, was also present.

12.28 The affidavit of this witness dated 23 September 2005 is at variance with his written statement of 21 May 1974 in one respect. The affidavit affirms:

“I wish to point out that the reference in the printed statement to me reading on Sunday in newspapers a description of the man (who reportedly spoke to a lady in O’Connell Street, just before the bombs exploded on Friday evening) I feeling that the description suited [the corporal], does not at all accord with my recollection and I say it is wrong.”

- 12.29 Instead, the witness in his affidavit states that it was an appeal for information concerning the bombings, made by Gardai to the general public as having prompted him to contact the Gardai on the matter:

“My decision to contact the Gardai was prompted by an appeal made by the late Chief Superintendent John Joy, who had made an appeal to the general public for any person having information which might assist the Gardai in their inquiries into the bombings of the 17th of May 1974 to come forward.”

- 12.30 The affidavit of September 2005 contains new material that did not appear in the statement made by this person to Gardai on 21 May 1974. In the first place, the affidavit states that he was contacted more than once by the Garda investigation team:

“After I had given my formal statement to the Gardai, I was contacted for a number of weeks on five or six occasions by these detectives. Usually I was picked up by a car by arrangement and interviewed informally with one Garda asking more questions while the other took notes. I cannot at this remove of time recall the details of these conversations, but I am sure I must have given more information supplementary to what is in the statement, possibly more details about [the corporal] that I was in a position to remember then, which unfortunately I do not remember now...”

After the initial few weeks, I did not hear from the Gardai for several months until I met one Garda on an occasion when I was collecting my daughter from [a named school]... and he told me informally and ‘off the record’ that my statement had gone up to the top and that a request had been made to the British authorities to interview the man whom I had named in my statement. To the best of my recollection, and this has stuck in my mind all down the years, I was told by this detective in terms that the response of the British was that the Irish ‘could go fuck themselves’; that the Gardai would get no co-operation from them.”

- 12.31 The affidavit also mentions an incident that was said by the person making the affidavit to have taken place about two years after the bombings, in which, according to this person, an unmarked Garda car pulled up beside him while he was out walking near his home:

“I knew by the demeanour and approach of the driver and front-seat passenger that they were both detective Gardai. I approached the car and one of the Gardai spoke to me from the car. He said words to the following effect:-

‘Do you remember that talk you had with [two named Gardai]? Well, keep your fucking mouth shut about it.’”

- 12.32 The commission has interviewed the two Garda detectives, one an experienced Detective Inspector, who dealt with the informant in May 1974. Understandably, after thirty-one years both men had difficulty in remembering details of their meetings in 1974 with the person who gave them the information concerning the British Army corporal. The two officers concerned both retired from An Garda Síochána some years ago, and no longer possess any notebooks or other documents which might contain information on the matter.
- 12.33 From the material disclosed to it by An Garda Síochána, the commission is satisfied that a copy of the statement made by the person who claimed to have seen the British Army corporal was delivered to the incident room for the Dublin investigation, at Dublin Castle. It is possible that the Gardai who took the statement from the person concerned might also have filed a written report on the matter, but such a report is not amongst the Garda documents disclosed to the commission.

Correspondence with the Northern Ireland Office

- 12.34 On 3 October 2005, the commission wrote to the Secretary of State for Northern Ireland concerning this aspect of its terms of reference. Having referred to correspondence between the Hamilton / Barron Inquiry and the Secretary of State, the commission's letter continues:

“From information available on the website of the Royal Pioneer Corps (<http://www.royalpioneer corps.co.uk>), it seems that the Corps Depot and Training Centre was based in Hermitage Camp, Wrexham and Gorsley Hall, Gresford from November 1949. In December 1959 the name of the unit was changed to the Depot RPC and on 12 September 1960 the Depot moved to Quebec Barracks, Northampton. The searches carried out in 1974 do not appear to have taken this into account.

Regarding the statement that “Records from that period are not kept in a way that enables this information to be recovered”: the commission fails to understand how this could be so. According to the Ministry of Defence Veterans' Agency website http://www.veteransagency.mod.uk/service_recs/service%20recs_army.htm, Army service records are archived and stored according to the Regiment or Corps. Furthermore, the name [of the Corporal] was by no means common: the Army List (Part I) for 1960 lists only six officers of that surname. In 1974, only two ... were listed.

*The commission **requests** that a search of military records be carried out with a view to confirming the existence or otherwise of a Corporal [surname given] attached to the Depot RPC in 1960.*

*If the information cannot be recovered, the commission would **request** an explanation as to why this is so. This should include a description of the form in which the relevant records were held, both in 1974 and today. The commission would also like to know whether any of those records have been lost or destroyed; and if so, the date on which such loss or destruction was recorded, and the reason for such loss or destruction.”*

12.35 By letter dated 25 October 2005, the Secretary of State for Northern Ireland replied as follows:

“I am afraid that despite a further search of Army records, it has still not proved possible to identify the Corporal [surname given] who was reported to have been seen in Dublin on 15 May 1974. A soldier’s surname, service number and date of birth are key to being able to check Army personnel electronic records. Based on the likely age profile of a Corporal in 1960, the MOD has tried to locate any record of him by conducting several searches on the assumption that he would have been in his late 20s or early 30s in 1960. These resulted in the identification of only one soldier with the surname [surname given]. He was British and in the Royal Army Medical Corps at the time and would therefore not appear to be the soldier you are attempting to trace.

Although additional information has been provided on Corporal [surname given], including the fact that he originally came from Australia and served at the Pioneer Recruit Training Depot in 1960, the Army records are not held in such a way that would enable the MOD to carry out searches based on this information. Whilst it is correct that Army service records are archived by Regiment or Corps, further identifying material such as date of birth and service number are still required to help narrow down searches.

The MOD has, however, contacted the Royal Pioneer Corps Association to seek their assistance in identifying Corporal [surname given] and I will let you know if, and as soon as, we have anything positive to report as a result of this.”

12.36 In the course of its own researches, the commission obtained photocopied extracts from a number of British Army-related publications. One of these extracts contained a reference to a British Army corporal of the same surname, and from the same regiment, as that given to Gardai by the anonymous informant on 19 May 1974. In the photocopied extract obtained by the commission, the Christian name of the British Army corporal concerned was represented by an initial. This information was conveyed to the Secretary of State for Northern Ireland in a letter dated 12 January 2006.

12.37 The matter was raised again by the commission at a meeting with British Government representatives on 9 February 2006.

12.38 On 17 February 2006, the Northern Ireland Office responded by letter stating:

“After exhaustive searches of Ministry of Defence (MOD) records to try to trace Corporal [surname given] the MOD sought the assistance of the Royal Pioneer Association (RPA), an organisation I understand you also approached on 14 December. Royal Pioneer Corps (RPC) [information] dating back to the early 1960s indicate that a Corporal [surname given] was at Wrexham in 1960. In [date given] he was listed as [seniority number and surname given] and he served in Kineton. The RPA advise that he never joined the RPA association, so they do not have a record of him. Even with the additional [Royal Pioneer Corps information ... the MOD still has no record of a soldier that would fit his likely age and career profile. During the meeting on 9 February, MOD officials said they had written to a former Corporal [surname given] but I am afraid he contacted the MOD to confirm that he is not the soldier you are seeking to trace. This person did not serve in Wrexham in 1960 and was in [another named] Regiment, not the Royal Pioneer Corps. The MOD believes it has now exhausted all possible routes for tracing this individual. Nonetheless, if any further information comes to light we will of course let you know.”

12.39 The statement that the soldier whom the commission were seeking to contact was serving in Kineton in 1962 was new information to the commission. This was additional information disclosed to the commission by the British government.

12.40 On 12 May 2006, the Northern Ireland Office wrote again with the following information:

“As you know the MOD has already written to a former Corporal [surname given]. He unfortunately turned out not to be the soldier in question.

The MOD have recently carried out further searches expanding the likely age range of a Corporal in 1960. This has resulted in the MOD writing to another former Corporal [surname given]. If and when he makes contact, I will let you know.”

12.41 A further communication from the Northern Ireland Office regarding another man of the same surname as the British Army corporal alleged to have been seen in Dublin on 15 May 1974 followed on 16 May 2006:

“Following my letter to you of 12 May, you will wish to know that Mr [name given] contacted the MoD on 15 May. Mr [name given] has

confirmed that he served with the Army at Wrexham in 1960 and asked the MoD to explain to you that he served with the Army from 1959 to 1962 and was not in Dublin in 1974. The MoD confirm from their records that Mr [name given] was discharged from the Army on 17 September 1962. Should you wish to contact Mr [name given] his details are as follows [contact details given].”

- 12.42 The commission duly established contact with the man concerned: a meeting was arranged and took place in the United Kingdom.

Interview with a former British Army corporal

- 12.43 The commission spent a number of hours in conversation with a man who told the commission that he was the only corporal in the Royal Pioneer Corps in 1960 with the same surname as the man alleged to have been in Dublin in November 1972 and May 1974. The commission informed him of his right to seek legal advice or to have a solicitor present at the interview: he indicated he had attended voluntarily, and was quite happy to answer the commission’s questions without legal representation. During the entire time he was with the commission, he answered all questions which were asked of him, directly and without hesitation. The commission was impressed with his open, honest manner and considers him to be a credible and truthful witness.
- 12.44 The man said that he was born in Lancashire, England. He was conscripted into the British Army in 1959. He was 20 years old at the time. He believes he was amongst the last groups of people to be drafted for national service, which was then being phased out: national service in the British Army was ended on 31 December 1960, although the last national serviceman was not discharged until May 1963. By 1959, the number of regiments taking in national service draftees was extremely limited. This man said he was offered two choices: the Catering Corps or the Royal Pioneer Corps. He chose the latter.
- 12.45 He said that his basic training was conducted in the Royal Pioneer Corps Training Depot at Wrexham. During training he displayed an interest in and aptitude for weapons. As a result, he was kept on at the Depot after his basic training was completed. He became a weapons instructor for new recruits – dealing with small arms, rifles and machine guns. He lived in the barracks at Wrexham. When the Training Depot moved to Northampton in 1960 he moved with it.
- 12.46 He was made a lance-corporal within 3 months of his induction, and a full corporal about 10 months later. He no longer recalls the exact date of either promotion. He was demobbed in 1962 when his period of national service came to an end. He did not apply for an extension.

- 12.47 One of the duties assigned to NCOs from time to time was to perform escort duties. This man recalled being sent to Belfast on two occasions to escort prisoners back to Great Britain. The prisoners were mainly soldiers who had gone absent without leave. He said he did not travel into this State on either occasion. Neither did he perform such a task or similar or related tasks in the State at any time.
- 12.48 The man stated that during his time with the Royal Pioneers he did not train anyone in martial arts, sports or unarmed combat. However, on leaving the British Army he got a job in the Prison Service, where he taught physical education to inmates. He worked for 12 months at a remand centre in [location supplied]. There followed 9 months of further training as a P.E. instructor: he was then sent to work at a borstal in [location supplied]. While working at the borstal, he took up judo training. To supplement his income, he began giving private judo classes to staff and their children, using a building attached to the borstal. He did not teach judo to the borstal inmates. After five years working at the borstal he left the Prison Service.
- 12.49 The man told the commission that he was not married or engaged during his period of National Service; but it was whilst serving at Wrexham that he met a woman who would eventually become his wife. They became engaged to be married while he was working at the remand centre, and he was married during the time he was working at the borstal. When he left the Prison Service, he and his wife moved to Wales and he began working for a business owned and run by his wife's family. Around 1974 / 75 he went into business with his brother-in-law, and remained in that business until his retirement in 1995.
- 12.50 The man freely volunteered that he had been in Ireland many times over the years, and showed no signs of harbouring any prejudice or ill-will towards Ireland or Irish people. He said that in the 1970s, as an avid rugby fan, he often travelled to see international matches at Lansdowne Road. He had no other reason to come to Dublin during the 1970s and did not do so. During the 1970s the international rugby season lasted from January to March, and the games took place at weekends, so there was no reason for him to have been in Dublin on a mid-week day in November 1972 or in May 1974. He could not think of any circumstances which would have resulted in his being in Dublin either on 29 November 1972 or on 15 May 1974. He is sure he was not in Dublin on either of those dates.
- 12.51 He said further that he has never driven a car in the Republic of Ireland, though he has been a passenger in cars in this country from time to time.
- 12.52 As for his alleged Australian origins, he stated firmly that he was born in England and has no Australian connections. Although he has travelled widely

since his retirement, indulging in long-distance walking, running and skiing activities, he has never visited Australia. The commission could not detect any trace of an Australian accent in his voice.

- 12.53 The man expressed some surprise and curiosity as to how and why his name had been mentioned in connection with the Dublin / Monaghan bombings. He reiterated that he was not in Dublin on the dates in question and had nothing whatsoever to do with the bombings. He was given an opportunity to ask the sole member any other questions he wished. There were no additional questions that he wished to ask.

Conclusions

1. The commission concludes that:
 - (a) The information given to the Gardai by the person who claimed to have seen a named British Army corporal in Dublin on 15 May 1974 was neither reliable nor likely to further the investigation and was recognised as such by the Gardai concerned.
 - (b) The steps taken by the Gardai to follow-up the information provided by this person were appropriate and adequate in the circumstances obtaining at the time.

Reasons for conclusions

1. It has now been established to the satisfaction of the commission and beyond a reasonable doubt that there was, attached to the Royal Pioneer Corps in 1960, a British Army corporal of the same surname as that given to Gardai by the person who claimed to have seen a British Army corporal in Dublin on 15 May 1974.
2. The commission has had the opportunity of meeting and taking evidence from both the witness who gave the Gardai the information and a man who the commission is satisfied is the British Army corporal referred to in that information. Their accounts differ significantly in a number of respects.
3. Taking all of the information available to the commission into account, the commission is satisfied that the version of events given by the former British Army corporal is more reliable than that of the person who gave information to the Gardai concerning a British Army corporal in 1974.
4. The credibility of the information given by the person who claimed to have seen the British Army corporal in Dublin on 15 May 1974 is further lessened by the fact that this person now refuses to accept as genuine the only part of his 1974

statement which could possibly connect his alleged sightings with the bombings of 17 May 1974 *i.e.* the resemblance of the man he saw to the man seen on North Earl Street shortly before the bombing. It is beyond the bounds of belief to suggest that the Gardai would have deliberately falsified the retyped version of his statement in this way, when they had no reason or possible motivation that the commission can think of for doing so. It is not credible that a passage of such size and detail could have been the result of a typing or photocopying error.

5. The fact that the person who gave the information to the Gardai now disputes the veracity of part of his original statement is not, of course, something that could have affected the view taken by the Garda investigation team in 1974 as to his credibility. Nonetheless, there are other features of this person's 1974 statement which could have raised doubts in the minds of the Garda Siochana as to its evidential value.
6. In the first place, there is a symmetry between the circumstances of the sightings in 1972 and 1974 which, if true, seems highly coincidental. Both sightings are said by the person concerned to have taken place on a Wednesday, two days before a major bombing incident: in both cases the witness claims to have been a passenger in a vehicle which was stopped in an outer lane of traffic in Dublin city centre. On both of the named occasions the witness said he had "*a clear view*" of the British Army corporal, who was driving a car slowly on the opposite side of the road, and "*immediately recognised him*".
7. Secondly, the person concerned described the British Army corporal seen on 15 May 1974 as driving "*an ice-green and light blue motor car*". This description is sufficiently close to the colour of the Parnell Street bomb car to raise the possibility that the person who gave the information to Gardai could have been influenced by newspaper descriptions of the latter vehicle. But the Parnell Street bomb car was not stolen until the morning of 17 May – two days after this person's alleged sighting of the British Army corporal is said to have taken place.
8. A third significant feature concerns the British Army corporal's supposed Australian origin. As we have seen, the person who claimed to have seen the British Army corporal in Dublin in 1974 stated to Gardai at the time that a newspaper description of a man seen by a lady witness at Westmoreland Street and again at North Earl Street on the day of the bombings, resembled that of the British Army corporal. Gardai investigating the bombings would undoubtedly have noted that, according to the above lady witness, the man she encountered had spoken with an English accent, not an Australian one.
9. The Garda documentation disclosed to the commission gives no indication of what views the investigating Gardai held concerning the credibility of the person who claimed to have seen the British Army corporal in Dublin on 15 May 1974. Still, no matter what those views may have been, it was incumbent upon the

- Garda investigation team to try and find the British Army corporal, if only to eliminate him from their inquiries.
10. This they sought to do by writing to the police in North Wales, who carried out inquiries in Wrexham and also contacted British Army Records. Nothing of substance resulted from those inquiries, and Gardai were informed by the North Wales police that the British authorities could not take their investigations any further.
 11. The Hamilton / Barron Report into the Dublin / Monaghan bombings pointed out two pieces of information available to Gardai which had not been conveyed to the British police – the fact that the corporal concerned may have married a Wrexham girl, and that he should have been in photographs hanging in the gym hall at the barracks. The report stated:

“This could have formed the basis for another request for information. The chances of a breakthrough may have been remote, but it is a path that should have been explored.”
 12. This comment must be considered in light of the fact that neither the Hamilton / Barron Inquiry, nor this commission have had access to a complete account of the Garda investigation into the bombings. It is possible that further requests for information were made by Gardai but that no note was made of such requests; or if a note was made, that it is now missing.
 13. It should also be pointed out that the fact that the person who claimed to have seen the British Army corporal in Dublin in 1974 told the Garda Siochana that the corporal was about 44 years of age, may have delayed the identification of that corporal by the British government.
 14. If one assumes that no further inquiries were made, the question then is whether a decision not to pursue the matter further would have been reasonable in all the circumstances. This entails taking the following into account:
 - the credibility of the person who gave Gardai the original information;
 - the significance of the original information (in terms of its possible connection with the bombings);
 - the likelihood of any further inquiries producing fresh information; and
 - the manpower and resources available to An Garda Siochana to pursue all unresolved lines of inquiry.
 15. As to credibility, the commission is satisfied that there were legitimate reasons to question the reliability of the alleged sightings of the British Army corporal in Dublin in November 1972 and May 1974. As to significance: even if true, there

was still no obvious connection between the alleged presence of the corporal in Dublin and the bombings in 1972 or 1974. Finally, in the light of the response from the North Wales Police in September 1974, the likelihood of any further inquiries producing a breakthrough at that time must be considered slim in the extreme.

16. When all of these factors are considered, the commission is satisfied that it was open to the Garda investigation team to decide that no further benefit could come from pursuing this 'lead'. The two Garda officers who met and took a statement from the person who claimed to have seen the British Army corporal were officers of experience and probity, well able to reach a responsible and informed view of the reliability of the informant and of the value of the material which he gave them, as well as the likely value of pursuing that material past the point which they did.
17. The commission is satisfied that the encounters and conversations which the informant claims to have had with Gardai subsequent to the making of his statement to the Gardai are unlikely to have taken place as described by the informant.

Chapter thirteen

THE NATIONAL ARCHIVES AND DOCUMENT MANAGEMENT

Introduction

13.1 Paragraph 3 of the commission's terms of reference concerns documentation of relevance to the Dublin and Monaghan bombings which is or may be missing from the archives of the Gardai, various government departments and other relevant public bodies. The commission is tasked with establishing the following:

"In relation to the missing documentation:

- i. *the exact documentation (Departmental, Garda intelligence and any other documentation of relevance) that is unaccounted for;*
- ii. *the reasons explaining why the documentation went missing;*
- iii. *whether the missing documentation can now be located; and*
- iv. *whether the systems currently in place are adequate to prevent a re-occurrence of such documentation going missing."*

13.2 The issue of missing documents relating to the Dublin and Monaghan bombing investigations was brought to public attention in the first place by the Hamilton / Barron Inquiry into the Dublin and Monaghan bombings, and subsequently by the Oireachtas Joint Committee which reviewed the Hamilton / Barron report. The fact that relevant documents were missing was seen as a matter of considerable importance. In chapter 2 of the Joint Committee's final report on the Dublin and Monaghan bombings, it is stated:

"One of the most extraordinary revelations contained in the Barron Report is that there is an amount of official documentation, which has disappeared. Given that this was the largest atrocity in the State, it is astonishing that better care was not kept of these documents and there exists no complete explanation as to their whereabouts."

13.3 The Oireachtas Joint Committee received submissions from a number of sources, including the Garda Commissioner and the Minister for Justice, on this issue. However, these submissions failed to clarify the matter to the satisfaction of the Joint Committee. Paragraph 2.71 of the Joint Committee's final report states:

“After hearing all of the submissions in relation to this issue there is considerable confusion as to which documents are actually missing, whether or not the missing documents are copies of original ones that are still in existence and whether or not documents referred to as being missing were ever in existence in the first place. However, what is very clear is that the Dublin and Monaghan bombings were the single greatest atrocity to have taken place since the foundation of the State, and for that reason alone it is a matter of fundamental concern that clarity is brought to this issue. Whilst the Sub-Committee has received no suggestion that the documentation was either deliberately destroyed or misplaced, the very fact that there is an issue about missing documentation is a matter of considerable disquiet to the Sub-Committee, and it is of the view that it requires an investigation which would have statutory powers.”

The task of carrying out such an investigation has been given to this commission.

13.4 In order to fulfil its obligations under this aspect of its terms of reference, the commission has requested disclosure of all relevant documents from the Garda Síochána, the Army, various Government departments and other relevant bodies. There are four possible categories, into one of which all material relevant to the Dublin and Monaghan bombings must fall:

- 1) Documents that exist and have been produced to the commission;
- 2) Documents that exist, but whose existence has not been disclosed to the commission;
- 3) Documents which were created, but which have not been produced to the commission and are deemed missing; and
- 4) Documents which may have been created, but whose existence cannot now be proven.

13.5 The commission has received affidavits of documents from the Garda Commissioner, the Army Chief of Staff, the Director of Public Prosecutions, the Dublin City Coroner, the Joint Oireachtas Committee and from all relevant Government departments. The affidavits contain lists of the documents which have been disclosed to the commission by the relevant bodies. Copies of these lists are to be found in the appendices of this report.

