

Judicial Communications Office

29 June 2022

COURT QUASHES HET REPORT INTO MCGURK'S BAR BOMBING

Summary of Judgment

Mr Justice Humphreys, sitting today in the High Court in Belfast, quashed the Historical Enquiries Team's ("HET") report into the McGurk's