13.6 In order to deal with this aspect of the commission’s terms of reference, it is essential to have some understanding of the principles governing effective document or records management. It is also necessary to be aware of the statutory framework which governs the preservation of public records in the State. Since 1986, the central body in this statutory framework has been the National Archives. The commission has had the benefit of receiving advice on the principles of document management and the manner in which they are

applied in this State from the current Director of the National Archives, Dr. David Craig.

Establishment of the National Archives

- 13.7 At the foundation of the Irish State there was in existence an established system for the preservation and retention of public records. The statutory regime was principally regulated by the Public Records (Ireland) Act, 1867 and the Public Records Act, 1876. Public records were stored and maintained, amongst other places, in the Public Record Office and the State Paper Office.
- 13.8 On 18 May, 1986 the Oireachtas provided, in the National Archives Act, 1986 (Number 11 of 1986), for the establishment of the statutory entity “*to be known as the National Archives*”. This Act repealed and replaced the statutory system for the preservation and maintenance of the state records that had been by then in existence for more than 100 years.
- 13.9 The National Archives Act, 1986 provides for the creation of the office of Director of the National Archives. The functions of the Director include the former functions of the Public Record Office, the functions of the Deputy Keeper of the Records by the Public Records (Ireland) Act, 1967, and the functions of the office of the State Paper Office. In addition Section 4(1) of the National Archives Act, 1986 confers thirteen specific statutory functions on the director including:
- c. The examination and acquisition of departmental records in accordance with this Act,*
 - d. The inspection and examination of arrangements for the preservation of departmental records and, with the consent or at the request of the appropriate member of the Government, the examination of departmental records,*
 - e. The giving of advice to a member of the Government and to any public service organisation on the management, preservation and reproduction of records under their control.*
- 13.10 Section 7(1) of the National Archives Act, 1986 places an express statutory duty on departments of state in relation to the preservation of departmental records:
- “Subject to the provisions of sections 19(3) and 19(4), Departmental records shall, unless they are transferred to the National Archives in accordance with section 8 or are disposed of under subsection (5), be*

retained and preserved in the Department of State in which they were made or are held, and shall not in any case be disposed of except in accordance with subsection (5); provided that, where more than one copy of such a record exists, the retention and preservation of the original or, if the original is no longer available, of an accurate and complete copy thereof shall suffice.”

13.11 Subsection (5) of section 7 provides:

“Departmental records, the disposal of which is authorised by an authorisation under this section, shall be disposed of by being destroyed in a manner which ensures that their confidentiality is not affected and that their contents are not ascertainable.”

13.12 Sections 19(3) and (4), referred to in section 7(1), give powers of regulation to the Minister for Public Service as follows:

“(3) The Minister for Public Service, after consultation with the Director, may make regulations –

- a. For the proper management and preservation of Departmental records in the custody or care of a Department of State, and*
- b. Fixing standards in relation to the copying of such records by photographic, micro-photographic and other processes and providing for the authentication and preservation of such copies with a view to the disposal of the originals of such copies.*

(4) For the purpose of their disposal, originals of records copied in accordance with regulations under subsection (3) may be destroyed on the written authorisation of the Director and the disposal of such records shall be carried out in a manner which ensures that their confidentiality is not affected and that their contents are not ascertainable.”

These regulatory powers are now exercised by the Minister for Finance. To date, no such regulations have been made.

13.13 Section 1(2) of the National Archives Act, 1986 and the schedule to that Act provide that the Garda Síochána and the Defence Forces are deemed to be included in the definition of a department of state and that their records are deemed to be included in statutory definition of departmental records contained in Section 2(2) of the National Archives Act, 1986.

13.14 There is an express statutory duty on each department of state to transfer departmental records which are more than 30 years old to the National Archives. There are a number of specific statutory exceptions to this duty to transfer records that are more than 30 years old. Section 8 of the National

Archives Act, 1986 provides that this general duty to transfer departmental records shall not apply where compliance:

- would seriously interfere with the administration of the department in question, because the records are in regular use in the department or are required in connection with the department's administration, or
- the National Archives have certified that the records concerned do not warrant transfer to the National Archives for preservation, or
- a department of state, with the consent of the Department of the Taoiseach, certifies in relation to particular departmental records, or a particular class or classes of departmental records, that to make them available for inspection by the public (a) would be contrary to the public interest, or (b) would or might constitute a breach of statutory duty, or breach of good faith on the ground that they contain information supplied in confidence, or (c) would or might cause distress or danger to the living persons on the ground that they contain information about individuals, or would or might be likely to lead to an action for damages for defamation.

13.15 Section 8(8) of the National Archives Act, 1986 provides that "*the Taoiseach may, with the agreement of the Director [of the National Archives], direct that the transfer to the National Archives under this Section of any class or group of departmental records be not proceeded with until he is satisfied that arrangements for such transfer are adequate*".

13.16 The main provisions of the National Archives Act, 1986 came into operation on the 1st June, 1988 pursuant to S. I. No 228/1988: National Archives Act, 1986 (Commencement) Order, 1988, made by the Taoiseach.

13.17 The statutory powers, duties and functions of the National Archives are regulated to a significant extent by the National Archives Act, 1986 Regulations, 1988 (S.I. No. 385 of 1988). These regulations provide, for example, that the age of a record is to be determined by the age of the latest substantive entry on that record (Article 4); that records must be transferred to the National Archives not later than the end of the year in which they become 30 years old; that on or before the 1st September each year each department of state must send to the Director a schedule listing all records which will be 30 years old before the following 1st January; that each department of state is responsible for the arrangement, numbering, cleaning, packing and labelling of its records which are to be transferred to the National Archives and for the carriage of those records to the National Archives (Article 5). The regulations also provide for the manner in which departmental records are certified, retained, withheld, reviewed, requisitioned, inspected and reproduced.

- 13.18 Section 18 (2) provides, inter alia, that a person who conceals or damages archives or who, without the consent of the Director, removes or destroys such archives shall be guilty of an offence. The section provides for both a summary, and an indictable mode of trial for this criminal offence.

Functioning of the National Archives

- 13.19 The commission heard evidence from Dr. David Craig, Director of the National Archives, on 15 September, 2005. Dr Craig was assisted in giving his evidence by Mr. Ken Hannigan, Keeper at the National Archives, and Mr. Tom Quinlan, Head of Records Acquisition at the National Archives.
- 13.20 The Director indicated in relation to departmental records that his statutory functions under the National Archives Act, 1986 involved him in three essential activities, namely, the acquisition of departmental records; certifying the disposal of certain departmental records and, to a limited degree, providing professional advice on matters connected with departmental records, including records management.
- 13.21 The Director expressed the view that, having regard to the current state of the Irish legislation and the resources available to the National Archives, it was not open to him to ensure full implementation of the National Archives Act. The Director agreed with the view that the best he can do is to hope that the National Archives operates effectively.
- 13.22 The Director indicated that in relation to the National Archives' capacity to store documentation, they had two facilities. At the time of giving evidence on 15 September 2005 the Director indicated that the National Archives had "*run out of shelf capacity*". The Director indicated that he had notified the Department of Arts, Sport and Tourism (the department of state now responsible for the National Archive) "*that unless we get additional spaces in the very immediate future, and I mean weeks rather than longer, that we will not be able to take in the annual transfer at the end of the year*". The Director indicated that the National Archives were "*full, essentially*". In his submission of 8 February 2007 in relation to the draft of this chapter sent to him on 1 February 2007, the Director said that:

"Later in 2005 some additional space suitable for the installation of shelving was made available to the National Archives at Bishop Street. The provision of this space enabled the National Archives to accept annual transfers of records in 2005 and 2006 from the Department of the Taoiseach, the Department of Foreign Affairs, the Department of Justice, Equality and Law Reform, and the Office of the Attorney General. However, this space is now full, and the National Archives is once again

in the position that it will be unable to accept annual transfers from Departments in 2007, if no additional suitable space is made available in 2007.

Proposals for new purpose-built premises for the National Archives have been considered by the relevant departments at various times since 1980, but to date none of these proposals have borne fruit. The proposal that the new premises be provided through redevelopment on the existing National Archives site at Bishop Street is currently being actively pursued. It is envisaged that the new premises will be provided by way of a public-private partnership, and €20,000,000 has been allocated for this purpose under the National Development Plan 2007-2013.”

13.23 The Director indicated that the number of positions in the National Archives, including some vacancies, amounted to 42 posts. The Director indicated that the minimum complement of staff necessary to attempt to discharge the functions under the National Archives Act, 1986 was a minimum of 100 persons.

13.24 The Director indicated that at the time of giving evidence the National Archives were refusing to take in large backlogs of records overdue for transfer by departments, because they didn't have sufficient space and did not have sufficient staff.

13.25 The Director indicated that the principal concern of the National Archives at the present time is to attempt to take custody of the annual release of records from the government departments whose papers have significant public interest. The Director indicated that in the schedule to the National Archives Act, 1986 there is an extensive list of statutory bodies who have continuing duties to transfer their records to the National Archives on an annual basis. The Garda Síochána is one of the statutory entities listed in the schedule to this Act. The Director indicated that in the year 1992 the Taoiseach made a directive under Section 8(8) of the National Archives Act, 1986 that the records of more than half of the entities listed in the schedule to the Act should not be transferred to the National Archives until he [the Taoiseach] was satisfied that arrangements for such transfer were adequate. This direction continues in force to date. In his submission of 8 February 2007 in relation to the draft of this chapter sent to him on 1 February 2007, the Director stated:

“Although the National Archives has been provided with small amounts of additional storage space in a number of stages since 1992, the National Archives has never had the space required to enable it to accept transfers from most of the bodies listed in the schedule to the Act, including the Garda Síochána.

The power of making and revoking directives under section 8(8) of the National Archives Act is now exercised by the Minister for Arts, Sport and Tourism.”

Principles of records management

- 13.26 In his evidence to the commission, the Director of the National Archives indicated that the records management function was a precise and independent discipline. To his knowledge there was no dedicated third-level educational course of professional training in records management in Ireland. However, professional archivists receive some limited training in aspects of records management as part of their archival training.
- 13.27 The professional discipline of records management is much more developed in countries such as England, America, Canada and Australia. The Director expressed the view that in Ireland, including the public service, records management in general, and the employment of appropriately qualified professional records managers in particular, are given a very low priority.
- 13.28 The Director told the commission:
- i) That big organisations frequently generate substantial quantities of records and, very quickly, discover the need to store those records in a particular location;
 - ii) That a system of records management was fundamental and necessary in order to organise, retrieve, use and track those records;
 - iii) That it was important to take into account that in any big organisation records are generated on a continuous basis.
- 13.29 The Director indicated that there was an established international standard in the area of records management. The relevant standard was International Standard ISO 15489, entitled “*Information and Documentation – Records Management*”. A copy of this international standard is set out in the appendices to this report.
- 13.30 The Director indicated that there are a number of essential requirements for a reliable and effective records management system and these include:
- 1. A dedicated location where records can be stored and identified readily and in an effective manner.
 - 2. That the records form part of a carefully planned records management system.

3. That the record itself is capable of being adequately and properly interpreted both in relation to its specific contents and the context in which it exists.
4. That the record itself should be capable of being maintained through time.
5. That if there is to be a disposal of records in any circumstances that it must be part of a planned system that properly takes account of the statutory responsibilities attaching to both the National Archives and the entity concerned.
6. That any records management system must at a minimum maintain an effective system audit to ensure that it is functioning effectively and that it can pick up on problems in the management system itself.

13.31 The Director considers that these are the minimum essential requirements for a records management system.

13.32 The Director indicated that the National Archives itself operates a very rigorous and high standard of records management in relation to its own files and holdings. The Director does not rely solely on the file classification system that a file may have had in a government department but, additionally, utilises a unique system of records management in the National Archives. This system of records management employs detailed measures to track the up-to-date location of each file, the person who moved it, and the location to which it went. The National Archives indicates that this system of record tracking is very effective. Where a file is removed from the National Archives there is a computer database tracking and controlling that file. The National Archives operates a system of auditing and checking in relation to their archives on a continuous basis.

13.33 The Director indicated that he was aware of circulars published by the Department of Finance which provided general guidance in relation to matters of records management and national archive related matters. The Director indicated that there had been a minor degree of consultation between the National Archives and the Department of Finance in relation to the content of some of these circulars. The Director made clear that this consultation would have been by way of being shown portion of these documents at a meeting but that the National Archives would not have seen the entire completed document.

13.34 The Director indicated that, leaving aside the question of legislation, it would be an appropriate function for the National Archives to publish guidance and standards in relation to topics such as records management and the tracking of records. The Director indicated that if there was published guidance in this

area it would materially assist the National Archives in discharging the National Archive's own statutory function.

- 13.35 The Director said that it was *“a major headache for the staff in some departments when they were being asked to prepare records of transfer, that they do not have any master information to start off with; so that they have to prowl around the basements and talk to staff in particular sections who might have records in their filing cabinets or whatever to find out what there is and so that they can prepare for the transfer. There is no central control in nearly all departments.”*

Secret and confidential records

- 13.36 In his evidence to the commission, the Director expressed the view that where an entity, such as An Garda Síochána, had a limited category of records that had a very high value such as documents that are secret or confidential or have some other very significant public interest in them the importance in maintaining an effective records management system in relation to that particular category of documentation was critical and required regular, consistent and reliable mechanisms of audit of that documentation. The Director expressed the view that despite this essential requirement it was his experience that in Ireland categories of records that were secret, confidential or important did not have adequate systems of records management.
- 13.37 The Director indicated that it was essential for an organisation such as the Garda Síochána to know what records it had. The Director considered that you can only know what records you have if there is some kind of listing register or database that indicates the nature of the holdings and that it is updated to take account of any changes in that database, especially in circumstances where there has been a loss or destruction. In addition the Director considered that an audit trail in the sense of recording the movement of records, the operation of records or the alteration of records in any way was an essential part of any records management system. These factors were merely elements of the international standard that was essential and appropriate in this context.
- 13.38 The Director indicated that archives, by definition, constitute an ordered collection of papers where the ordering is adequate to allow you, at any given point, to know what you ought to have and, if what you ought to have is not what you have, where you could hope to locate what is missing and replace it in its proper place, and where there are adequate structures for the disposition of individual documents within your archive so that the archive staff can assist a person coming as a client to use that archive, to find specifically what the client is seeking. The Director stated that in relation to security, confidential or other significant public interest records he would expect the

records management standards to be more thoroughly applied to this limited category of archives.

- 13.39 The Director expressed the view that those persons charged with the preservation and maintenance of secret or confidential records are more easily supervised if their work practices are transparent. The Director nonetheless indicated that the experience of the National Archives was that, not infrequently, persons in control of limited collections of records of this type *“can find anything they want when they need it but they don’t really want anybody else to be able to find it”*. The Director expressed the view that *“people may, in a more genuine way think that to let other people in the organisation know that certain records exist will undermine the confidentiality of that information and thereby allow the information to become available outside an organisation that should not become available”*. The Director expressed the view that while this approach was understandable, he did not consider it to be a correct approach. He further expressed the view that *“without very good procedures coming down from above this type of approach would continue”*.
- 13.40 The Director expressed the view that in an organisation such as An Garda Síochána the Garda Commissioner, as an individual, *“may not choose necessarily always to know all the details but they must have the right to know and in any case where they [Commissioners] are worried, they must be able to find out”*. It was important that the Garda Síochána had in place systems that ensured the maintenance of those records where it was impossible for the Garda Commissioner to know the day-to-day contents of the archives.
- 13.41 Finally, in relation to the public disclosure of secret or confidential material, the Director indicated to the Commission that the fact that a record previously enjoyed a designation of “secure”, “confidential” or “secret” had, in general, no effect on the status of that document in the National Archives once it had been transferred into the custody of the National Archives. A document that had previously been “secret” would, generally, be made available to the public in accordance with the provisions of the National Archives Act, 1986.

Management of electronic records

- 13.42 The Director also gave evidence in the very difficult area of preservation of electronic records.
- 13.43 The Director indicated that electronic records were very fragile, very vulnerable in all sorts of ways that more traditional paper or other records weren’t. The Director expressed the view that the necessity for proper systems, proper management, proper control and audit that apply to paper

records are even more important in the case of electronic records. The Director expressed the view that

“if you haven’t got it right from the beginning and managed it right thereafter there probably won’t be anything to access or if there is anything, it will be something pretty meaningless; that no matter how much work is done it would never make sense”.

He told the commission that there is particular difficulty in relation to the preserving of records which were first created in the electronic domain rather than on paper.

13.44 The Director considered that in particular cases it may be necessary to consider the idea of printing out categories of electronic records to ensure that there is adequate back-up of the original. The difficulty with this suggestion is that in relation to the entire electronic records that are in existence, it would not be economically feasible or practical to attempt to make paper copies of all these records.

13.45 The Director expressed the professional view that

“it is a myth that the computer, or electronic records, have replaced or will replace more traditional forms of records”.

The Garda Síochána and the National Archives

The Garda Síochána Code

13.46 The fifth edition of the Garda Síochána Code (published in August 2005) at paragraph 25.58, provides express guidance to all members of the Garda Síochána concerning their specific statutory duties in relation to Garda Síochána records.

13.47 The Garda Code makes explicit the statutory duty of the Garda Síochána to comply with the terms of the National Archives Act, 1986. The duty arises both in relation to the preservation of Garda Síochána records and their transfer, when they are more than 30 years old, to the National Archives.

13.48 The Code provides, for example, that original material is to be preserved or, if the original has been destroyed or lost, a good copy of the record. The Code states at paragraph 21.58 (4) that:

“A Garda record created within the administrative system, be it at Station, District, Divisional or Headquarters level must be accounted for in its composite form, i.e. the end product must be preserved. Departmental

records, unless they are transferred to the National Archives or disposed of in accordance with the Act will be retained and preserved in the Department of State in which they are made or are held.”

- 13.49 According to paragraph 21.58 (5) of the Garda Code, sanction for the transfer of records to the National Archives or for the destruction or disposal of Garda records must be obtained from the Garda Archivist at the Garda Museum, Dublin Castle. In relation to the disposal of Garda documents, paragraph 21.58 (6) of the Garda Code notes:

“Where the destruction or disposal of departmental records is authorised, they shall be destroyed in a manner which ensures that their confidentiality is not affected and that their contents are not ascertainable.”

Evidence of the Director of the National Archives

- 13.50 In his evidence to the commission, the Director of the National Archives indicated that his officials dealing with the Garda Síochána are security cleared in the same fashion as other civil servants. The particular individual, Mr. Quinlan, who is concerned with this area of the National Archive’s work has a long history *“of being associated with classified and secure documentation and information”* in government departments.
- 13.51 The Director indicated that, in relation to the preservation of records in the Garda Síochána over the last ten years, his officers had not been shown the systems of records management, storage and so forth that exist in the Garda Síochána in relation to Garda documentation.
- 13.52 In relation to the Garda Síochána the National Archives have not, generally speaking, had access to *“what one would regard as the core operational records of a police force”*. He indicated that while they [the National Archive staff] have had sight of a wide variety of records in the context of consideration of certification for their destruction these were records *“that are rather marginal to their core policing functions”*. The question of certification of these marginal records has not necessitated the National Archive being familiar with the structure and operation of the core policing function of the Garda Síochána.
- 13.53 The Director indicated that he had never read that part of the Garda Síochána Code that referred to the National Archives. The Director indicated that he did not believe that he had been consulted by the Garda Síochána in relation to drafting of that part of the Garda Síochána Code concerning the National Archives. The Director indicated that he was aware that a direction in

relation to the National Archives Act, 1986 was to be included in the Garda Siochana Code. The Director indicated that he had no knowledge of the contents of the Garda Siochana Code. The Director further indicated that he had never been consulted by the Garda Siochana on any question concerning the operation or review of the records management activities of the Garda Siochana.

- 13.54 The Director told the commission that the Garda Siochana have a professionally qualified archivist who liaises directly with the National Archives. The officer concerned is an Inspector in the Garda Siochana who completed the University College, Dublin archives course and now works in the Garda Siochana as a museum curator and archivist. The Director expressed the view that the range of responsibilities on this officer could not be properly or satisfactorily discharged by one person. The Director expressed the view that the responsibilities on this Garda were “too much”. This officer was, in the Director’s view, not *“in a position to function in the way that one would really want someone in any overall sense in charge of records and archives to be able to function”*. The Director also expressed the view that the Garda museum was *“very much out on a limb from the main structure of the Gardai”*.
- 13.55 The Director expressed the view that in order to properly discharge the duties owed by the Garda Siochana to the National Archives it would be necessary for a person
- “...to perform a central co-ordinating role with regard to records management and the liaison of National Archives, such a person I think would need to be much closer to the centre of things within the Garda hierarchy. He would need to be answering, even indirectly, to a very senior officer of the Garda Siochana who would have a wider overall responsibility for records, and answering to such a senior officer who one would also expect in the way one expects a person would back the more junior officer, when required, if the junior officer wasn’t getting co-operation that he would get support”*.
- 13.56 The Director stated that in his view it *“is a common sense observation, that expecting somebody who is really more a museum curator and historical archivist to be simultaneously acting as their principal records officer is not realistic. It is not the way to do things”*. The Director had a concern that there was often a confusion between the professional discipline of an archivist and the separate and quite distinct professional discipline of records management.
- 13.57 The Director told the commission that the National Archives were aware that the Garda Siochana had one single major location for archives at Santry, in

Dublin. The Director made clear that he does not have an “overall picture” of the storage circumstances of Garda Síochána records.

- 13.58 The Director indicated that the National Archives had not visited the archive facility in Santry, or anywhere else, to view any major holdings of Garda Síochána papers in the last ten years. The Director indicated that he did not have sufficient resources to carry out this type of inspection.

Government departments and the National Archives

Files disclosed to the commission

- 13.59 The Director of the National Archives, in his evidence to the commission confirmed that he had provided by way of voluntary disclosure to the commission files in the National Archives from the Department of the Taoiseach, the Department of Justice, Equality and Law Reform, and the Department of Foreign Affairs. The Director permitted the commission to inspect the manner and system of storage and preservation of these records at the National Archives premises at Bishop Street, Dublin 8.
- 13.60 There were two files from the Department of the Taoiseach. The first file was file no. 2005/7/660. It was entitled “*Twenty-six counties [Republic of Ireland; Southern Ireland]: explosions, including bombs in Dublin and Monaghan in May 1974.*” The second file was file no. 2005/7/661 and it was entitled “*Twenty-six counties [Republic of Ireland; Southern Ireland]: explosions including bombs in Dublin and Monaghan in May 1974.*” At the time of inspection the originals of these files had been recalled under the provisions of The National Archives Act, 1986 by the Department of the Taoiseach to facilitate their disclosure to the Commission by the Department of the Taoiseach.
- 13.61 Two files from the Department of Justice, Equality and Law Reform were disclosed to the Commission by the National Archives. The first file is file no. 2005/24/16 and is entitled “*Autopsies of the bodies of the victims in bomb explosion in Dublin on 17th May 1974*”. The second file number is 2005/24/17 and is similarly entitled “*Autopsies of the bodies of the victims in bomb explosion in Monaghan on 17th May 1974*”. Interestingly the Department of Justice, Equality and Law Reform files in the custody of the National Archives are copy files, and not original files. The Director indicated his view that the transfer of a copy file by a department to the National Archives was not in compliance with proper archive practice, nor in strict compliance with the provisions of the National Archives Act, 1986.
- 13.62 The Director produced to the commission two files from the Department of Foreign Affairs that were in the National Archives and were relevant to the

terms of reference of the commission. The first file number is 2005/4/56 and entitled “*Southern bombings in 1974 press reaction*”. The second file number is 2005/4/795 and is entitled “*Bomb explosions in the 26 counties (mainly press cuttings)*”. The originals of these two files had been recalled by the Department of Foreign Affairs so that they could be produced by that department to the commission.

Evidence of the Director of the National Archives

- 13.63 The Director indicated that the public servants in the government departments discharging functions under the National Archives Act, 1986 do not have any specific training in relation to their functions under the National Archives Act, 1986. The commission notes, however, that the Department of Foreign Affairs, the Defence Forces and the Garda Síochána employ persons with archive qualification and training. The Director stated that the written briefs provided by the National Archives and the history of one-to-one meetings between the National Archives and the civil servants involved constitutes, in the main, the training in this area for civil servants.
- 13.64 The Director made the point that he does not enjoy an unqualified right to inspect any document in the possession of a government department. He did, however, point out that he does enjoy a right to inspect the arrangements for the preservation of records. He indicated that his preference is to exercise this latter statutory power in a co-operative fashion. He did indicate that the National Archives has “*at times gone into some areas of some departments or other public bodies carried [sic] by the Act where the staff might not have been very keen about our going in but we did in fact go in*”. He indicated, however, that this was rare. He indicated that if he suspected he wasn’t getting the material that he anticipated he should, the National Archives would probably pursue this matter orally with the department concerned. In this regard he indicated that “*in some cases our archivists have had to press fairly hard to make sure that we did get all the records that we believed were there. Sometimes that was more successful and sometimes less successful*”.
- 13.65 The Director made clear his view that an archivist from the National Archives should have an understanding of the systems in a government department that gives rise to the creation, maintenance and use of records in that department.
- 13.66 The Director made the important point that the National Archives can only know about the existence of records when the department concerned informs the National Archives of the existence of those records. He reiterated that if a government department declined to show records to the National Archives then the 1986 Act expressly requires that government department to retain and preserve those records. He also made clear that the power to inspect the arrangements for the preservation of records is not the same thing as inspecting individual records.

Conclusions

1. There is a generally applicable international standard in the area of records management.
2. There is, at least since the commencement of the provisions of the National Archives Act, 1986 a clear and mandatory statutory duty on all departments of state, including the Garda Síochána and the Defence Forces, to preserve and maintain their records.
3. It is clear that all persons and entities having duties to discharge under the National Archives Act, 1986 attempt to do so to the extent that they can. However, the evidence before the commission clearly establishes that in practice there is insufficient training, expertise, staffing and resources to enable those persons and entities who have duties under the National Archives Act, 1986 to comply with their clear statutory duties.
4. The National Archives, in practice, does not receive from the Garda Síochána the archives and records envisaged by the National Archives Act, 1986.
5. The direction made by the Taoiseach in 1992 pursuant to Section 8(8) of the National Archives Act, 1986 may constitute a sufficient answer to the failure of the Garda Síochána to transfer their archives to the National Archives.
6. The premises, staff and other resources presently available to the National Archives are clearly insufficient to discharge its statutory function.
7. The necessity to have an established and effective system of records management is particularly applicable to collections of records where that material has a secret, confidential or other significant public interest attaching to it.
8. It would be unfair to suggest that the curator of the Garda Síochána Museum is responsible for the current records management systems in the Garda Síochána and the commission does not so suggest.

Reasons for conclusions

1. The above conclusions are based primarily on the evidence given to the commission by the Director of the National Archives, as well as on the relevant material disclosed to the commission by the various departments of state (including the Garda Síochána and the Defence Forces).

Chapter 14

MISSING DOCUMENTATION THE GARDA SÍOCHÁNA

Introduction

- 14.1 Documentation relevant to the Dublin and Monaghan bombings in the possession of the Garda Síochána falls into the following categories:
- i) Material arising directly from the original Garda investigation into the Dublin and Monaghan bombings;
 - ii) Intelligence material; and
 - iii) Material arising from later inquiries concerning the bombings, including the inquiries made consequent upon the screening of the Yorkshire Television programme '*Hidden Hand – the forgotten massacre*', the Garda investigations into the allegations of former British Army captain Fred Holroyd and former RUC sergeant John Weir, and inquiries arising from the work of the Hamilton / Barron Inquiry.
- 14.2 The commission has established that documents did exist which the commission has not seen, and which would come under categories (i) and (ii) above. There is no evidence of any missing documentation from category (iii), but those later inquiries into the bombings, though limited in nature and scope, are relevant to the question of when documentation arising from the original bombings investigations might have gone missing, and when it was first suggested and realised that such documentation was missing.
- 14.3 Neither the Garda Manual of Criminal Investigation (1946) nor the Garda Code (1965 edition), both of which were in force in 1974, contain any guidelines on the preservation of documentation arising from the investigation of a crime which remains unsolved. However, the Manual of Criminal Investigation does stress the need for an ongoing review of unsolved cases, which implies that the existing documentary record and relevant exhibits must be properly catalogued and preserved:

“Finally, it must be stated that the investigation of an unsolved crime should not be allowed to elapse for want of continued enquiries. It should be constantly reviewed. When in other similar cases arrests have been made the possibility of the accused being responsible for the unsolved crime should not be overlooked.”

- 14.4 Before setting out its findings in relation to the question of what Garda documentation is missing, the commission first sets out what has been reported by the Hamilton / Barron Inquiry, the Oireachtas Joint Committee and sworn in evidence by the Garda Commissioner on this issue.

The Hamilton / Barron Inquiry

- 14.5 The report of the Hamilton / Barron Inquiry into the Dublin and Monaghan bombings highlighted certain documents which it considered were missing from Garda archives. It did not provide an exhaustive list of all the documents that the Inquiry believed were missing. The matters highlighted by the Hamilton / Barron Inquiry are indicated in the following passage from page 12 of the Inquiry's report:

“Firstly, some relevant security files that should have been retained at Garda Headquarters were missing. The Inquiry was furnished with the Monaghan security file, but not with that for Dublin. In relation to loyalist paramilitary organisations, the general file started in 1966 contains no information prior to the early 1980s. While there are annual files relating to the UVF/UDA, none are available for the years 1974 and 1975. The Special Detective Unit kept files on these bodies, and those have been made available to the Inquiry. But the files kept by Security and Intelligence (C3) at Garda Headquarters would have included more than just the files kept by the Security and Intelligence (C3) division, of which SDU was merely a part. These have not been seen by the Inquiry.

Secondly, annual files relating to payments were not available. Of particular interest to the Inquiry were payments made to confidential sources, but full information on this matter no longer exists.

Unfortunately, no relevant files survive in the Louth / Meath division as a result of two changes in the Headquarters of the division, one from Drogheda to Dundalk and the second back from Dundalk to Drogheda. Although some relevant documents were located in the Sligo / Leitrim division, many must have been destroyed. Good records were maintained in the Monaghan / Cavan division and these have been supplied. Similarly, but to a lesser extent, documents have been supplied by the Donegal division.”

The Oireachtas Joint Committee

- 14.6 In his evidence to the Oireachtas Joint Committee on 10 February 2004, the Garda Commissioner undertook to provide written clarification to the Joint Committee in relation to the material that was missing from Garda files. This

was done by letter dated 13 February 2004, in which the Commissioner stated:

“During the course of the work of the Independent Commission of Inquiry into the Dublin and Monaghan Bombings, some eight hundred (800) files were made available to Mr Justice Barron by An Garda Síochána. The contents of the files varied from single pages to bulky files. Twelve (12) files, despite exhaustive searches for same, could not be located – the details of which are as follows:

- 1) 3C 38/71 *File titled ‘Border Incidents’.*
- 2) 3C 104/71 *File titled ‘The appointment of Detective Garda (name not included) to Detective Branch’.*
- 3) 3C 15/73 *File titled ‘IRA activities’.*
- 4) 3C 38/73 *File titled ‘Border Incidents’.*
- 5) 3C 68/73 *File titled ‘Robbery at the Starlight Ballroom, Clones’.*
- 6) 3C 15/74 *File titled ‘IRA activities’.*
- 7) 3C 35/74 *File titled ‘UDA’.*
- 8) 3C 936/74 *File titled ‘Dublin Bombings’.*
- 9) 3C 1781/74 *File titled ‘Suspect Motor Cars’.*
- 10) 3C 35/75 *File titled ‘UDA’.*
- 11) 3C 27/76 *File titled ‘Garda Transport Radio Equipment’.*
- 12) 3C 1146/76 *File titled (name not included) – this file related to a suspect for a crime other than the Dublin / Monaghan Bombings and which is currently within the remit of the Commission [of Inquiry].”*

14.7 The Hamilton / Barron Inquiry had requested access to these particular files, amongst others. The Garda Síochána conducted searches for the requested files, from which it emerged that these particular files were missing. This does not necessarily mean that they contained information of relevance to the Dublin and Monaghan bombings. The Garda Síochána has no record of what material was contained in each file: it is therefore not possible to state whether or not the files contained any relevant material.

Evidence of the Garda Commissioner

- 14.8 On 20 December 2005 the Garda Commissioner provided an affidavit of documents to this commission. The second schedule to that affidavit contains a list of material no longer in the possession, power or procurement of the Garda Síochána. The affidavit avers as follows:

“The full circumstance in which the data, documentation and information identified in the Second Schedule are no longer in An Garda Síochána’s possession are:

The documentation listed in the second schedule of my affidavit and which can not now be located, were ten of the security files listed in the total of twelve security files indicated to the Joint Committee on Justice, Equality, Defence and Women’s Rights as unaccounted for.

Two of the original twelve listed files i.e. 3C 35/75 file entitled ‘UDA’ and 3C 1146/76 referring to an unpublished name of a suspect, have now been located and produced to the Commission of Investigation into the Dublin and Monaghan Bombings 1974 [this commission].”

- 14.9 In addition to the ten security files referred to above, the Garda Commissioner in paragraph 11 of his affidavit refers to two other categories from which documents are missing. These categories of material are (a) correspondence file registers and (b) forensic materials. The Commissioner in his affidavit avers as follows:

“The file registers containing details of correspondence passing through the offices of the Central Detective Unit (C.D.U.), Special Detective Unit (S.D.U.), Store Street Garda Station, Pearse Street Garda Station (in whose policing districts the Dublin Bombings of 1974 occurred) and Monaghan Garda Stations are no longer available...

I am aware from reading the extant materials concerning the Bombing investigations and further documents provided to me by the Commission that reference is made to materials taken possession of by the Gardaí (car parts and rubble) from the bomb scenes, together with some clothing of the victims returned to the Gardaí, via hospitals, in addition to materials brought to the Forensic Science Laboratory, Belfast, for examination. I regret to say these materials are no longer available.”

- 14.10 In a supplemental affidavit dated 10 January 2006, the Garda Commissioner added to the list of missing documents as follows:

“I wish to confirm that the two photo albums referred to in Garda reports, which were used to produce to witnesses and contained photographs of

suspects, provided by the then R.U.C., are no longer available, despite exhaustive searches for same.”

14.11 Notwithstanding the evidence provided by the Garda Commissioner in his affidavits of 20 December 2005 and 10 January 2006, the reality is that a comprehensive account of what relevant Garda documentation is missing is not possible, for the following reasons:

- i) Although the Manual of Criminal Investigation (1946) and the Garda Code (1965 edition) give examples of documents that would or should be generated in a large-scale investigation such as that into the Dublin and Monaghan bombings, there is no definitive list of the types of documents which should or would normally have been created by a murder investigation in 1974.
- ii) Such indexes of relevant documents as exist in Garda records are inadequate and insufficient. They do not allow the commission to establish with reasonable certainty what documents exist or ought to exist.
- iii) Even in circumstances where a reliable index of Garda files exists, it was not Garda practice to number or index the individual documents in a given file, with the exceptions of files containing witness statements and job flyers. Thus, for instance, with the ten security files identified as missing by the Garda Commissioner: it is now impossible to reconstruct those files, as there is no record of what documents each file contained or should have contained.

14.12 Having said that, it has been possible for the commission to identify a number of documents which were created but which have not been disclosed to the commission. These documents are listed below under headings relating to the category of documentation to which they belong.

Job flyers

14.13 As mentioned earlier in this report, job flyers arising from the Dublin investigation were kept, for the most part, in loose-leaf folders rather than being pasted into a job book as they were in the Monaghan investigation.

14.14 Job flyers were numbered consecutively, presumably by the Gardaí who were responsible for record management in the incident rooms. In relation to the Dublin bombings investigation, the highest numbered job flyer disclosed to the commission is No. 1337. This flyer is dated 3 July 1974. A Garda document entitled: “*Index to Jobs*” notes a job numbered 1337 as being the highest job number.

- 14.15 There are 163 original job flyers unaccounted for. White carbon copies exist for each of these missing originals; but there may have been additional minutes or annotations on the originals which are no longer available. In three instances, the white carbon copy flyer is marked: “*Use as blue form*”. There is no explanation in any of these instances for this departure from normal practice, and the commission has not been able to establish why the blue forms were not used in these instances.
- 14.16 Supplementary flyers arising from numbered jobs were given the suffix “Q”. The commission has seen 39 such numbered documents. Of these, 11 blue originals are missing. It was not, therefore, possible for the commission to ascertain the total number of supplementary flyers issued.
- 14.17 In contrast to the Dublin investigation, it appears that the Monaghan investigation team pasted segments from each job flyer into a jobs book. The book itself still exists, but no duplicates of the job flyers have been disclosed to the commission. They must be presumed to have been lost, destroyed or, perhaps, never filled out.
- 14.18 Under the standard procedures for a major criminal investigation, a copy of each job flyer should have been handed to the Garda member responsible for carrying out that job. That copy should have been returned to the incident room upon completion of the task concerned and filed, together with any reports or statements arising from the action taken by the Gardaí concerned on foot of the job assignment. The commission has not seen any such files or documents relating to the Monaghan investigation, and again must assume that such documents were either not returned to Monaghan station, or went astray or were destroyed.

Statements

- 14.19 The commission was supplied with a small, hardback notebook containing an index of statements relating to the Dublin bombings. This index was created by the Dublin investigation team. The highest numbered statement recorded in it is number 1152.
- 14.20 Copies of statements numbered 1-1152 (inclusive) have been disclosed to the commission. However, a significant number of original statements have not been disclosed, though the Garda Síochána have repeatedly assured the commission that they (the Gardaí) have disclosed to the commission all Garda documents in their possession, power or procurement, relevant to the commission’s terms of reference.
- 14.21 Amongst the documents received from the Garda Síochána were two brown folders marked “501-1000. ORIGINAL STATEMENTS – DUBLIN” and “1001- ORIGINAL STATEMENTS – DUBLIN”. There is no similar folder for

original statements numbered 1-500, which are all missing. A further 53 original statements are missing from those numbered between 501 and 1152 inclusive.

- 14.22 The index of statements relating to the Dublin bombings investigation records 37 supplementary statements. Four of these supplementary statements are missing from the documents disclosed to the commission.
- 14.23 There are other statements relating to the Dublin investigation which are not numbered. Many of these are from the owners of vehicles which were parked near the bomb scenes, or which were mentioned in the statements of witnesses.
- 14.24 The highest numbered statement relating to the Monaghan investigation and disclosed to the commission is numbered 392. However, the commission has not had disclosed to it any index of statements taken in Monaghan which could confirm that this was indeed the total number of statements taken by the Gardaí in the course of the Monaghan investigation.
- 14.25 Some of the witnesses interviewed by Gardaí in Monaghan made more than one statement. A number of these supplementary statements were amongst the documents disclosed to the commission. However, in the absence of a contemporary index, the commission cannot confirm that all the supplementary statements taken by the Monaghan investigation team have been disclosed to the commission.
- 14.26 Almost all of the witness statements from the Monaghan investigation disclosed to the commission are typewritten copies. The commission has received from the Garda Síochána only seven original statements, numbered 372-374 and 376-379 respectively (both inclusive). These were contained in a folder marked: "*Typed statements / No's 117 to 160*". Folders entitled: "*Monaghan Original Statements No's 1-258*" and "*Original statements for typing*" did not in fact contain any original statements, though they did contain a number of typed copies of statements.
- 14.27 Of the numbered statements relating to the Monaghan investigation, there are seven statements which have not been disclosed to the commission in any form. The seven missing statements are numbers 292, 330, 331, 341, 350, 357 and 360. The identity of the persons who made those statements is not known to the commission.

Reports

- 14.28 It is not possible to establish the number of reports that are missing from the Dublin and Monaghan bombings investigation files. A number of Garda documents disclosed to the commission contain requests for further reports on particular matters; or refer to reports which are expected to be created. In the absence of a comprehensive indexing system for documents sent to and received by the Garda investigation, the commission cannot establish whether such reports were or were not created.
- 14.29 What can be said is that a request for a report would not always result in the creation of a new document: the response may have been verbal, with no written record; or it may have taken the form of a note added to a copy of an existing letter, job sheet or other document. The commission can only surmise in this regard, but would point out these possibilities to demonstrate that a gap in the written record does not necessarily mean that a document existed which has not been disclosed to the commission.

Correspondence

- 14.30 Letters arising from the Dublin and Monaghan investigations can be found throughout the Garda documentation disclosed to the commission. There is no index of correspondence sent and received by the investigation teams, though correspondence registers should certainly have been kept at the offices of the Central Detective Unit, Special Detective Unit, Crime & Security branch (C3) and all relevant stations in Dublin and Monaghan.
- 14.31 A register of correspondence for the Central Detective Unit for the year 1974 has been disclosed to the commission. The register is a large hardback volume, entitled "*Letter Book*" and is marked as property of the Central Detective Unit, Dublin Castle, Dublin Metropolitan Area. It contains one page headed:

"Explosions – fatal – at (1) Parnell St (2) Talbot St & (3) South Leinster Street, Dublin at 5.30 pm on Friday 17th May 1974".

Underneath this heading is a list of letters sent and received by CDU, dating between 20 May 1974 and 24 January 1975. Copies of all of the letters referred to under this heading have been disclosed to the commission by the Garda Síochána.

Exhibits

- 14.32 As stated earlier in this report, the Garda Síochána has disclosed to the commission a list of exhibits relating to the Dublin bombings investigation, but no such list relating to the Monaghan investigation has been disclosed. In

his evidence to the commission, the Garda Commissioner has averred that the materials referred to in the Dublin list of exhibits “*are no longer available*”.

14.33 The Garda documentation disclosed to the commission reveals the existence of a number of other exhibits not mentioned in the list of exhibits compiled in relation to the Dublin investigation, which were not disclosed to the commission by the Garda Síochána. These include:

- Photograph albums containing photographs of potential suspects for the bombings, which were shown to eyewitnesses in Dublin and Monaghan. The albums were recorded as missing in the Garda Commissioner’s supplemental affidavit to the commission dated 10 January 2006. There is no record of the identity of the persons whose photographs were contained in each album, and thus no means of reconstructing the albums.
- The commission sought access to the official notebooks kept by individual Gardaí who were involved in investigating the leads mentioned in paragraph 2 of the commission’s terms of reference. These notebooks were not disclosed to the commission, and must be presumed lost, abandoned or destroyed.
- The witness who alerted Gardaí to the presence of the white van at Portland Row (mentioned in paragraph 2 (i) of the commission’s terms of reference) told the commission that he gave Gardaí a written note of the van’s registration number on at least two occasions. No such note or notes has been disclosed to the commission.
- The Monaghan investigation report refers to a fingermark which was found on a registration plate belonging to the Monaghan bomb car. This registration plate is no longer in the possession of the Garda Síochána.

In a statement dated 23 May 1974, a Detective Garda attached to the fingerprint section of the Technical Bureau indicates that he had possession of both the registration plate and of a photograph of the fingermark on the registration plate. The photograph was taken by a Garda from the photographic section of the Technical Bureau. No such photograph has been disclosed to the commission.

The Garda Code (1965 edition) lists amongst the standard forms used by the Garda Síochána a form numbered C.57, which is entitled “*Result of fingerprint examination*”. The Garda material disclosed to the commission does not contain a C.57 form

relating to the fingermark found on the Monaghan bomb car registration plate.

- Also amongst the standard forms scheduled in the Garda Code (1965 edition) is a form numbered C.56, entitled “*List of exhibits forwarded for examination*”. One of these forms was completed in relation to the samples delivered to Dr James Donovan at the State Laboratory on 20 and 23 May 1974. However, no C.56 form or any equivalent record concerning the samples sent to the Forensic Science Laboratory in Northern Ireland has been disclosed to the commission.

Intelligence material

14.34 The Garda Commissioner told the Oireachtas Joint Committee that there were twelve Crime & Security (C3) files missing from the Garda archives. Two of these files were subsequently found and disclosed to the commission, as the Garda Commissioner avers in his affidavit of 20 December 2005.

14.35 In his statement of evidence to the commission dated 19 December 2005, the Garda Commissioner explained the circumstances in which the above two files were found as follows:

“With a view to answering the specific questions posited within the terms of reference [of the commission] a further, file by file search was ordered of the registry housing the security files at the Security & Intelligence branch of Garda Headquarters. It was during this exercise that two of the above listed files, i.e. 3C 1146/76 and 3C 35/75 were discovered misplaced between other files. The Detective Sergeant who is currently in charge of the registry located these files on the 29th July 2005 (3C 35/75) and 30th August 2005 (3C 1146/76), during this exercise. The search of the registry, which was an inspection of each individual file, began in April 2004 and was completed in September 2005. The notification of the fact that the files were located was not the subject of a written report. The information was communicated verbally and the files handed to [a named Detective Inspector].”

14.36 The Garda Síochána were able to identify which files were missing from the Crime & Security (C3) branch because the C3 file registers for the relevant years are intact. However, as in other branches of the Garda Síochána, C3 did not keep a register of individual documents within a given file. It is therefore impossible to say with certainty what documents had been in the missing files.

14.37 For the same reason, it is impossible to state that the Crime & Security files which have been disclosed to the commission are intact.

Authorised destruction of Garda files and records

- 14.38 It is not realistic to expect the Garda Síochána to preserve every document in their possession in perpetuity. The question therefore arises as to what rules, if any, have been put in place to ensure that any destruction of Garda documentation is carried out in an authorised, supervised, controlled and regulated process, and to ensure that documents which should not be destroyed are not destroyed.
- 14.39 In this regard, the Garda Síochána has disclosed to the commission a copy of a circular issued by the Garda Commissioner on 13 May 1971 and headed, “*Destruction of Files and Records*”. The circular is addressed by the Commissioner to each officer and station outside the Dublin Metropolitan Area (DMA). It begins as follows:
- “In order to relieve the storage congestion in offices and stations throughout the country, the Commissioner has decided that a number of old files, books and records may be destroyed and a list of the files set out under the Headquarters Branch normally dealing with the particular work, is attached for your information. The Books and Records are listed separately. Such files, etc. are classified as confidential waste.*
- The Controller, Stationery Office, Beggar’s Bush Barracks, Dublin is prepared to dispose of the confidential waste if it is available for collection in Dublin...”*
- 14.40 Amongst the list of books and records which may be destroyed, the circular provides that the correspondence registers and indexes of correspondence for both district and divisional offices can be destroyed after two years from the time of completion. Under the heading, “*Sub-District*”, the circular lists a number of items including “*station note book*” and “*official note books*” which may be destroyed two years after completion. The commission takes the words “after completion” as meaning “when the particular book or record is full.”
- 14.41 Under the heading, “*Section 1C*” [also known as Crime Branch or Crime Ordinary] the circular states that crime files dealing with the following types of crime are to be retained indefinitely:
- i) Murder;
 - ii) Attempted murder;
 - iii) Conspiracy or incitement to murder;
 - iv) Manslaughter (exclusive of traffic cases);

- v) Wounding and other acts endangering life (felonies);
- vi) Agrarian crimes;
- vii) All crimes in which firearms or explosives are used;
- viii) Robbery and assaults with intent to rob; and
- ix) All files containing a record of important judicial decisions irrespective of subject matter.

14.42 In order to ensure that such files are preserved, the circular provides that:

“A slip (typed or written) with the inscription ‘To be Retained Indefinitely’ shall be attached to the covers of the files listed opposite.”

The commission has not seen such a slip on any of the Crime Branch files disclosed to it or inspected by it in relation to the Dublin and Monaghan bombings.

14.43 Under the heading, “*Section 3C*” [otherwise known as Crime & Security, or later, Security & Intelligence branch], the circular lists four types of document which may be destroyed after a stated period of time from the date of their completion. They are as follows:

- x) Forms C.10
- xi) Reports in connection with candidates for other police forces;
- xii) Applications for reference forms; and
- xiii) Applications for police certificates of character.

14.44 The circular goes on to state:

“All other files concerning cases reportable to this Section to be retained indefinitely.”

14.45 It is important to note that the instructions given in this circular of 13 May 1971 apply to Gardaí and stations outside the Dublin Metropolitan Area. Thus, any references to the destruction of C1 (Crime Ordinary), C3 (Crime & Security) or C4 (Technical Bureau) documents are references to the destruction of copies of such documents held in local districts or divisions outside the DMA. The circular does not apply to documents held in the archives of C1, C3 or C4 at Garda Headquarters. There do not appear to have been any regulations in relation to the destruction of documents at Garda Headquarters.

Reasons why Dublin / Monaghan investigation documentation went missing

- 14.46 It is not possible to establish with any reasonable degree of precision how, why or even when all of the Garda investigation documents which cannot now be located went missing.
- 14.47 The incident rooms at Dublin Castle and Monaghan Garda station were at the heart of the investigations into the Dublin and Monaghan bombings. The papers generated by the investigation teams were (or certainly should have been) kept in the incident rooms while the investigation was in progress and the Garda members responsible for managing the investigation papers were based there.
- 14.48 On a date or dates unknown to the commission, the incident rooms in Dublin and Monaghan were closed and the members of the investigation teams returned to the branches and locations from which they ordinarily carried out their duties. What happened to the documentation generated by the investigation teams in Dublin and Monaghan when the incident rooms ceased to function is not known. Nor could the commission establish whether the Garda members responsible for document management in the Dublin and Monaghan incident rooms returned to other duties prior to the incident rooms' closing.
- 14.49 It would appear that some unspecified documentation arising from the Monaghan investigation was kept at Monaghan Garda station. Evidence for this comes not from any contemporary records but from a letter of a Garda officer attached to the Cavan / Monaghan division to the Dublin City Coroner dated 15 September 2003. The letter was in response to a request by the Coroner for sight of Garda documentation relevant to the reopened inquests on the bombings. The letter states:

“All files relating to the investigation of this matter which were retained in Cavan / Monaghan Garda Division were transferred to Assistant Commissioner Crime Branch, Garda Headquarters approximately ten years ago and remain there.”

This would place the time at which the documents were transferred to Garda Headquarters as being around September 1993, which is the month in which a Detective Superintendent who was conducting an inquiry into matters arising from a Yorkshire Television programme on the Dublin and Monaghan bombings, was said to have found “*the investigation papers*”.²² No list of the documents which were transferred from the Cavan / Monaghan division to Garda Headquarters at that time has been disclosed to the commission. Neither is there an adequate inventory of the documents found by the Detective Superintendent in the course of his inquiry into the Yorkshire

²² See para. 14.51 below.

Television programme and which were relevant to the Dublin / Monaghan bombings investigations.

Garda reviews of the Dublin / Monaghan investigations

- 14.50 The first review by the Garda Síochána of the original investigation into the Dublin and Monaghan bombings was initiated by the Garda Commissioner in July 1993, in the wake of the Yorkshire Television programme on the bombings, *“Hidden hand – the forgotten massacre”*. A Detective Superintendent was appointed by the Garda Commissioner *“to re-examine the files on the investigation”* in the light of allegations made in the Yorkshire Television programme. In his report, dated 25 November 1993 the Detective Superintendent wrote:

“I have read all available statements and examined extant records.”

Further on in his report he referred to:

“...my examination of the Investigation Files, Reports and Records.”

- 14.51 It appears that finding the investigation papers was not as straightforward a task as might have been expected. A Department of Justice record of a phone call from a senior Garda officer to the Department of Justice dated 21 September 1993 states:

“Superintendent [name given] has now found the original investigation papers. (Prior to this the only file available was the file that had been sent to the DPP) [sic].”

In a handwritten note in the margin of the document recording the above telephone call, the then Minister for Justice commented on the above passage as follows:

“I find this disturbing to say the least.”

- 14.52 In evidence to the commission, the then Minister confirmed the seriousness with which she regarded this matter at the time. She stated:

“As Minister for Justice I was not in the habit of making handwritten notes on official documents provided by officials in the Department to me. Therefore on the rare occasion when I made a handwritten note it would have been regarded by Department officials as a matter of some significance...”

I have no recollection of what steps, if any, I took afterwards. However my experience over two years in the Department of Justice tells me that all necessary follow-up actions would have been taken by the officials

concerned and that the Minister would have been updated if and when new information became available.”

- 14.53 As a matter of fact, the DPP had not received a file on the Dublin or Monaghan bombings at the date of this phone call (21 September 1993), and did not receive any relevant documentation until 21 March 1994, some months after the completion of the Detective Superintendent’s report of 25 November 1993. What is meant by “*the file that had been sent to the DPP*” in the above passage is therefore unclear. It may refer to copies of the Dublin and Monaghan investigation reports. A comprehensive list of the documents seen by the Detective Superintendent who wrote the report of 25 November 1993 has not been disclosed to the commission: in all probability, no such list exists.
- 14.54 The Detective Superintendent who had been appointed “*to re-examine the files on the investigation*” in the light of the contents of the ‘Hidden Hand’ television programme gave evidence to the commission on 1 December 2006. He stated that the papers he saw relating to the Dublin bombings investigation came from the Central Detective Unit (CDU). He stated that there was no index or list of the papers with the CDU file seen by him.
- 14.55 The Detective Superintendent further stated that there was no copy of the investigation file on the Dublin bombings in the Special Detective Unit. He also averred that he knew this because he had been working in the Special Detective Unit in a clerical capacity prior to being asked to review the content of the Yorkshire Television programme.
- 14.56 The Detective Superintendent stated to the commission that he had also searched for relevant documentation in Store Street and Pearse Street Garda stations – the stations which covered the areas where the three Dublin bombs had been exploded. He had expected to find job books in those stations relating to the Dublin bombings investigation, but he saw no such books. Nor did he see collections of job flyers in lever arch files or folders, such as have been disclosed to the commission.
- 14.57 In relation to the search for material on the Monaghan bombing, The Detective Superintendent said that he visited Monaghan Garda station and spoke in particular with a Detective Inspector there. However, the Detective Superintendent said the papers that he (the Detective Superintendent) got in relation to the Monaghan bombing came to him not directly from Monaghan, but from Crime & Security (C3). He could not say whether the papers he saw had been in the Crime & Security (C3) archive since 1974 or whether Crime & Security had got them, at the Detective Superintendent’s request, from Monaghan station or from Crime Branch at Garda Headquarters.
- 14.58 The sole reference in the Detective Superintendent’s report of 25 November 1993 to documents which were missing from the original investigation papers

concerns photograph albums which were shown to eyewitnesses in the Dublin and Monaghan investigations. The report states:

“It has not been possible to peruse the albums of photographs used in making these identifications. I have spoken with several of the members of the investigation teams, up to and including Deputy Commissioner rank, and it would appear that the albums of photographs were very strictly controlled by the officers in charge and are not available on file. The two members who dealt exclusively with the albums produced to the witnesses in Monaghan assured me that they received the photographs from an officer and handed them back to that officer. Similarly in Dublin, I have spoken to two of the three members involved in this aspect of the investigation and they also state that the position was as in Monaghan. The particular officer has since died and I have sought the assistance of some of his closest associates without avail. It would appear that the albums of photographs were compiled from photographs secured from the R.U.C. and that the supplied originals were taken without the knowledge of the suspects involved and were very closely guarded at the time.”

- 14.59 The photographs of suspected loyalist subversives received from the RUC in 1974 may or may not have been returned to the RUC by the Gardaí. The disposal of these sensitive, confidential photographs is not documented in the material disclosed to the commission by the Garda Síochána.
- 14.60 The commission asked the Detective Superintendent who carried out the review of the Yorkshire Television programme, ‘Hidden Hand’ and its contents whether he had been aware at the time he carried out his review of any other documents that were missing relating to the Dublin and Monaghan bombings investigations, other than the photographs and job books already mentioned by him. The Detective Superintendent stated:
- “There was one thing that was extraordinary, there was no record of a forensic record first of all and there was no record of finding evidence, cataloguing it, dealing with it and sending it and certainly no train of evidence as there was in several other cases.”*
- 14.61 Finally, the commission asked the Detective Superintendent what he had done with the papers accumulated by him, upon the completion of his report on 25 November 1993. He said that everything he had went to the Central Detective Unit.
- 14.62 The Detective Superintendent in question retired from the Garda Síochána on 28 November 1993, three days after concluding his report on the ‘Hidden Hand’ television programme.
- 14.63 In 1999, Garda inquiries into allegations made by former RUC Sergeant John Weir prompted another internal Garda review of the original Dublin and

Monaghan bombing investigations. The Garda reports arising from this review process contain summaries of the original investigations, but make no mention of the fact that documentation was missing from the original investigation papers.

- 14.64 The Detective Superintendent who wrote the Garda review report arising from the allegations of Mr. Weir stated in evidence to the commission:

“The specific remit of my review report was solely to investigate the particular allegations made by Mr. Weir and not to either re-investigate the Dublin and Monaghan bombs of the 17th May 1974 or the integrity of the Garda Síochána investigation files; and that is what I did.”

- 14.65 In any large organisation, regardless of how reliable its systems of document management may be, the accidental loss or destruction of some documentation as a result of human error or criminality is a risk that must be accepted and provided against. What the commission finds disturbing in this instance is the apparent failure of Garda record management systems to detect the loss of documentation. In the case of many of the missing documents, their absence from the investigation papers was first discovered by the commission, not by the Garda Síochána themselves.

- 14.66 Although the investigations into the Dublin and Monaghan bombings were the subject of further reports by Gardaí in 1993 and in 1999, the detectives responsible for writing those reports concerned themselves only with finding sufficient documentation to enable them to compare the allegations which they were investigating with the findings made by the original investigation teams in the Dublin and Monaghan investigation reports. They were not concerned with establishing the extent to which the original Dublin and Monaghan investigation files remained intact.

- 14.67 The commission concludes that since the time when the original investigations into the bombings were wound down, the Garda Síochána have not conducted any adequate review of the integrity of the documentary record concerning the Dublin and Monaghan bombing investigations.

Reasons why intelligence material went missing

- 14.68 The section of the Garda Síochána responsible for collating intelligence material on subversives and subversive crime in 1974 was Crime & Security (C3). In his evidence to the commission, the Garda Commissioner made clear that all files belonging to C3 were housed within a secure area with tightly controlled access. In his affidavit of documents dated 20 December 2005 he stated:

“All staff members working in the then 3C Section (now Security and Intelligence Section) would have access to these files during the course of

their daily work. Prior to the mid 1980's (when computerisation was introduced) work on such files would have necessitated personnel accessing the files from the Registry within 3C, resulting in the movement of paper-based files from the Registry and vice-versa. Security files are not permitted to be removed from this section without the express permission of Assistant Commissioner Crime & Security."

14.69 However, the Report of the Inquiry into State Security of 26 February 1974 ('the Finlay Report') concluded that staff levels in C3 at that time were inadequate, and that as a result,

"...the filing, indexing and co-relation of information obtained has fallen below the adequate and proper standard."

14.70 At first glance there would seem to be a number of possible ways in which intelligence material could have gone missing from the C3 archives. They are:

- i) Misplacing of files or documents within the archives of C3;
- ii) Destruction of documents caused by fire, flood or other similar occurrence;
- iii) Deliberate or accidental destruction of files by members of C3; and
- iv) Unauthorised removal of files from the buildings which house the C3 section of the Garda Síochána.

14.71 As previously stated, two of the twelve C3 files which were stated to be missing in the Garda evidence to the Joint Oireachtas Committee were subsequently found to have been misplaced within the C3 archives. However, the Garda Commissioner has told the commission that all possible searches of the C3 archive have now been exhausted, and that none of the remaining missing files have been found.

14.72 Regarding the possibility of documents being destroyed by fire or flood, the Garda Commissioner stated in evidence to the commission:

"I can say with certainty that there were no catastrophic incidents such as fires, flooding or known thefts which could have led to the loss of documentation in the registry."

14.73 Concerning the possibility of the deliberate or accidental destruction of files, the Garda Commissioner suggested to the commission that the ten Crime & Security (C3) files listed as missing could have been destroyed, notwithstanding a general Garda policy of preserving intelligence material. The Commissioner explained his reasoning in evidence to the commission as follows:

“One cannot overlook the possibility of these files being pulped as there is evidence on other contemporary files at that section where writing on the file covers state [sic] ‘Do not pulp’. Headquarters Circular dated 13th April 1971 and S1/2017/80 dated 28th August 1980, which make reference to the destruction of files must be considered in this context. In addition, the possibility and opportunity for human error in destroying files was present and must be considered.”

14.74 The fourth possibility – that documents may have been removed from C3 by members of the Garda Síochána – was not mentioned by the Garda Commissioner in his evidence to the commission. Nonetheless, the commission considers that this cannot be discounted as a possibility.

14.75 An incident which occurred towards the end of 1972 should have alerted the Garda Síochána to the vulnerability of its security material and in particular to the impossibility of auditing the content of its files without a record of each individual document contained in each file.

Reasons why forensic material went missing

14.76 Within the Garda Síochána, the responsibility of accounting for material relating to the forensic aspects of the Dublin and Monaghan bombings investigations lay with the ballistics, fingerprinting and photography sections of the Technical Bureau. These sections kept their own files and registers, using their own file numbering systems.

14.77 A Detective Sergeant in the ballistics section of the Technical Bureau (now retired) gave evidence to the commission concerning this aspect of the Garda investigation into the bombings. At the time of the investigations in 1974, this Detective Sergeant was the second most senior officer in the ballistics section. The section was under the command of Detective Inspector Tom O’Connor, who is now dead.

14.78 The Detective Sergeant told the commission in evidence that a register, known as the Exhibits Register, kept a record of all items of physical evidence which came into the Technical Bureau for examination. He stated:

“Items received for examination and / or testing at the Ballistics Section were recorded in the Ballistics Section Exhibits Register with relevant particulars entered in seven columns extending across two adjoining pages. The format and headings of these columns were as follows:

<i>F.S. No.</i>	<i>Receipt & Date</i>	<i>Description</i>	<i>Case</i>	<i>Return Of Exhibits</i>	<i>Result Of Examination</i>	<i>Attendance at scenes, Courts etc.</i>
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Starting from the outer edge of the left side page, the first column was headed F.S. No. The initials stand for 'Firearms Section', the original title of the Ballistics Section. 'No.' is the sequential number of the case followed by a stroke and the last two digits of the year e.g. F.S. 2/07. This became the case number.

The second column was headed 'Receipt & Date' and was provided for recording the name, rank, registration number and station of the Garda who delivered the items received for examination and / or test, and the date on which the items were received.

The third column was headed 'Description' and was provided for the listing of all items received in each case and items or material taken possession of by a member of the Ballistics Section in the course of an examination and search of a scene of crime.

The fourth column was headed 'Case' and was provided for a brief entry of the nature of each case or circumstances to which items related e.g. murder, suicide, fatal hit-and-run collision, suspected arson, fire, possession of explosives, firearms, etc., with details of location and date.

The space allocated for each case extended across to the adjoining right side page, [which also] contained a further three columns...

The fifth column was headed 'Return of Exhibits' and provided for a record of items returned or collected following examination and test with details of the name, rank and station of the Garda to whom items were returned and the date of return. In cases where items were required to be produced as exhibits in evidence in court proceedings in which a member of the Ballistics Section was a witness then that member would retain those items and produce them to the court in the course of his evidence.

The sixth column was headed 'Result of Examinations' and provided for a brief summary of the outcome of examination and / or testing of items received at the Ballistics Section ... [whether] negative or other outcome.

The seventh and final column... headed 'Attendance at Scenes, Courts etc.', provided for notes of dates of attendance at scenes of crime, courts, inquests, postmortems, conferences etc."

14.79 According to the Detective Sergeant, the workload on the ballistics section increased during the 1970s to a point where the Gardaí in that section were no longer able to keep the Exhibits Register up to date in every case:

"Not every case was reported on because as time went on and the cases flooded in things became so busy in the ballistics section that we weren't able to deal with some of the smaller stuff. Very often for convenience some old thing would be found down the country and they would bring it

in to you and get rid of it, leave it into the Bureau and they would forget about it. Well, if nobody else was concerned so much about it we weren't concerned. We were concerned with getting cases reported because there were people charged and there were courts coming up and there were dates for production of evidence and so on. We were working to these boundaries and we had to disregard smaller trifling stuff."

- 14.80 In relation to the delivery of samples to the State Laboratory for forensic analysis, the Detective Sergeant stated in evidence to the commission that the decision on whether the laboratory would return such samples to the Garda Síochána depended on their evidential value:

"If the result of the test was such that evidence was needed to be given in relation to it, the scientist himself would produce them directly in most cases... would produce them to the Court... But otherwise, if they weren't of any evidential value, we would either collect them or if they were of no evidential value, they would probably be destroyed, dumped in a bin or something.

Q. By who?

A. Presumably if they were left in the State laboratory by some of the staff there, or if they weren't, if we brought them back, we never, in ordinary circumstances, got rid of stuff like that."

- 14.81 According to the Detective Sergeant, items of physical evidence in the possession of the ballistics section were kept in one particular room. This room was directly above a room known as 'the lab', where the ballistics section kept their microscopes and other technical equipment.
- 14.82 The Detective Sergeant recalled one occasion, on a date which he cannot recall but believes to be some time after 30 December 1974, when he arrived at the building used by the ballistics section to find that a large number of items from the upstairs room had been "cleared out" and burned in a fire in the yard by "the yardman". The yardman was not a member of the Gardaí, but an employee of the Board of Works. The Detective Sergeant was told that this had been done on the instructions of a senior officer in the Technical Bureau who was not attached to the ballistics section. Detective Inspector O'Connor, the officer in charge of the ballistics section, was not present when this destruction of exhibits took place.
- 14.83 The Detective Sergeant produced to the commission a photograph, which he said was taken by one of his Garda colleagues at his (the Detective Sergeant's) request. A copy of the photograph is appended to the commission's report. The Detective Sergeant gave evidence to the commission that the photograph shows a man tending a fire a few yards from the ballistics section building, with a further pile of items behind him, against

the wall of the building itself. On the back of the photograph, the Detective Sergeant had written the following note:

“Date of Burning of Exhibits was after the 30-12-1974 see Case F.S. 595/74”

- 14.84 The Detective Sergeant gave evidence to the commission that the case number may relate to a murder case for which he was unable to locate one of the exhibits – a pair of bloodstained boots. He believes that they must have been destroyed in the fire shown in the photograph.
- 14.85 According to his evidence to the commission, the Detective Sergeant prevented the further destruction of exhibits by taking possession of the key to ‘the lab’ – the downstairs room in which the ballistics section carried out their work – and refusing to allow anyone access to that room until such time as D/Inspr O’Connor, the then head of the ballistics section, arrived at the building.
- 14.86 No record was kept of what items were destroyed in the incident described above. Consequently, there is no means of establishing whether any of the exhibits destroyed in this incident related to the Dublin or Monaghan bombings. However, the incident is indicative of a cavalier attitude on the part of some members of the Garda Síochána in 1974 towards the preservation of evidence and the keeping of proper records. This attitude may have resulted from Gardaí having to work in unsuitable premises with inadequate storage space. Whatever its origins, the commission is of the view that such an attitude may have contributed to the loss of documentation and physical exhibits relating to the bombings.

Whether missing documentation can now be located

- 14.87 As has already been stated, the principal difficulty in locating missing Garda documentation is that, for the most part, it is not possible to identify from existing Garda records what documents are missing.
- 14.88 The Garda Commissioner in his affidavit of 20 December 2005 gave the following account of the searches that have been carried out by the Garda Síochána of its own archives, in connection with the work of this commission:

“Prior to the swearing of this affidavit, I consulted with the Garda Liaison Officer to the Commission of Investigation into the Dublin and Monaghan bombing 1974 to consider the enquiries and searches conducted by him, in discovering documents relevant to the Commission’s terms of reference. In that context I can confirm searches for documentation were carried out at the following locations on the basis that it may be possible to discover documents relating to these bombing investigations:

- a. *Store Street Garda Station*
- b. *Pearse Street Garda Station*
- c. *Fitzgibbon Street Garda Station*
- d. *Harcourt Terrace Garda Station*
- e. *Kevin Street Garda Station*
- f. *Bridewell Garda Station*
- g. *Mountjoy Garda Station*
- h. *Whitehall Garda Station*
- i. *Santry Garda Station*
- j. *Special Detective Unit*
- k. *National Bureau of Criminal Investigation*
- l. *Monaghan Garda Station*
- m. *Crime Policy and Administration Section, Garda Headquarters*
- n. *Records Stores, John's Road, Dublin 8.*
- o. *Deputy Commissioner's Office, Garda Headquarters, Phoenix Park, Dublin 8.*
- p. *Commissioner's Officer, Garda Headquarters, Phoenix Park, Dublin 8."*

Previous searches of the above-mentioned locations had already been carried out by the Garda Síochána at the request of the Hamilton / Barron Inquiry. In some cases, premises were searched several times.

- 14.89 The Garda Commissioner also referred to contacts made, at the suggestion of this commission, with relevant bodies outside the jurisdiction, with a view to obtaining from those bodies copies of any relevant documents which the Gardaí might have sent to them, or vice versa, and which were no longer in the possession of the Garda Síochána:

"An Garda Síochána at the request of the Commission sought the assistance of the Metropolitan Police Special Branch, the British Security Services and the Police Service of Northern Ireland with a view to obtaining any materials passed by / to An Garda Síochána in respect of the files unaccounted for and listed earlier in this affidavit. An Garda

Síochána furnished the details of this correspondence to the Commission of Investigation.”

14.90 The request made by the Garda Síochána to the PSNI had a positive result: a search by the PSNI of their micro-fiche archives led to the discovery of a number of documents which bore the file number of one of the missing Crime & Security files. A print of each document, together with a typed transcript of the contents of each document, was sent by the PSNI to the Garda Síochána on 15 February 2006. Copies of the documents were disclosed to the commission by the Garda Síochána on 21 February. None of the documents found by the PSNI related to the Dublin and Monaghan bombings of 17 May 1974. This is not to say that other documents contained in those files and which have not been found may have been relevant to the bombings.

14.91 Concerning the likelihood of finding any of the ten missing Crime & Security (C3) files, the Garda liaison officer to the commission stated in a letter dated 26 September 2005:

“Having consulted with senior personnel at the branch, I can confirm [that] in their opinion, there is no further prospect of recovering any of the remaining ten files unaccounted for within that section.”

14.92 This view was echoed by the Garda Commissioner in his statement of evidence to the commission dated 19 December 2005, as follows:

“Having exhausted all search avenues open to me within the Security & Intelligence section, I am satisfied that there is no further likelihood of recovering these files.”

Whether current document management systems in the Garda Síochána are adequate to prevent a re-occurrence of such documentation going missing

Documentation arising from a criminal investigation

14.93 The commission has been informed by the Garda Commissioner that the current policy of the Garda Síochána is

“...that all papers and documents germane to a particular investigation remain with the local Garda officers charged with exercising that function, under the direction and control of the District Officer (Superintendent).”

With this in mind, the commission visited a number of police stations in the Dublin Metropolitan Area to see how documentation arising from an investigation is currently managed and preserved. The commission also visited the Garda station in Monaghan town.

- 14.94 The commission formed the view that these stations were well managed by the officers concerned, considering the resources at their disposal, the volume of documentation generated at the stations and the constraints imposed by the physical environment in which the officers worked.
- 14.95 The stations visited by the commission were housed in old buildings, no longer adequate for the needs of the Garda Síochána in that area. This was particularly true for the stations in Dublin city centre. Although in some cases, a refurbishment programme had brought about some improvements, the fact remains that the size and layout of these buildings are unsuitable for the nature and the volume of policing work being done there.
- 14.96 The station superintendents interviewed by the commission exhibited an awareness of, and a strong concern for the need to ensure that current Garda documentation is properly managed. In one Dublin station in particular, the commission was shown a random selection of reports arising from audits carried out at the station to ensure its documentation was in order. These reports were impressive. The superintendent in question has a policy of carrying out 'spot-checks' in particular areas of administration in his station. When he identifies a problem he carefully defines its parameters, prepares a precise plan to determine how, by whom, and within what time frame, the problem is to be rectified, and he then monitors the implementation of that plan to completion.
- 14.97 The commission could not establish if there was a uniform or comprehensive record management system in use in the stations which it visited. It appeared to the commission that within each station, there were a variety of different systems in operation all of which were essential to the effective performance of the various police functions carried out at a particular Garda station. The systems used in each station visited by the commission were broadly similar. Some systems depended on hand written ledgers and record books, others were computer based, and yet others were written and contained in different filing systems. The position was similar in relation to the operation and maintenance of registers, where they existed.
- 14.98 In addition to current records, the Garda stations visited by the commission in Dublin and Monaghan held a certain amount of non-current documentation. In general, the facilities in which this non-current documentation was stored were not adequate for the purpose. The commission could not establish the location, or any information concerning the possible destruction, of the non-current records concerning the stations concerned.
- 14.99 As far as major criminal investigations are concerned, the Garda Commissioner provided the commission with a briefing paper written in June 2005 for a project board tasked with overseeing the purchase and installation of an IT-based case management system for large-scale criminal investigations. The paper notes:

“The challenge is not that major investigations introduce significant additional functionality, but rather that the sheer volume of information to be processed in a major investigation renders the current manual processes unsatisfactory.”

14.100 The point is well made, and could explain, at least in part, the inadequacies in the documentary record which are manifest in relation to the original investigations into the Dublin and Monaghan bombings in 1974.

14.101 The briefing paper goes on to recommend that an IT solution for major investigation management should, at a minimum, incorporate the following:

- Incident room management
- Case file management
- Document management
- Exhibits tracking
- Informant management
- Intelligence analysis, and
- Links to specialist sections including forensics, ballistics, fingerprints, mapping, finance and personnel.

14.102 Taking each of these areas in turn, the briefing paper demonstrates that the systems currently in place in relation to the management of material arising from a major investigation have changed little since 1974. Reliance is still placed upon a series of manually maintained indexes, sometimes handwritten. The inadequacies of this system to cope with the demands placed upon it are particularly clear in the case of exhibits, as the following passage from the briefing paper makes clear:

“At present, exhibits collected during a major investigation are recorded manually on paper. A single loose page is used to track the initial receipt of the exhibit and the people to whom the exhibit is subsequently given. From the perspective of the investigation team, this sheet is the only record which is maintained, meaning that the loss or destruction of the paper record could result in the entire exhibits record for all exhibits being unavailable. Whereas an exhibits tracking system operates successfully in the Technical Bureau, it tracks exhibits only from the time they are presented in the Technical Bureau until such time as they are collected.”

14.103 According to the projected timetable set out in the briefing paper of June 2005, the Garda Síochána hoped to have a new, IT-based major investigation / intelligence system in place and operational by December 2006.

14.104 It is clear from the extract of the briefing paper quoted above that the weaknesses in the current system of managing exhibits exist outside of the Technical Bureau. The records management systems in the Technical Bureau itself are of a high standard. In a letter to the commission dated 19 January 2007, the Garda Commissioner stated:

“Since September 2000, each section within the Garda Technical Bureau holds ISO 9001 accreditation in the context of Quality Management Systems. This involves four internal audits and two external independent audits of documented processes and procedures in each section. This robust audit review facilitates continuous assessment and review of current practices and procedures at the Garda Technical Bureau. This ensures best practice is carried out and the highest professional standards are practiced and maintained.

Technical Bureau management is currently pursuing ISO 17025 accreditation, which is a specific standard for Laboratories and is a prerequisite to membership of the European Network of Forensic Science Institutes (ENFSI) which is being actively pursued. To this end we have engaged a consultant to assist us in the early stages and are due for a site visit from INAAB the accreditation board in the near future.”

Intelligence material

14.105 In his statement of evidence to the commission, the Garda Commissioner places particular emphasis on the current and projected use of information technology to record and track intelligence material received by the Garda Síochána. He contrasts the resources currently available to the Security & Intelligence branch with the resources available in 1974 as follows:

“The files that remain unaccounted for were created at a time when there were no computers or IT structures in place to capture the data contained on the files. Prior to computerisation a card index system was used to assist in the retrieval of information recorded on files...In today’s world all information / intelligence entering the [Security & Intelligence] branch is recorded on computer. The data is searchable for ease of retrieval and a record kept of where information is stored and disseminated.

This point is worth emphasising for the following reason. Currently if a desk officer at Security & Intelligence Branch is researching a particular file, he / she can access all the information pertaining to the subject from the 1980s to the present day, by searching the computer database and

without any need to consult or examine the actual paper file. In the 1970s this was not the case and files routinely moved from the file registry to various offices within Security & Intelligence, as the necessity arose to peruse particular files.”

14.106 At the date of the Garda Commissioner’s statement to the commission (19 December 2005), the Garda Síochána had two separate computer systems which contained intelligence information. The first of these is known as the PULSE Collating and Intelligence system. The current edition of the Garda Code, which was distributed to all serving members of the permanent Garda service in July 2006, describes the objective of this system as follows:

“...to complement the overall gathering and processing of information / intelligence in An Garda Síochána.”

14.107 The Garda Code (2006 edition) provides that all information or intelligence coming to the attention of any member of the Garda Síochána, regardless of rank, should be entered onto the PULSE system, unless it comes under one of the following categories:

- i) Information from a non-Garda source which, if recorded on PULSE, might tend to reveal the identity of the informant; or
- ii) Information which relates to subversive activity or to serious crime.

14.108 According to section 34.13 of the Garda Code (2006 edition), information which falls into either or both of these exceptional categories should be conveyed to the Security & Intelligence branch using the standard paper form known as C.77:

“It should always be clearly understood that where the intelligence is sensitive or relates to subversive activity / serious crime, or where there is a risk that the identity of a source of intelligence may be revealed, such intelligence should continue to be reported on Form C.77 and forwarded to Assistant Commissioner, Crime & Security, Garda Headquarters.”

14.109 Intelligence material which is entered onto the PULSE system should also be preserved on paper. Section 34.12(4) of the Code provides:

“A physical record, ideally in the member’s notebook should be maintained for all information entered onto PULSE.”

14.110 Section 21.19 (4) of the Garda Code (2006 edition) states that

“Official notebooks are classed as ‘Departmental Records’ under the National Archives Act, 1986 and therefore cannot be destroyed. They should be retained in a secure place. Members leaving the Service should

surrender, on obtaining a receipt, to their District Officer for secure storage.”

14.111 The second computer system within the Garda Síochána which contains intelligence material is the National Intelligence Database. This is a stand-alone system used and updated exclusively by the Security & Intelligence branch of the Garda Síochána. This database houses information received by Security & Intelligence concerning subversive activity and serious crime. As we have seen, much of this information is sent to Security & Intelligence on C.77 forms. Intelligence material can also be received from the Department of Justice: there are arrangements in place whereby intelligence material originating with other institutions of the State including the Department of the Taoiseach and the Department of Foreign Affairs can be passed on to the Department of Justice for onward transmission to the Security & Intelligence branch of the Garda Síochána. Other potential sources of intelligence material for the Garda Security & Intelligence branch are Army Intelligence, foreign police and intelligence services, and open-source materials.

14.112 The C.77 and other written materials which come into Security & Intelligence are not scanned directly into the database: rather, what is believed to be the salient information contained in those materials is typed into the database by members of the Security & Intelligence branch. All of the information on the National Intelligence Database is indexed and is fully searchable, using a text retrieval tool built into the database programme.

14.113 In addition to the National Intelligence Database, the Security & Intelligence branch maintains a paper archive of materials received. These materials are added to existing Security & Intelligence branch files. If no appropriate file exists, new files may be opened on persons, organisations or incidents as necessary. In his evidence to the commission the Garda Commissioner stated:

“Files on persons or incidents are opened by the Desk Officers as the need arises. The title of the file is entered into a sequential files register in the Registry in Security & Intelligence. Items of correspondence are added to the file on an ongoing basis and the information is also entered on the National Intelligence Database.”

14.114 Electronic records are also kept of all correspondence received by the Security & Intelligence branch. In a letter to the commission dated 19 January 2007 the Garda Commissioner states:

“The offices of the Assistant Commissioner, the Detective Chief Superintendent Security & Intelligence, along with the individual offices within Security & Intelligence... all maintain an electronic record of correspondence received which identifies the source of the correspondence and also sets out how the correspondence is further processed.”

- 14.115 In his statement to the commission dated 19 December 2005, the Garda Commissioner refers to the proposed introduction of an electronic file tracking system within the Security & Intelligence branch, as a further safeguard against files being lost or misplaced. The Garda Commissioner also refers to ongoing refurbishment work within the building which houses the Security & Intelligence branch:
- “When this work is complete, due consideration will be given to existing demands for additional workspace for personnel within the Security & Intelligence section. It is recognised that greater space not previously available within the Crime and Security area is required, in improving the working environment of personnel within that section.”*
- 14.116 In a letter to the commission dated 19 January 2007, the Garda Commissioner informed the commission that the proposals to provide greater space for the Security & Intelligence branch and to introduce an electronic file tracking system had not yet reached the stage of implementation. He stated:
- “Plans have advanced to the stage that the refurbishment [of] part of the building to allow for the provision of a new registry with enhanced storage facilities for paper files have been agreed and will go to tender in the very near future. The new registry will also include a file tracking / management system (two separate systems are currently being evaluated) to control and track the movement of files into and out of the registry.”*
- 14.117 The commission has referred already to examples of audit reports which it was shown during visits to local stations in Dublin and Monaghan. In the course of a visit to the premises of the Security & Intelligence branch, the commission requested sight of a similar audit report for that branch. A copy of such an audit report was produced to the commission. However, it differed considerably in style and content from the audit reports seen at local stations. In the view of the commission, it was more like a policy statement of how Security & Intelligence functioned, rather than an audit of any specific area of activity or any specific problems identified or suspected.
- 14.118 As already noted, the computer systems currently in place in Security & Intelligence date from the early 1980s, and contain little material from before that time. The commission visited the location in the Security & Intelligence section where paper materials from the 1970s and early 1980s are stored. The commission is satisfied that the space available to store these materials, and consequently the manner in which they are now kept, was plainly inadequate.
- 14.119 The Garda Síochána disclosed to the commission a list of the materials which were provided by the Gardaí to the Hamilton / Barron Inquiry during the course of that Inquiry. The commission is satisfied that this list was created by the Garda Síochána subsequent to the establishment of the commission.

Some of the materials supplied to the Hamilton / Barron Inquiry by the Garda Síochána consisted of original files and documents.

Conclusions

1. Since the original investigations into the Dublin and Monaghan bombings were wound down, the integrity of the Garda files resulting from those investigations has not been maintained.
2. There has been no adequate review by the Garda Síochána of the integrity of the Dublin and Monaghan investigation files, from the time the original investigations were wound down until the establishment of this commission.
3. It is not possible to give a full account of the exact Garda documentation which is missing, relevant to the Dublin and Monaghan bombings.
4. The commission has identified a number of Garda documents which did exist but which have not been produced to the commission, and must be presumed to have been lost or destroyed. Most of these documents were identified as missing documents as a result of work undertaken by the commission, rather than by the Garda Síochána.
5. The failure on the part of the Garda Síochána to detect the absence of certain documentation is no less disturbing than the fact that documentation is missing.
6. The reasons why the documentation went missing cannot be confirmed, but are likely to include the following:
 - i) Inadequate record-management systems;
 - ii) Loss of documentation caused by misfiling or other human error;
 - iii) Unauthorised and / or accidental destruction and / or removal of documents.
7. The possibility of further relevant documentation being found cannot be ruled out; but since it is impossible to say exactly what documentation is missing, it will never be possible to say that the files have been fully restored or reconstituted.
8. The failure to account for security and intelligence material is a serious failure, which could have very grave consequences for individuals mentioned or implicated in such material.
9. In the particular context of files which contain security and intelligence material, no system is adequate which does not allow the Gardaí to account for each individual document at any given time.

10. The increased computerisation of document management across the various branches of the Garda Síochána makes it much more unlikely that a loss of documentation similar to that regarding the Dublin / Monaghan bombings investigation could occur again.
11. The improvements in current systems have not affected the likelihood that documentation from other unsolved cases from the 1970s and 1980s has gone or will go missing.

Reasons for conclusions

1. The gaps in the documentation disclosed to the commission by the Garda Síochána.
2. The failings in the systems of information and records management used by the Garda Síochána in 1974 and thereafter, as identified by the commission in this report.
3. The practice of not listing or recording individual documents within a given file, which makes an effective audit of the contents of a given file impossible. This practice of indexing files but not their contents appears to be universally practiced throughout the public service. The only exceptions known to the commission is the Army, which has a practice of keeping a list of the contents of individual documents on the inside of each file cover, and the Department of Foreign Affairs, which numbers certain categories of reports obtained from the State's embassies abroad. Whilst the practice of not indexing individual documents may be adequate for some State bodies it is a manifestly inappropriate and dangerous practice in any department or organisation which stores or handles security and intelligence material.

Chapter 15

MISSING DOCUMENTATION THE DEFENCE FORCES

Hamilton / Barron Inquiry

- 15.1 Under the heading ‘Sources and Materials’, the report of the Hamilton / Barron Inquiry into the Dublin and Monaghan bombings had the following to say concerning information received by the Hamilton / Barron Inquiry from the Army:

“The Inquiry received full co-operation from the Army. It was given access to a wide range of confidential material, including intelligence reports.”

- 15.2 No mention was made in the Hamilton / Barron report of any missing Army documentation.

Affidavit of the Chief of Staff

- 15.3 In an affidavit of documents submitted to the commission on 14 September 2005, the Chief of Staff of the Defence Forces averred that there were no relevant documents missing from Army records. He summarised the searches for relevant documentation carried out by the Army as follows:

“I instructed the Director of Intelligence to report on the current systems in operation and ordered a search to be conducted of the military intelligence registry and military archives for documentation connected to the Dublin and Monaghan Bombings 1974. I inspected the register of intelligence files and clarified with the Director of Intelligence that all relevant files had been examined and satisfied myself that no relevant file was overlooked. I perused the relevant material that is now being submitted to the Commission of Investigation into the Dublin and Monaghan Bombings of 1974.”

Document management in Army Intelligence, 1974

- 15.4 Amongst the material disclosed to the commission by the Army is a document from the Intelligence Section, Army Headquarters dated October 1975 and entitled: “*Internal Security Guide*”. Part II of this document, headed “Security of Information” deals *inter alia* with the safe custody of classified material – that is, material the unauthorised disclosure of which

would, at a minimum, be undesirable in the interests of the State. Part VI of the Internal Security Guide (1975 edition) deals with office procedures and document management. The commission understands that the principles and practices described in this document were also in place at the time of the Dublin / Monaghan bombings in May 1974, and for some considerable time before that.

- 15.5 According to the Internal Security Guide (1975 edition), access to classified military material is said to be subject to two governing principles, known as the ‘need to know’ and the ‘need to hold’ principles. In effect, this means that military personnel are allowed access to classified material only in so far as they have a need to know the contents of the material, and can only retain possession of such material for as long as such personnel have need of the contents of any given document containing classified material:

“Thus CLASSIFIED material will be returned to the originator, to the Registry or other safe custody immediately the NEED TO HOLD has passed.”

- 15.6 In 1974, the main components of the document management system in Army Intelligence were:

- i) An alphabetical card index;
- ii) Numbered files;
- iii) Logs or chronological files recording incoming and outgoing material;
- iv) Subject files, and
- v) Personal files.

- 15.7 The process for dealing with incoming intelligence material is outlined as follows:

“a. Incoming material should be received at a central point, where it is opened, checked and logged.

b. Material should be searched against the main Index for pertinent references.

c. Pertinent existing files should be attached, or new files opened as appropriate.

d. The material and attached data is to be passed to the desk concerned for action and carding indicators.

e. The material should be carded and returned to file.”

- 15.8 Files created within Army Intelligence were numbered consecutively. Material in each individual file was filed in chronological order, according to the date of receipt of each document. The documents in each file are also numbered consecutively. Since the early 1940s, Army Intelligence has operated a card index system which recorded every document placed on a given file:

“The cards were filed separately from the files themselves and could be easily accessed by cross-referencing file numbers. By checking the entries on the relevant card it could be established what documents exist on the file. All documents placed on the file were numbered consecutively so that a missing document would be noticed on inspection.”

Army Intelligence and the Dublin / Monaghan bombings

- 15.9 Amongst the material disclosed to the commission by the Defence Forces is a photocopy of an Army Intelligence file entitled “Dublin Monaghan bombing”. The date on which this file was opened is not known to the commission. The earliest dated documents in the file consist of newspaper clippings from 18 May 1974, the day after the bombs had been exploded in Dublin and Monaghan.
- 15.10 Virtually all of the documents in this Army Intelligence file are newspaper clippings. There are, however, four documents dating from 1974 which contain information obtained by Army Intelligence from confidential sources in relation to the Dublin and Monaghan bombings. In two of these instances, Army Intelligence passed on the information to the Garda Síochána by letter. Copies of these letters are in the Army Intelligence file. In another instance, a handwritten note on the face of the document indicates that the Garda Síochána was informed, without specifying the means of communication.
- 15.11 The fourth and last of the four Army Intelligence documents containing confidential information relating to the bombings was referred to by the commission in the section of this report dealing with the matters raised at paragraph 2 (i) of the commission’s terms of reference. The document contains two separate pieces of information, apparently from separate sources, said to relate to the bombings in Dublin on 17 May 1974. Both pieces of information refer to inquiries allegedly carried out by the Garda Síochána. There is no documentary evidence disclosed to the commission to show that these pieces of information were processed or checked in any way by Army Intelligence as to the reliability of either the source or the content of the information. This, in effect, renders the material valueless.
- 15.12 The index to the Army Intelligence file which contains the document in question shows no gaps in the numerical record of documents contained in the file. This leaves three possibilities: either Army Intelligence failed to take

appropriate steps to verify the information contained in the document, or they did so but failed to record the results, or that other documentation on this subject did exist at an earlier date but was not filed appropriately.

In further evidence to the commission concerning this matter, the Chief of Staff stated:

“While any action taken as a result of this report is not recorded, I am of the view that the most likely reason for this... is the failure to record the results. My reason for this conclusion is the practice, evident from other documentation in this and in other files, of passing on without delay appropriate information in writing and orally to An Garda Síochána. Even allowing that Military Intelligence did not have any powers of investigation, corroboration of a search allegedly conducted by An Garda Síochána would have been a routine matter of desk-to-desk liaison.”

Current document management systems in Army Intelligence

15.13 Army Intelligence revised their system of file management in early 2000. The Defence Forces explained the changes which have taken place since that time as follows:

“At this time new file covers were instituted which allowed for the recording of documents on the inside cover of the file itself. Information recorded included: the document name, a reference (in practice the consecutive number allotted), title, classification and number of pages. In the period since then the Cardex [card index] system was phased out and the new system introduced for all new classified files opened.”

15.14 In his statement of evidence to the commission, the Army Chief of Staff provided the following information concerning current systems in the Directorate of Army Intelligence:

“The intelligence function at the Directorate is conducted within a secure environment with restricted access...A stand-alone information technology network is maintained with appropriate data security procedures. Finally the Directorate maintains a Registry of classified documentation, access to which is controlled.

The security of information and documentation is controlled in the Registry in accordance with the Manual of Military Security and Intelligence Standard Operating Procedures... The authority for grading classified documents is... covered by instructions, as is re-classification, access and extent of circulation...

In the Registry, files are maintained, updated and managed by the Registry Staff in accordance with the Defence Forces Records

Management System (DFRMS). This Administrative Instruction outlines the procedures for document life-cycle, categorisation, retention and disposal under the National Archives Act 1986. A register of all files is maintained. A database is also maintained, onto which is placed information and summaries of papers, reports etc. together with a file reference where the complete document is available. This process has been affected somewhat in recent years by the loss of the civilian component, which in 1975 numbered five, who provided vital database management expertise and continuity in the Registry.

Access to the intelligence database and files in the Registry is controlled by the Registry Staff. Only the Registry Staff have direct access to the Registry and only those members of the Directorate who have specific responsibility in regard to material contained in the database or files have any access to it. In turn, this access itself is controlled by the Registry Staff. The viewing of files is supervised by the Staff. Removal of files, interference with content or photocopying are not permitted. File covers are colour coded. In addition the full contents of each file is listed on a document index on the inside of each file cover.

All intelligence received from abroad now comes via secure data links to the Intelligence Comcen [Communications centre], where messages are decrypted, electronically logged and recorded before being passed to the appropriate analyst. Some moves towards a system of electronic file management have been made and the Directorate is presently researching a suitable management and retrieval system for the future.”

Conclusions

1. The commission has seen no evidence that any document created by the Army and relevant to the Dublin and Monaghan bombings of May 1974 is missing.
2. Since the early 1940s, Army Intelligence has kept indexes which record every individual document in each file registered by the Intelligence section. These indexes show that every file disclosed to the commission by Army Intelligence is intact.
3. The commission has seen one Army Intelligence report containing two pieces of information relevant to the Dublin and Monaghan bombings, neither of which appear to have been followed up by Army Intelligence. The commission is satisfied nonetheless that the Army Intelligence file which contains the report is intact.
4. The system of records management employed by Army Intelligence in 1974 is the only system examined by the commission which makes it possible to

check whether all of the documents which ought to be in a given file are in fact there.

5. The systems currently in place in Army Intelligence are adequate to prevent documentation going missing. It is perhaps a truism to say that no system is absolutely fool-proof but the standard achieved by Army Intelligence is, in the view of the commission, very high.

Reasons for conclusions

1. The commission has based its conclusions on the written and oral evidence given to it by the Army Chief of Staff, on information obtained by the commission during visits to inspect the Army Intelligence section and the Army archives (with the assistance of the Army archivist), and on the relevant documentary material disclosed to it by the Army, in particular intelligence material.

Chapter 16

MISSING DOCUMENTATION THE DEPARTMENT OF JUSTICE

The Hamilton / Barron Inquiry

- 16.1 Under the heading ‘Sources and Materials’, the report of the Hamilton / Barron Inquiry into the Dublin and Monaghan bombings had the following to say concerning information received by that Inquiry from the Department of Justice, Equality and Law Reform (hereinafter referred to as the Department of Justice):

“Government departments have provided all of the relevant files in their possession and have answered all requests for follow-up information, with one exception: the Department of Justice, Equality and Law Reform has found that files are missing from its archives. A copy of the investigation report into the Monaghan bombing is the only contemporary document relating to the Dublin and Monaghan bombings of 17 May 1974. It is not only the Dublin investigation report that is missing, but also what must have been a considerable amount of security information. Extensive files have been provided relating to matters arising after the ‘Hidden Hand’ programme in 1993. This emphasises the extent of the documentation which is no longer available.

The Department of Justice was informed of all Garda operational matters relating to subversive crime. Information was normally supplied by way of internal intelligence reports with covering letters and was brought to the Department by a member of An Garda Síochána.

In 1974 there appear to have been two books in which files were recorded. One is a book in which the subject matter of files were set out in chronological order and numbered accordingly. The other book was indexed alphabetically.

In and around 1972-74 there are individual files on serious criminal offences. For example there is a file on [a] kidnapping [which took place in] June 1974 and a file on [a] killing [which took place in] January 1973, both of which have been supplied to the Inquiry. However, in relation to bombings there are no individual files. There is merely a general bombings file, opened in 1972, into which reports received from the Gardaí were placed.

This file contains, in the main, individual internal reports of various bombing incidents, forwarded by the Gardaí to the Department with a

covering letter. In some cases, it contains a full Garda investigation report with accompanying statements. It does not contain any Garda reports relating to the bombings in Dublin on 1 December 1972 or 20 January 1973, nor of the bombings in Dublin on 17 May 1974.

The investigation reports and accompanying documents relating to the bombings in Dublin on 1 December 1972 and 20 January 1973, received in 1973, have been supplied to the Inquiry in their original folders. There is no contemporary record which shows that the Dublin and Monaghan investigation reports were sent to the Department; but it is inconceivable that they were not.

The bombings file does list all the bombings in the State between the 16th October 1972 and the 6th March 1976, setting out the date and place where the bombing occurred as well as details of the numbers either killed or injured. The bombings in Dublin and Monaghan are included in this list.

At the request of the Inquiry, the Department of Justice conducted a number of searches for the missing documentation, but without result. In a final letter to the Inquiry, the Secretary General wrote:

‘While every effort has been made to locate all relevant papers in this matter, the process is made more difficult by the fact that most of the documents are 25 to 30 years old and none of the staff who would have been dealing with them at the time are still in the Department. I would also like to reiterate a point made by officials in the past, that is that even where reports of incidents were received from the Garda authorities these would, in the main, have been used for information purposes only.’

The Oireachtas Joint Committee

- 16.2 In order to clarify what documentation, if any, was missing from the archives of the Department of Justice, the Oireachtas Joint Committee sought, and received, written and oral submissions from the Minister for Justice, Equality and Law Reform, as well as from senior officials in the Department. These submissions have been disclosed to the commission by the Oireachtas Joint Committee.

Further evidence obtained by the commission

- 16.3 In a letter dated 22 July 2005 to the Secretary General of the Department of Justice, Equality and Law Reform, the commission requested the Department to provide to the commission a statement of evidence in relation to the

matters arising from paragraph (3) of the commission's terms of reference. A statement of evidence was received from the Secretary General on 12 September 2005, together with an affidavit of documents.

16.4 Further, additional statements of evidence in relation to this aspect of the commission's terms of reference were received from the Secretary General on 17 October 2005 and 16 December 2005.

16.5 The commission also heard oral evidence from the Secretary General and from his predecessor as Secretary General.

Document management in 1974

16.6 In his first written statement to the commission, the Secretary General begins by making "*some preliminary, scene-setting comments*" in relation to the role of the Department of Justice in 1974. It states:

"By way of background information, in the 1970s, security matters were dealt with in the Department by its Security Division (now Security and Northern Ireland Division). In the early 1970s, it was staffed by 1 Principal Officer ... 1 Assistant Principal Officer ... and two more junior staff. The Division would have reported to [name given] Assistant Secretary (deceased), and [name given], Secretary (deceased). As none of the staff then dealing with security matters is now available, it is not possible for the Department to obtain first-hand knowledge of the Division's functioning at the time.

Security Division's principal function would have been to advise the Minister and Secretary on security policy issues, and it would have liaised primarily with the Garda Siochana to this end. From time to time confidential information, useful in briefing the Minister, would have been received from other Government Departments, such as the Department of Foreign Affairs. The Division's main interlocutors in the Garda organisation would have been 'C3' in Garda Headquarters..."

16.7 The Secretary General goes on to make the following observations concerning communication between the Garda Siochana and the Department in the 1970s:

"It is important to emphasise that neither the Department nor the Minister is responsible for criminal investigations, which are a matter for the Garda Siochana. Equally, both the Minister and the Department rely on the Garda Siochana for briefings on security matters. It is more likely than not that at least a proportion of this briefing would have been done orally and, given the small scale of the Security Division and the major security upheavals taking place in the 1970s, it may well have been the case that details of these briefings would not be recorded in the Department. As is

the present practice, oral briefings are sometimes preferred where the purpose is to provide the Minister with information of a highly sensitive nature and where it is considered inappropriate, at the time, to present a written brief or to maintain an account of the information supplied...

Nonetheless, it is clear from extant documentation in Security and Northern Ireland Division that there was regular, ongoing written reporting from the Garda Síochána on, variously, a bi-monthly, monthly or quarterly basis. These reports involved, inter alia, the terse recounting of known subversive activity and Garda activities thereon, including surveillance information. In the main, in the early 1970s, the reports focused on IRA activity. It is difficult, at this remove, to establish how written bi-monthly, monthly or quarterly reporting evolved, except to say that by the 1970s [such periodic reports] were accepted practice.

It is worth noting that, with few if any exceptions, these kinds of Garda reports rest alone on Security Department files, with no commentary or ancillary documentation created by the Division itself. It is understood that such reporting was for information purposes only.”

- 16.8 Concerning the filing system in the Department of Justice, the Secretary General points out that the Security Division maintained its own file registry system and file storage areas, separate and distinct from other areas of the Department:

“In the 1970s, Security Division’s file registry consisted of notebooks in which handwritten records of the files opened were maintained, to include details of the file reference numbers, file titles, etc. The Division’s file storage areas would have been accessible only to staff of the Division. The rest of the Department availed of a central file registry which allocated file numbers to other Divisions according to file topic and which stored archived files on behalf of the rest of the Department. For reasons of security, the central file registry had no connection to the Security Division’s file registry.”

Missing documentation

- 16.9 In his evidence to the commission, the Secretary General of the Department set out the efforts made by the Department to find relevant documentation for disclosure to the Hamilton / Barron Inquiry as follows:

“During the Barron Inquiry’s engagement with the Department, diligent searches were carried out, making use of the contemporaneous paper-based file registers and a latter-day electronic file register. Any potentially relevant files would have been duly retrieved and examined for relevance to the Barron Inquiry. In addition to being guided by its file

registers, Security and Northern Ireland Division also made direct searches of all files and folders, whether registered or not, in an attempt to identify and / or locate material of interest to the Barron Inquiry. Searches were also carried out in relation to the general file registry held in the Department outside the Security and Northern Ireland Division. Given the enormous number of files opened by the rest of the Department, the latter searches were confined to the general file registers rather than file-by-file examinations.”

Dublin and Monaghan bombing files

- 16.10 The file registry for the Security Division in the Department of Justice has no record of any file being opened in relation to the Dublin or Monaghan bombings in 1974.
- 16.11 The Minister for Justice, in his written submission to the Oireachtas Joint Committee, commented on this fact as follows:
- “Irrespective of suppositions which people may make about what files may or may not have existed, the fact is that there is no evidence in Security Division that individual files were opened at the time in relation to either the Dublin or Monaghan bombings. In those circumstances – and it is difficult to conceive why if files were opened on the matters they would not be included in the registers – it may be the case that what happened is that any papers in relation to the bombings would have been included in more general files. In this regard, the Department made a number of files available to the [Hamilton / Barron] Inquiry.”*
- 16.12 The Department has disclosed a file to the commission, opened by its Security Division in 1972, entitled “*Bombings (general file)*”. This file contains documentation received by the Department of Justice from the Garda Síochána in connection with various bomb attacks which took place in the State from 1972 onwards.
- 16.13 The filing system operated by the Department of Justice did not (and does not) list the individual documents which go to make up the contents of a given file. It is therefore not possible to establish whether the files disclosed to the commission are intact. In particular, it is not possible to establish whether the “*Bombings (general file)*” ever contained a copy of Chief Superintendent Joy’s report of 9 August 1974, commonly described by the Garda Síochána as “the Dublin investigation report.”
- 16.14 The documentation disclosed to the commission by the Department contains the following items of correspondence between the Department and the Garda Síochána which relate to the Dublin and Monaghan bombings of 17 May 1974:

- 1) A letter from the Garda Siochana, Crime & Security section (C3) to the Secretary, Department of Justice dated 23 May 1974. Attached to the letter is a preliminary report from Gardai in Monaghan concerning the Monaghan bombing.
- 2) A letter from the Garda Siochana, Crime & Security section (C3) to the Secretary, Department of Justice dated 24 May 1974. Attached to the letter is a preliminary report from Gardai in Dublin concerning the bombing at South Leinster Street, Dublin.
- 3) A letter from the Garda Siochana, Crime & Security section (C3) to the Secretary, Department of Justice dated 24 May 1974. Attached to the letter is a preliminary report from Gardai in Dublin concerning the bombings at Talbot Street and Parnell Street, Dublin.
- 4) A letter from the Garda Siochana, Crime & Security section (C3) to the Secretary, Department of Justice dated 4 June 1974. Attached to the letter is a Garda report concerning allegations made in a newspaper article of 2 June 1974.
- 5) A letter from the Commissioner 'C' to the Secretary, Department of Justice dated 21 June 1974. The letter begins: "*Previous telephonic communication to your office refers.*" The letter goes on to give detailed information about the cars which were exploded in Dublin and Monaghan on 17 May 1974, and also gives information arising from a possible sighting of one of the bombers. Attached to the letter is a report from Gardai in Dublin which lists the persons killed and injured in the three Dublin bombings. The letter from the Commissioner 'C' ends by stating:

"A full investigation is taking place and a detailed report will follow as soon as available."
- 6) A letter from the Garda Siochana, Crime & Security section (C3) to the Secretary, Department of Justice dated 31 July 1974. Attached to the letter is a report from Gardai in Monaghan concerning the recent death in hospital of one of the victims of the Monaghan bombing. The letter ends: "*Any developments will be reported.*"

16.15 The Department of Justice has disclosed to the commission a copy of the Garda investigation report into the Monaghan bombing ("the Monaghan investigation report"). Placed inside the cover of this copy of the report is a letter to the Secretary of the Department of Justice from the Garda Siochana, dated 31 July 1974, which states:

“I am directed by the Commissioner to refer to this office minute of the 10th July, 1974, regarding the above matter and to forward for the information of the Minister a report dated the 26th July 1974, received from the Superintendent, Monaghan, in reference.

- 16.16 This letter from the Garda Síochána bears a stamp indicating that it was received by the Department of Justice on 31 July 1974 and a further stamp which reads “*Seen by Minister*”. There is no corresponding copy of this letter in the documentation disclosed to the commission by the Garda Síochána.
- 16.17 It is not clear to the commission whether the copy of the Monaghan investigation report received by the Department of Justice was added to the file entitled “*Bombings (general file)*” maintained by the Security and Northern Ireland division, or if it was filed at all.
- 16.18 There is nothing in the extant records of the Garda Síochána or of the Department of Justice to show whether the Department received a copy of the Dublin investigation report from the Garda Síochána in 1974. One possible explanation is that the report *was* sent, but that all records relating to it are now missing from the archives of the Gardai and the Department. In his evidence to the commission, the Secretary General addressed this possibility as follows:

“As no covering letter was found in the Department and no copy letter was found in the Garda Síochána, it was posited that both sets of documentation had gone missing.

From the Department’s perspective, this would appear to be an extraordinary and unwarranted inductive leap for which there is no evidence and for which plausibility is strained. The Department would suggest that, on the basis of the evidence, the reasonable conclusion to reach is that no such covering letter existed in the first place.”

- 16.19 The commission respectfully disagrees with the Secretary General’s view on this matter. It is, in the commission’s considered view, by no means implausible to suggest that the Garda Síochána may have lost their copy of such a covering letter, in light of the fact that they do not have a copy of the covering letter which accompanied the copy of the Monaghan investigation report delivered to the Department on 31 July 1974. As to the records in the Department, the commission notes that the covering letter for the Monaghan report was not filed separately by the Department, but was kept inside the report itself. If the report had been mislaid, the covering letter may well have been mislaid with it.

The commission is unable to conclude, on the balance of probabilities, whether or not a copy of the Dublin investigation report was sent by the Garda Síochána to the Department of Justice in 1974.

Other registered files

16.20 In the course of its work, the Hamilton / Barron Inquiry sought access to a number of files which were listed in the registry of the Security Division at the Department of Justice. In his evidence to the commission, the Secretary General said that all registered files which had been sought by the Hamilton / Barron Inquiry were found and disclosed to that Inquiry by the Department.

16.21 However, it has been disclosed to the commission by the Secretary General that there are registered files dating from 1973 which are missing from the archives of the Security Division. In his evidence to the commission, the Secretary General averred:

“Pursuant to the National Archives Act 1986, files which are more than 30 years of age may be either certified for release for public inspection to the National Archives or may be certified for withholding from public inspection...”

It is the case that, in the schedule of records attached to the withholding certificate signed by Security & Northern Ireland Division [of the Department of Justice] in 2003, six files are listed as ‘missing’.”

16.22 Three of the six ‘missing’ files were subsequently located within the Division, but at the time of writing of this report, the remaining three files have not been found. The files which are still missing are listed as follows:

16/73 [Name and location of factory given] – Manufacture of Ammonium Nitrate

36/73 Radio-Telephone in Cars – Correspondence with [name given]

40/73 Correspondence between Secretary and Secretary of Foreign Affairs

16.23 In a letter to the commission dated 29 January 2007, the Secretary General wrote concerning this matter:

“Although it is a source of concern and regret that these files are unaccounted for ...it should be noted that none of these files deal with the Dublin and Monaghan bombings of 1974.”

In a further letter to the commission dated 5 March 2007, the Secretary General stated:

“I accept that my conclusion cannot be made with absolute certainty (and even with an index of the contents of the contents of each file, an error could occur in this regard also), but I would contend very strongly that there is no reason whatsoever to maintain that there is some measure of reasonable belief that the files may have contained relevant documentation.”

16.24 The commission does not accept that such a conclusion can safely be drawn in the absence of a complete index of the contents of each file. The commission could not establish if files 16/73 and 40/73 contained information relevant to the Dublin and Monaghan bombings.

16.25 In addressing the question of how these registered files came to be missing, the Secretary General told the commission in the course of his evidence that:

“The Department is not in a position to provide insight into how or when the three unaccounted for files became so. It would appear that this must have occurred some years ago, as Security & Northern Ireland Division’s previous electronic file tracking system, which was populated in the 1990s with the details of all extant files dating from the late 1960s, does not contain reference to them.”

16.26 In the course of giving evidence before the Oireachtas Joint Committee on 10 February 2004 the then Secretary General of the Department of Justice was questioned as follows concerning the possibility of registered files being removed from the Security Division of the Department:

“[Question]: Is there any way anybody can take out a file out of that section to bring home or read? For example, would the Minister check out a file, or would the Secretary General if he wanted maybe take home a voluminous file to read?”

[Answer]: I never as a matter of practice go near files in that division unless I have to and then I do not take them home in my bag.

[Question]: Is there a mechanism for anybody to take them such as a library system whereby one might check out a particular file to take away from the Department?

[Answer]: It would be contrary to what we regard as acceptable practice because anybody can be burgled or lose a briefcase. Anybody taking a file like that out of the Department would be running an extremely high risk. I could not say that nobody ever did.”

16.27 Further information on the matter was received by the Oireachtas Joint Committee in a letter of 4 March 2004 from the then Secretary General of the Department in which he wrote:

“There was then, as now, no ‘library system’ for checking out or in Security Division files by officials of the Division. As stated to the Sub-Committee, it is and was not considered to be sound practice, from a security perspective, to remove files from the secure environment of the Division.”

Unregistered documentation

- 16.28 The principal difficulty which arises in relation to documentation held by the Department of Justice does not relate to registered files, but relates to unregistered material received from the Garda Síochána and of possible relevance to the Dublin and Monaghan bombings. The existence of unregistered Garda material in the archives of the Department was confirmed by the Secretary General in the course of his evidence to the commission:

“To the greatest extent that it can be ascertained, all files opened by Security & Northern Ireland Division are registered files, i.e. they have been registered in a registry and allocated file reference numbers. By ‘file’, the Department here means a collection of papers contained usually within a formal file cover, printed specially for the Department and bearing its name, with fields for the completion of a file name, file reference number and ancillary information.

In addition to such registered files, it is the case that the Division, as a legacy of its archive material, holds a very small proportion of folders and other atypical document holders (e.g. ring-bind folders) containing official papers. By ‘folder’, the Department here means a document holder, available as a generic stationery item, which bears neither printed cover information nor information fields. These folders / atypical document holders were usually not registered and, accordingly, do not bear any registration number.

The fact that such folders exist is not novel. The Independent Commission of Inquiry into the Dublin and Monaghan Bombings of 1974 (‘Barron Inquiry’) was aware of this fact, as is the Commission of Investigation, as evidenced in the first and second schedules of disclosed documents in the Secretary General’s affidavit of documents, sworn on 12 September, 2005.

During the course of the Barron Inquiry, all unregistered material was thoroughly searched to determine relevance to its investigations and disclosed accordingly. The same also applies in respect of the Commission of Investigation.”

- 16.29 The existence of unregistered files and “atypical document holders” in the Department of Justice makes it possible that the Department received documentation from the Garda Síochána of relevance to the Dublin and

Monaghan bombings of which the Department has no record and which is no longer in the possession of the Department.

16.30 Whether or not the Department of Justice chose to open a file of its own on any matter arising from the Garda investigation into the Dublin and Monaghan bombings is not the main issue which concerns the commission. The commission's principal concern in relation to paragraph (3) of its terms of reference, is whether the Department by its records can show:

(a) exactly what security and intelligence documentation the Department received from the Garda Síochána, and

(b) whether that security and intelligence documentation was retained by the Department, returned to the Gardai, destroyed or lost.

16.31 On the evidence before the commission, the Department of Justice can do neither of these things. This is because of a practice, which existed during the 1970s and for an unascertainable period thereafter, of keeping some documentation without placing that documentation in registered files.

Current document management systems in the Department of Justice

Use of information technology

16.32 In his first statement of evidence to the commission, dated 12 September 2005, the Secretary General gave an overview of how the records management systems in the Department of Justice have developed since the 1970s. The Secretary General focused in the first instance on the Security and Northern Ireland Division:

“As previously mentioned, the Department’s Security and Northern Ireland Division has always maintained its own file registry and file storage areas, separate and distinct from the rest of the Department. In order to facilitate this, a simple, basic custom-designed file tracking system was developed for the Division by the Department’s IT Division in the 1990s. Although this system was prospective, i.e. it recorded details of files being opened only from its launch date, a retrospective exercise was undertaken to populate it with information on registered files dating back as far as the early 1970s (notwithstanding the fact that the Division maintained files dating back to the foundation of the State).”

16.33 The Secretary General then turned to the systems in place in the rest of the Department:

“In relation to the wider Department, with the rapid introduction of information technology systems in the 1990s, the previous system of a central file registry gradually eroded and finally disappeared. In effect,

this meant that a single overview of all files being opened and held by Divisions other than Security Division from the 1990s onwards was lost.

In order to ameliorate the situation in the wider Department and to allow the entire Department, including Security and Northern Ireland Division, to fully meet its obligations under the National Archives Act 1986, work commenced in 2004 on the development of a single and comprehensive file management policy for the Department.

The development of such a policy remains ongoing. To date, a file tracking system has been prototyped by the Department's IT Division which contains information fields sufficient to track the opening and registering of files, file movements, etc., as well as information required to process archived files pursuant to the National Archives Act 1986.

In 2005, this prototype file tracking system was made prematurely available to Security and Northern Ireland Division in order to facilitate a comprehensive information capture exercise in relation to all its files and folders, having regard to the implied criticisms contained in the Barron Report... For the first time, therefore, Security and Northern Ireland Division will soon have a full overview of all its files and folders created since the foundation of the State in a fully word-searchable (albeit prototype) file tracking system.

The prototype system will, in due course, transit to a fully user-approved version made universally available as part of the Department's mainstream information technology suite...

Although it is intended that Security and Northern Ireland Division will continue to maintain a separate file registry and file storage areas, all Divisions of the Department will apply the same information technology tool and apply the same policy in respect of file management in order to ensure uniform consistency and self-evident good practice."

16.34 In a letter to the commission dated 29 January 2007, the Secretary General provided the following update regarding the IT systems in the Department:

"The fully developed and tested file tracking system for the rest of the Department – identical in nature but separate from security reasons from that in use in Security and Northern Ireland Division – has now been successfully piloted in a number of other Divisions. It is planned to roll out the system to all other areas of the Department (with the exception of the immigration area, which is developing its own file tracking and records management system) during the course of this year...

Once the aforementioned developments come to fruition, the Department will consider that it then operates effective, efficient and transparent file management arrangements of a high standard."

Staff and resources

- 16.35 In his statement to the commission of 12 September 2005, the Secretary General stated the Department's intention "*to recruit a dedicated archivist to ensure the care and availability of its historic archive, having regard to the requirements of the National Archives Act 1986.*" The Secretary General also stated:

"In an effort to further enhance record keeping within the [Security and Northern Ireland] Division, an additional Executive Officer and Clerical Officer will be appointed from within the Department's authorised staffing complement."

- 16.36 In his letter to the commission of 27 January 2007, the Secretary General gave the following update about these proposed staff changes:

"An archivist has not been appointed, and there are no plans to fill such a post at present. To a great extent, this requirement has been superseded by the establishment of an external, expert Archives Advisory Group to advise the Department on the historical value of its archive records which are more than thirty years old. They will consider what arrangements can be put in place to release some of these records and to make others available for the purpose of advancing bona fide research..."

The additional Clerical Officer has been appointed from within the Department's authorised staffing complement and is now serving in Security and Northern Ireland Division. The additional Executive Officer has not yet been appointed."

In a further letter to the commission dated 5 March 2007, the Secretary General stated:

"In my letter to the Commission of 29 January, 2007, I stated that the archivist had not been appointed but mentioned the appointment of the Archives Advisory Group and its work. I think it is worth putting on record that as part of this work the Department has appointed a former Assistant Secretary of the Department to carry out a comprehensive review of all the files of the [Security and Northern Ireland] Division which are more than 30 years old.

In addition, I am now in a position to inform the Commission that an Executive Officer has been appointed to the Security and Northern Ireland Division. The officer will take up duties on 12 March."

Unregistered material

16.37 The commission has already expressed its concern regarding the existence of unregistered material in the Department of Justice, and particularly in the Security and Northern Ireland division of the Department.

16.38 In that regard, it should be noted that steps are being taken by the Department to ensure that no material kept by the Department will remain unregistered. In his third statement of evidence to the commission, dated 16 December 2005, the Secretary General stated:

“From an administrative perspective, it is undesirable that unregistered archive material exists. Accordingly, as part of the ongoing cataloguing process within Security and Northern Ireland Division (see Section 7 of the Secretary General’s Statement of Evidence of September 2005), it has already been decided that all unregistered document holders will be registered, i.e., they will be allocated registry numbers. These numbers will be such as to be instantly identifiable as having been allocated retrospectively, so as not to distort the historical integrity of the archive.”

16.39 On 29 January 2007, the Secretary General wrote to the commission with further information on this issue, stating:

“I am pleased to inform you that the details of all document holders (files, folders etc.), whether previously registered or unregistered, have now been entered into the new file tracking database. In other words, the electronic cataloguing process has now been successfully completed within Security & Northern Ireland Division.”

Conclusions

1. The commission is satisfied that no individual files were opened in 1974 by the Security Division of the Department of Justice in connection with the Dublin or Monaghan bombings of 17 May 1974.
2. Three registered files, which were opened in 1973 by its Security Division, are now missing from the archives of the Department. The commission cannot establish whether any of these files contained information relevant to the Dublin and Monaghan bombings. The commission has not established the reason or reasons why these registered files are now missing.
3. There is no evidence that any other file recorded in the registry of the Department of Justice and containing information relevant to the Dublin and Monaghan bombings is missing.
4. The fact that documents in Department of Justice files containing security and intelligence material were not numbered or indexed as to their content means that

the commission and indeed, the Department cannot establish whether or not security and intelligence material is missing from the relevant files.

5. During the 1970s, the Department of Justice received an unknown number of documents from the Garda Síochána which were not registered in the filing system kept by the Department of Justice. The commission is satisfied, on the basis of the unregistered material which has been disclosed to it by the Department, that much of the unregistered documentation kept by the Security and Northern Ireland division of the Department would probably have contained confidential, security and intelligence material.
6. There may be unregistered documentation which was received by the Department of Justice from the Garda Síochána and is now missing, but by reason of the unsatisfactory practice of not registering all documentation, this cannot be established.
7. The Department of Justice had and has a duty to preserve, maintain and account for all documentation received by it from the Garda Síochána. This duty is independent of any duty on the Garda Síochána to maintain records of such documentation.
8. The practice, which existed for an unknown period in the Department of Justice, of having Garda documents which were not contained in registered files, constituted an unjustifiable risk that, if the security of the material contained in such documents were to be breached, such a breach would be undetectable. This could have potentially serious consequences for persons identified or identifiable from the contents of such documents.
9. In the particular context of departmental files which contain security and intelligence material, no system is adequate which does not allow the Department to account for each individual document at any given time
10. The process of registering all unregistered document holders, which has now been completed by the Security and Northern Ireland division of the Department, is an important step towards eliminating the risk that documents could go missing without detection.
11. However, as long as the Department's system records only the existence of files and not the security and intelligence documents within a file, it remains possible that security and intelligence documents could be lost and that such loss would be undetectable.

Reasons for conclusions

1. The commission has based its conclusions on the documentary evidence disclosed to it by the Department of Justice, Equality and Law Reform; on the evidence given to the Joint Oireachtas Committee by the Minister for Justice and the

Secretary General of the Department; and on the evidence given to the commission by the current and former holders of the office of Secretary General of the Department.

Chapter 17

MISSING DOCUMENTATION OTHER GOVERNMENT DEPARTMENTS

Introduction

- 17.1 The report of the Hamilton / Barron Inquiry into the Dublin and Monaghan bombings of 1974 states that documents were obtained by that Inquiry from the Department of Justice, the Department of Foreign Affairs, the Department of Defence and the Department of the Taoiseach. With the exception of the Department of Justice, the Hamilton / Barron Inquiry did not identify any instance of relevant documentation having gone missing from the archives of any government department.
- 17.2 Responsibility for liaising with the Garda Síochána lies with the Department of Justice. No other Department deals directly with the Garda Síochána and the commission would not expect to find Garda documentation concerning the Dublin / Monaghan bombings in the archives of any Department other than the Department of Justice.
- 17.3 Nonetheless, it is possible that certain Departments might have received material relevant to the commission's terms of reference from sources other than the Gardai. That being so, the commission felt it necessary, in order to fulfil the task of undertaking "*a thorough investigation*" of the matters raised in paragraph (3) of its terms of reference, to seek affidavits of documents from the following government departments, on the basis that they might have had relevant documentation in their possession, power or procurement:
- i) The Department of Foreign Affairs;
 - ii) The Department of Defence; and
 - iii) The Department of the Taoiseach.
- 17.4 The commission also visited each of these departments, in order to examine the document management systems currently in place.

Department of Foreign Affairs

- 17.5 The commission received a statement of evidence from the Secretary General of the Department of Foreign Affairs on 23 September 2005. The statement was sworn to in the course of the Secretary General's sworn evidence to the commission, given on 23 September 2005. The first part of the statement

contains the following outline of the role of the Department of Foreign Affairs, with particular reference to security matters and Northern Ireland:

“The role of the Department in pursuing reconciliation and partnership on the island of Ireland includes monitoring and assessing developments within Northern Ireland and maintaining a comprehensive network of contacts there in order to maintain a maximum understanding of viewpoints and, in turn, to promote a better appreciation of Government policy...”

The scope of our contact and information includes, but is by no means limited to, security matters in Northern Ireland.”

17.6 As to the kind of documentation that could or should arise from this work, the Secretary General stated:

“It is our practice to commit to paper and to circulate as appropriate not only reports of formal meetings but also accounts of conversations with contacts and receipt of any incidental information which may come to the attention of officers and have a bearing on our work.”

17.7 Regarding the extent to which such information is circulated, the Secretary General stated:

“Contact and information reports are compiled, generally on a weekly basis, in a digest which is copied, inter alia, to the Taoiseach, Tánaiste, Minister for Justice, Equality and Law Reform, and the Attorney General...Some material which is too sensitive for inclusion in even this confidential circulation is sent directly to a very restricted readership. Other, more routine material is copied either to the relevant individual officers or to pre-designated circulation groups, which include officials in other departments as well as staff within this department.

It would be rare for contact and information work to yield information relating to a security threat against the State. If this were to occur, it would immediately be passed to the Department of Justice, Equality and Law Reform for appropriate follow-up by the Garda Síochána.”

Document management in 1974

17.8 The filing systems in the Department of Foreign Affairs, as they were in 1974 and as they now are, were described by the Secretary General in his statement of evidence to the commission.

17.9 In 1974, the Department operated a Central Registry for files, the purpose of which was to ensure the efficient management of all files created in the Department. Any section of the Department wishing to create a new file

would inform the Central Registry, who would check that a file of a similar name did not already exist:

“Once a file name was approved, the file was allocated a unique reference number based upon the series number allocated to files of a similar nature. The appropriate key words would then be entered on the appropriate index card for future reference.

When a new file was opened, a unique entry was made in the relevant Clár Gen book. These reference books contained, in numerical order, details of the title, date and reference number of each file. All movements of the file were also manually entered into the Clár Gen, thus ensuring that the Department was aware of the location of each file.”

- 17.10 The section of the Department of Foreign Affairs responsible for dealing with information relating to security and Northern Ireland is called the Anglo-Irish Division. Owing to the sensitivity of the information with which it was and is concerned, this section has been permitted from 1970 / 71 onwards to operate its own sub-registry:

“The Anglo-Irish sub-registry initially operated, and now operates, according to the same principles as the Central Registry... To ensure that the database of the Central Registry is kept up to date, Anglo-Irish Division has, from time to time, provided updates of changes to file details on its sub-registry database.”

- 17.11 Both the Central Registry and the Anglo-Irish sub-registry recorded the existence of files. Documents contained within those files were not individually numbered or listed, with the exception of certain categories of reports which were sent from Irish embassies to the Department. Such reports were given a serial number followed by the capital of the country of accreditation. The practice of numbering political reports was introduced by departmental circular in 1957; a similar practice for economic reports was introduced in 1961, and in 1970 the same practice was instituted for reports on matters relating to the European Economic Community. This sequential numbering practice has been continued until the present time in relation to these categories of reports.

- 17.12 It seems that not all documentation in the possession of the Anglo-Irish Division was kept in registered files, as the following passage from the Secretary General’s statement of evidence makes clear:

“In the past in Anglo-Irish Division staff did retain some information, in a secure manner, but without placing it on a registered file. At the time of the introduction of Freedom of Information legislation, a full physical inventory of all Anglo-Irish files and papers was carried out. Undocumented files were discovered at that time and entered into the

Anglo-Irish sub-registry. Staff responsible are satisfied that this exercise resulted in all material held at that time being correctly entered in the sub-registry.”

Missing documentation

- 17.13 On the question of whether any documentation from the Department of Foreign Affairs is missing, the Secretary General stated:

“There has never been any suggestion that the Department of Foreign Affairs has misplaced papers relating to the Dublin or Monaghan bombings of 1974. Furthermore, our search for material for disclosure to the Commission (described above) has not revealed any indication that this might be the case.”

- 17.14 The commission is satisfied that the Department of Foreign Affairs did not open a specific file on the Dublin or Monaghan bombings in 1974. However, the Department did disclose a large number of files to the commission, on the basis that they might contain information relevant to the commission’s terms of reference. A list of these files can be found in the appendices to this report.

- 17.15 On 26 January 2007 the Secretary General wrote to the commission concerning a further discovery of documentation, as follows:

“It has been brought to my attention that our Embassy in London, in preparing for the next phase of files-transfer to the National Archives under the National Archives Act 1986, has very recently discovered a number of files that might possibly be of interest to the Commission. Regrettably, they were not discovered in the search exercise undertaken by the Embassy in 2005 and I only became aware of their existence in recent days.

...The detailed perusal of these files did not reveal the existence of any document that was directly related to the Dublin and Monaghan bombings of 1974. However, adopting a broad interpretation of relevance, 12 documents were identified as being of possible interest to the commission. These are listed in the attached Annex and copies are enclosed for completeness of record.

I regret that these additional files have only recently come to light. The Ambassador in London has assured me that the Embassy has now been exhaustively searched and he is satisfied that any material with contemporary reference to the Dublin and Monaghan bombings has been identified.”

- 17.16 The twelve documents identified by the Department as being of possible interest to the commission came from a number of files which were found

following a search at the Irish embassy in London. Four of the files found in this search of the embassy were registered files. Five unregistered files were also found.

17.17 The commission has received evidence from the Department of Foreign Affairs to the effect that the five unregistered files were what are known as “brief files” – that is, temporary files, prepared for the purpose of briefing the Minister, the Ambassador or senior Department officials in advance of a particular meeting. The commission has been told that ‘brief files’ generally contained duplicates of material extracted from larger, registered files. Any material in a ‘brief file’ which did not already exist on a registered file would be taken and filed appropriately once the brief had fulfilled its purpose. There was and is a practice in the Department of destroying additional copies of brief files.

17.18 Regarding the four registered files which were found in the London embassy, the commission sought an explanation as to why these files “*were not discovered in the search exercise undertaken by the Embassy in 2005*” – that is to say, in the searches which were carried out following the commission’s request for disclosure of all documentation relevant to its terms of reference. In further evidence to the commission, the Secretary General stated:

“The Department accepts that the files referred to... were inadvertently overlooked by the officers involved in the search in London in 2005 when a very large number of files were examined in a brief time period. The possible relevance of the contents of these files was regrettably not recognised.”

Current document management systems

17.19 In the mid-1990s, a computer system dedicated to file registration and tracking was introduced into the Department. In 1999, the sub-registry maintained by the Anglo-Irish Division was computerised. Since that time, all files created within that division have been registered on the computer system. However, it remains the case that, with the exception of certain categories of reports from Irish embassies abroad, the individual documents contained in each file are not numbered or listed.

17.20 Current paper files are usually held within their respective divisions for ease of access. According to the Secretary General’s statement of evidence to the commission, departmental officials may create and hold folders of duplicate material for reference purposes:

“As long as the material is handled and later disposed of in a secure manner, this does not cause difficulty.”

- 17.21 Files no longer in current use are returned to the Central Registry, where the closure of the file is noted and its new storage location is recorded. All non-current files (with the exception of certain, particularly sensitive files) are stored in a dedicated records storage facility in the Dublin area. The sensitive files which are not kept in the storage facility are retained in the Department, in a secure section of the Department's political division.
- 17.22 The Department of Foreign Affairs employs a professional archivist who actively manages, with a team of officials, the records management, archiving and National Archives Act 1986 obligations of the Department. This professional archivist support materially contributes to the Department's high standard of record management.

The Department of Defence

- 17.23 The commission received both oral evidence and a written statement of evidence from the Secretary General of the Department of Defence on 14 September 2005, as well as an affidavit of documents sworn on 13 September 2005. The evidence provided by the Secretary General outlined the duties, functions and records management systems of the Department of Defence, both in 1974 and now.
- 17.24 The archives of the Department of Defence and of the Defence Forces were and are completely separate. This point was emphasised to the commission by the Secretary General in his evidence.
- 17.25 The Secretary General told the commission that the role of the Defence Forces in the context of the bombings was that of providing aid to the civil power, which was and is, in this context, the Garda Síochána:

“The policy in relation to ATCP [aid to the civil power] is that the Defence Forces will respond to requests from the Gardai as required to the extent of their resources and capabilities to protect life and property.

The Department would not be advised of the specific instances in which the Defence Forces were called on in an ATCP [aid to the civil power] role. These are operational matters, which would be managed at an operational level between the military authorities and the Gardai.

In the case of the Dublin and Monaghan bombings, it is understood that the Defence Forces provided EOD [Explosives Ordnance Disposal] support to the Gardai at each of the incidents and also assisted in the mounting of cordons and border patrols at the request of the Gardai. As already stated, these were operational matters, which would not have involved the Department. As such, there are no files in this Department dealing specifically with the Dublin and Monaghan bombings.”

- 17.26 Regarding other, more general files which might have contained information of relevance to the bombings, the Secretary General gave evidence to the commission as follows:

“There are files containing minutes of the Interdepartmental National Security Group and these files were made available to the Barron Inquiry in 2002.

In relation to intelligence co-operation between Army Intelligence and their counterparts in the UK, it is understood that the Secretary General at the time was not briefed on these contacts or on the information or intelligence gathered. The then practice was that that Director of Military Intelligence would brief the Minister [for Defence] and the Minister would return whatever briefing minutes or reports he received to the Director of Military Intelligence. There is no information or files available in the Department to suggest that the Minister advised the Secretary General of such briefings or that any papers which he received were ever passed to the civil side of the Department. Notwithstanding this, the Department undertook a detailed search of all files which might have contained information relating to these events. No files, records of files, documents or information were found containing intelligence or other information in relation to the [Dublin and Monaghan] bombings.”

Document management in 1974

- 17.27 In 1974, responsibility for opening and recording of all ‘secret’ files fell upon the executive branch of the Department. This function was transferred to the human resources branch in 1998. The procedures followed in relation to the custody of secret files were set out in Departmental office circulars 5/63, 1/66 and 2/66.
- 17.28 Circular 5/63 provided that a special register of secret files would be kept by the executive branch. Any officer who received a secret file from the executive branch was required to supply a receipt for the file, and that officer was responsible for the safe custody of the file until it was either returned to the executive branch or passed to another authorised officer, in which case the executive branch had to be notified.
- 17.29 Regarding the structures which may have been in place in 1974 to check the integrity of Departmental files, the Secretary General told the commission in evidence:

“Given the passage of time it has not been possible to ascertain the arrangements which may have been in place regarding periodic checks and / or auditing of the Department of Defence’s documentation, information papers and records at that time.[i.e. in 1974]”

- 17.30 Nonetheless, the commission has seen nothing to suggest that any relevant documentation is missing from the Department of Defence.

Current document management systems

- 17.31 In addition to receiving evidence from the Secretary General concerning the present systems for storing, preserving and regulating access to documentation in the Department of Defence, the commission was permitted to inspect the premises where documentation is kept by the Department.
- 17.32 The commission is satisfied that the facilities and systems currently employed by the Department in relation to storing and managing documentation are more than adequate for the purpose.

The Department of the Taoiseach

- 17.33 By letter dated 30 August 2005, in response to a request from the commission, the Department of the Taoiseach advised the commission that it had not located any documents of specific relevance to the commission's terms of reference. Subsequently, the Department facilitated an inspection of records by the commission which led to a number of documents of potential interest to the commission being identified. Copies of those records were made available to the commission and are listed in an affidavit of documents sworn by Mr Dermot McCarthy, Secretary General of the Department of the Taoiseach on 21 December 2005. The Secretary General also provided the commission with a statement of evidence dated 21 December 2005 and gave evidence in person to the commission on that date.

- 17.34 The Secretary General's statement describes the role of the Department of the Taoiseach in security matters as follows:

“The Department of the Taoiseach is frequently called upon to discharge a co-ordinating role in relation to major or sensitive issues, particularly where there is a cross-cutting dimension. Also, the Department usually services Cabinet Committees and, of course, the Department is involved where issues arise that are of particular concern to the Taoiseach, as Head of Government...”

That role is not a formal one, unlike the Garda Síochána and the Department of Justice, Equality and Law Reform. The Department of the Taoiseach does become involved from time to time in a co-ordinating capacity where particular circumstances require it.”

- 17.35 The Department of the Taoiseach has secured, on a part-time basis, the services of a professional archivist from the National Archives, who has a long-established knowledge of the file and record management systems in the

Department of the Taoiseach. The Department also has an experienced team of officials who manage the record management, archiving and National Archives Act 1986 functions of the Department.

17.36 The commission is satisfied that the Department had in 1974, and continues to have today, a highly effective and secure system of information and record management. In particular, there are Departmental circulars in force which regulate in detail the manner in which sensitive and confidential documentation is stored, preserved and accessed.

Conclusions

1. The commission has found no evidence that any file recorded in the registries of the Department of Foreign Affairs, the Department of Defence or the Department of the Taoiseach, is missing.
2. In 1974, these Departments did not have a practice of numbering or indexing individual documents within a given file (with the exception of certain categories of reports from Irish embassies to the Department of Foreign Affairs, referred to at paragraph 17.11 above). It is not possible for the commission to establish with certainty whether files which do not contain numbered or listed documents are now intact or complete.
3. The Department of Foreign Affairs disclosed the existence of a certain amount of unregistered material which was retained by the Anglo-Irish Division. The failure to register such material makes it impossible to establish with certainty the true extent of the documentation which ought to be in the possession of the Department of Foreign Affairs, and which is relevant to this commission's terms of reference. The unregistered material which has been located by the Department has now been properly registered and filed by the Department.
4. As long as the filing systems employed by the Department of Foreign Affairs, the Department of Defence and the Department of the Taoiseach only record the existence of files and not the documents within a file, it remains possible that documents could be lost and that such loss could go undetected.

Reasons for conclusions

1. The commission has based its conclusions in this regard on the documentary evidence disclosed to it by the Department of Foreign Affairs, the Department of Defence and the Department of the Taoiseach, on the oral evidence given to the commission by the Secretary General of each department, and on information obtained by the commission during visits to each of the said departments.

Chapter 18

THE INQUESTS INTO THE DUBLIN AND MONAGHAN BOMBINGS

Introduction

- 18.1 The bombings in Dublin and Monaghan on the 17th May 1974 killed thirty-three people. Twenty-six people were killed in Dublin. Seven people were killed in Monaghan.
- 18.2 Where a person is killed in circumstances of violence the coroner for the district in which the death has occurred has a duty under section 17 of the Coroner's Act 1962 to hold an inquest "...if he is of opinion that the death may have occurred in a violent manner ..."
- 18.3 The Coroner's Act 1962 placed a statutory duty on the Dublin City Coroner and the Coroner for North Monaghan to hold inquests into the deaths of the persons who were killed by these bombs.
- 18.4 It is important to note that an inquest does not investigate, nor consider, questions of criminal or civil liability in respect of a death. An inquest is a limited form of public inquiry. Section 30 of the Coroner's Act 1962 is very precise as to the limits it places on an inquest, providing as follows:
- "Questions of civil or criminal liability shall not be considered or investigated at an inquest and accordingly every inquest shall be confined to ascertaining the identity of the person in relation to whose death the inquest is being held and how and where the death occurred."*
- 18.5 Relatively soon after a death (usually when the postmortem report is received) the coroner may open an inquest, take evidence of identification and give the cause of death (so that death may be registered). In cases of homicide the Garda Síochána will usually seek an adjournment under Section 25 of the Coroner's Act 1962 on the grounds that the Garda investigation is continuing, or that a file has been submitted to the DPP (section 25(1)), or that a person has been charged in relation to the death (section 25(2)). Adjournments pursuant to section 25(1) are to a date certain; adjournments under section 25(2) are *sine die* (until criminal proceedings are completed).
- In practice the body of the deceased will have been buried or cremated for weeks (or even months) prior to such adjournments.
- 18.6 The Dublin City Coroner, Professor Patrick J. Bofin, opened inquests on 27 May 1974 into the deaths of the twenty-six persons killed by bombs in Dublin City on 17 May 1974. Brief evidence appears to have been given before the

coroner by Inspector M.J. Hanrahan, of Store Street Garda Station. In each inquest the Coroner heard evidence of identification of each deceased person, their name, surname, home address, age, gender, marital status, date of death, place of death, and medical evidence as to the cause of death.

- 18.7 After the Coroner heard this preliminary evidence, counsel for the Garda Síochána applied for an adjournment of the inquests, on the grounds that the criminal investigation into the Dublin bombings had not yet been completed. This was a proper, and not unexpected, application to be made on behalf of the Garda Síochána. Section 25(1) of the Coroners Act 1962 provides:

“Where, at an inquest in relation to any death, a member of the Garda Síochána not below the rank of inspector requests the coroner to adjourn the inquest on the ground that proceedings in relation to the death are being considered, coroner shall adjourn the inquest for such period as he thinks proper and shall further adjourn the inquest for similar periods so often as a member of the Garda Síochána not below the rank of inspector requests him on the ground aforesaid so to do.”

- 18.8 The report by the Garda Síochána concerning the criminal investigation into the Dublin bombings was not completed until 9 August 1974. Section 25(1) of the Coroner’s Act 1962 required Professor Bofin to adjourn the inquests when the Garda Síochána made an application for an adjournment. To do otherwise would have been *ultra vires* the Coroner’s Act 1962.
- 18.9 The Dublin City Coroner acceded to the adjournment application and the inquests were adjourned *sine die*. The failure of the Dublin City Coroner on 27 May 1974 to adjourn the inquests to a specific future date appears to have been in breach of the requirements of Section 25(1) of the Coroners Act 1962.
- 18.10 A short time later the Coroner for North Monaghan, Mr. Patrick O’Gara, solicitor, opened and completed inquests on 11 June 1974 into the deaths of six persons killed by the bomb in Monaghan Town.
- 18.11 A seventh person seriously injured in the Monaghan bomb blast was transferred from the Monaghan County Hospital to the Richmond Hospital in Dublin and died at a later date. The inquest in relation to this seventh death took place in the Dublin City Coroner’s Court.²³
- 18.12 The report by the Garda Síochána of the criminal investigation into the Monaghan bombings was not completed until 7 July 1974. However, in marked contrast to the Dublin inquests, there appears to have been no application by the Garda Síochána to adjourn the Monaghan inquests pending the completion of the criminal investigation by them into the Monaghan bombing.

²³ See para. 18.17 below.

18.13 The commission has been unable to establish the reasons why, or the circumstances in which the Garda Síochána did not make the normal application on 11 June 1974 to adjourn an inquest while their criminal investigation into the Monaghan bombing was continuing. This is surprising when account is taken of the fact that the Garda Síochána retained counsel to make an application for an adjournment under section 25(1) of the Coroners Act 1962 in relation to the Dublin inquests a little more than two weeks prior to the Monaghan inquests.

18.14 In each of the six Monaghan inquests the Coroner sat with a jury who returned in each case the following findings:

“Death due to injuries caused by flying missiles as a result of the detonation of explosives at North Road, Monaghan at approximately 7p.m. on the 17th May, 1974”

18.15 It is important to note that in none of the six Monaghan inquests held on 11 June 1974 is a formal verdict, such as “unlawful killing”, recorded. This is surprising as a verdict at an inquest is a crucial aspect of its statutory function.

In evidence to the commission, the present Dublin City Coroner commented on this matter as follows:

“There are numerous references to “verdict” in the 1962 Act. Unfortunately it was not unusual at the time for a coroner in Ireland to record ‘findings’ without a formal verdict.”

18.16 The commission has also been unable to establish the reasons why or the circumstances in which the Coroner for North Monaghan, on 11 June 1974, allowed the inquest jury not to return a verdict on each of these six deaths as was required by section 32 of the Coroners Act 1962. Non-standardisation in practice may help to explain this.

18.17 The seventh victim of the Monaghan bombing died on 23 July 1974. The Dublin City Coroner opened an inquest into his death on 25 July 1974. Evidence was heard by the Coroner of this deceased person’s identification, his name, surname, home address, age, gender, marital status, date of death, place of death, and medical evidence as to the cause of his death. This inquest, similar to those heard on 27 May 1974, was adjourned *sine die* by the Coroner. The failure of the Dublin City Coroner on 23 July 1974 to adjourn this inquest to a specific future date appears also to have breached the requirements of Section 25(1) of the Coroners Act 1962.

1974 to 2003

- 18.18 The records for the Dublin City Coroner's Office indicate that the twenty-six inquests into the deaths arising out of the Dublin bombings and a further inquest concerning a person seriously injured by the Monaghan bomb and who later died in a Dublin hospital were never concluded.
- 18.19 The current Dublin City Coroner, Dr. Brian Farrell, Barrister-at-Law, assumed office in 1991. In that year there was no listing in the Coroner's Court list of the twenty-seven inquests related to the Dublin and Monaghan bombings that had been adjourned in 1974. The files in relation to these inquests had ceased to be active: they had been archived at the Dublin City Coroner's Court.
- 18.20 In April 1999 solicitors on behalf of a number of the relatives of persons whose inquests had been adjourned wrote to the Dublin City Coroner seeking to have these inquests re-listed in the Dublin City Coroner's Court list.
- 18.21 The Dublin City Coroner commenced an investigation into the circumstances of what was, by this time, an order of the Coroner's Court adjourning inquest proceedings made twenty-five years previously. He succeeded in retrieving the archived records of all twenty-seven adjourned inquests and established from these records the material circumstances of the adjourned hearings. These records were disclosed by the Coroner to the commission, and are listed in the schedule to this final report.
- 18.22 The Coroner had then to consider the difficult legal issue of his own jurisdiction to embark upon an inquest at a remove of time when many material witness, documents and relevant evidence were unlikely to be available. The Coroner decided to re-list these inquests and to set about the task of assembling relevant evidence for his proposed court hearings.
- 18.23 In September 2003 the Attorney General, Mr. Rory Brady, S.C., in the exercise of his statutory powers contained in section 24 of the Coroners Act 1962, directed the Dublin City Coroner to conduct new inquests into the six persons killed in the Monaghan bombing whose inquests were previously concluded by the Coroner for North Monaghan in June 1974. The six Monaghan inquest files were then forwarded to the Dublin City Coroner by the present coroner for North Monaghan. This decision by the Attorney General was important because it ensured that the families of the victims who had died as a result of the Dublin and Monaghan bombings, despite an elapse of what was by then nearly thirty years, would have fresh inquests into the circumstances of those deaths.
- 18.24 The Coroner sat in public on 23 January 2004, 30 January 2004, 7 April 2004 and 16 April 2004 to conduct preliminary hearings before the commencement of the thirty-three new inquests.

- 18.25 The inquests opened on 27 April 2004 and continued on 28-30 April, 4-7 May, and 10-19 May. The inquests concluded on 20 May 2004.
- 18.26 The Coroner arranged for a daily transcript of all sworn witnesses in these inquests. A certified copy of the transcript of these inquests was disclosed in evidence to the commission.
- 18.27 In respect of each of the thirty-three victims of the Dublin and Monaghan bombings the jury in the Dublin City Coroners Court returned verdicts of *“unlawful killing by person or persons unknown.”*
- 18.28 The achievement of the Dublin City Coroner in concluding these thirty-three inquests cannot be underestimated. This is especially so when account is taken of the fact that more than thirty years had elapsed between the bombings and the conclusion of the inquests. The public records prior to these inquests were inaccurate in a number of material respects concerning aspects of the circumstances of some of the victims. The Coroner during the inquests corrected these errors, with the assistance of surviving family members.

Sources of information

- 18.29 The importance of an inquest from the standpoint of the families of victims of crime is that it will usually only occur after the conclusion of a criminal trial connected to the circumstances of a death, or where the Director of Public Prosecutions in the exercise of his independent statutory functions under the Prosecution of Offences Act 1974 has decided not to institute criminal proceedings on the basis that there is not sufficient evidence to justify a criminal charges in relation to a death.
- 18.30 Where there has been no criminal prosecution relating to a death, and where the circumstances of that death require an inquest to be held under the Coroners Act 1962, the inquest is likely to be the sole occasion when the family of the deceased can hear evidence as to the cause of death and as to the circumstances surrounding that death.
- 18.31 The sources of information leading to the evidence heard at an inquest derive in significant part from inquiries made, and written statements of evidence taken by, the Garda Síochána. In many instances the Garda Síochána in the course of their criminal investigation will have assembled the documentation, statements of evidence and other relevant information. In other instances where the circumstances of a death do not warrant a criminal investigation the Garda Síochána or the coroner will, nonetheless, identify witnesses, take statements from them, and make any other appropriate inquiries to assist a coroner in adducing evidence at an inquest.

- 18.32 The Dublin City Coroner in 2004 also had the benefit of statements of evidence, documentation and information made available by the families of the persons killed in the Dublin and Monaghan bombings. In this regard significant investigative assistance was provided by ‘Justice for the Forgotten’ (an organization of victims and relatives seeking justice for the Dublin and Monaghan bombings of 17 May 1974, and the Dublin bombings of 1 December 1972 and 20 January 1973), Mr. Greg O’Neill, solicitor, and Mr. Desmond J. Doherty, solicitor. In a significant number of instances these additional sources were of material assistance in furthering the investigative aspect of the inquests held by the Dublin City Coroner.
- 18.33 A coroner, where he has decided to hold an inquest into a death, has a duty to seek out all relevant sources of information bearing upon the circumstances of that death. While a coroner can seek evidence from any source he is substantially dependent on the voluntary co-operation of those who have evidence in disclosing it. If evidence is not disclosed the coroner will not be in a position to decide as to its relevance to the inquest.
- 18.34 In the case of the twenty-six inquests opened and adjourned by Professor Bofin on 27 May 1974, the Dublin City Coroner’s Office archives indicate that only statements of identification and post-mortem reports were adduced in evidence. In relation to the six inquests concluded on 11 June 1974 in Monaghan, the archives of the Coroner for North Monaghan contain only statements of identification and post-mortem reports that were adduced in evidence. The position was the same in respect of the Monaghan bomb victim whose inquest was opened and adjourned by the Dublin City Coroner on 25 July 1974.
- 18.35 The current Dublin City Coroner, Dr. Farrell, stated to the commission that in cases where there has been a criminal investigation arising out of a death, the Garda Síochána permit his office to have access to the statements of evidence obtained in the course of that investigation and to the final Garda report at the conclusion of a criminal investigation. In those instances where there has been a criminal trial the Garda Síochána permit the Coroner access to the series of witness statements called the “book of evidence” which may have constituted the essential prosecution case in a criminal trial. Dr. Farrell also stated that it was usual for his office to have meetings before an inquest with senior Garda Síochána officers connected with a criminal investigation. He stated that he had, from time to time, security or intelligence information or material disclosed to him by the Garda Síochána where it might be relevant to the circumstances of a death. The Coroner stated that he treated this sensitive information in accordance with the law of privilege and confidentiality.
- 18.36 In preparing to resume the public hearings into the twenty-seven adjourned Dublin City inquests, and in conducting fresh inquests into the six inquests heard in North Monaghan, the Dublin City Coroner had a number of meetings with senior officers of the Garda Síochána. These Garda officers, as was to be

expected due to the lapse of thirty years, were not the officers who were involved in the original criminal investigations into the Dublin and Monaghan bombings. Dr. Farrell did not have access to the Garda Síochána investigation report into the Dublin bombings dated 9 August 1974, the Garda Síochána investigation report into the Monaghan bombing dated 7 July 1974, or to any security and intelligence information or material.

- 18.37 The Dublin City Coroner was provided with brief outline reports by the Garda Síochána in September 2003, one report in relation to the Dublin bombings and an additional report into the Monaghan bombing.
- 18.38 The Garda Síochána made the decision as to the selection from Garda Síochána files of statements of evidence, documentation and information that were disclosed to the Dublin City Coroner.
- 18.39 The Garda Síochána disclosed to the Coroner 128 witness statements relevant to the Monaghan bombing investigation and 98 witness statements relating to the investigation into the Dublin bombings. The statements disclosed to the Coroner correspond with the statements attached to the Monaghan and Dublin investigation reports of 7 July 1974 and 9 August 1974 respectively.

The inquest hearings

- 18.40 The Dublin City Coroner conducted the thirty-three inquests into the Dublin and Monaghan bombings of 17 May 1974 over a period of sixteen days in 2004. This was one of the largest inquest hearings held in this State. It is also the first occasion when the surviving families of the victims of these bombings had an opportunity to hear evidence concerning and to participate in a public hearing, albeit limited to the statutory purposes of an inquest, into the circumstances leading to the killing of their family members.
- 18.41 The Dublin City Coroner disclosed in evidence to the commission a transcript of the evidence heard by him before a jury in these thirty-three inquests.
- 18.42 The commission is satisfied that the Dublin City Coroner properly attempted to pursue all appropriate areas of investigation into these deaths. The Dublin City Coroner nonetheless made clear to the commission his view that there were a number of unsatisfactory factors that arose in relation to these hearings, despite the extensive pre-hearing preparation and the assistance that he received from all relevant parties.
- 18.43 His first concern was the proper interpretation by a coroner of the issue of “how” a death occurred. Dr. Farrell described the interpretation of the “how” a death occurred as “...*the most controversial issue in coronial practice at the present time.*” In many inquests it is argued that the issue as to ‘how’ a death occurred is the very limited factual question of the precise medical cause of

death. Dr. Farrell considers that this strict approach in practice is not in the public interest. In his view:

“It has to be not only the medical cause of death, but the circumstances surrounding the death. In other words, by what means did the deceased lose his or her life. I believe that it is important that in addition to the statutory requirement to place on the record who, how, where and when, ... one also needs to place a coherent account of the circumstances of the death on the public record; otherwise, the hearing is not satisfactory, it’s not complete and it’s not serving its proper public function.”

- 18.44 Dr. Farrell told the commission that in conducting his public hearings into the circumstances in which a particular death occurred he was concerned to ensure what he describes as “a meaningful inquiry” and that, he opined, requires him to adopt a broader interpretation of the word “how”. At the same time Dr. Farrell was clear that an inquest is a specific form of statutory investigation that must not be used as an investigation for some other purpose.
- 18.45 The next difficulty he identified arose from the failure of attempts to obtain evidence, documentation and information from persons who he considered were in a position to assist him. These included persons within the State who could not be effectively compelled to attend the hearings, and persons and entities outside of the State who either declined to assist him, or who provided limited assistance. Dr. Farrell remains of the view that these areas of investigation were proper enquiries for his office to have made and which might well have assisted his limited statutory investigation into the circumstances of these deaths. Dr. Farrell considered that his statutory powers to compel the attendance of witnesses or to obtain documentation were insufficient to the inquest function he carries out. In practice if the coroner does not receive voluntary co-operation he is unlikely to obtain evidence, documentation or information that he considers he properly requires. In a subsequent submission to the commission, Dr. Farrell pointed out that the Coroners (Amendment) Act 2005 has greatly increased the fines for non-attendance at an inquest by a witness or juror.
- 18.46 Dr. Farrell did indicate that the Department of Justice, Equality and Law Reform had published a review of the coroner’s service in the year 2000, a report of the Coroner’s Rules Committee in the year 2002 and a General Scheme for a Coroners Bill in the year 2006. He expressed the view that the proposals in these policy documents were *“the minimum that should be done”*.

The Coroner and the commission

- 18.47 The significant work done by Dr. Farrell in relation to his inquests into the deaths of the thirty-three victims of the Dublin and Monaghan bombings has materially assisted the commission in its investigations.
- 18.48 The records of these inquests, including the 1974 adjourned Dublin hearings and the 1974 concluded Monaghan hearings, are properly preserved and maintained in accordance with the requirements of the National Archives Act 1986. The records were there, they were easily accessed, and the sources from whom the records were obtained were clearly indicated. These records are listed in the schedule to this final report.
- 18.49 Dr. Farrell disclosed all relevant evidence, documentation and information to the commission. The commission was also afforded an opportunity to inspect the originals of all these materials in their place of current storage.
- 18.50 The records held in the Office of the Dublin City Coroners Court materially assisted the commission in identifying persons and entities likely to hold original evidence, documentation and information relevant to the commission's terms of reference.
- 18.51 The evidence heard by the Dublin City Coroner also materially assisted the commission in its attempts to obtain evidence, documentation and information relevant to the commission's terms of reference.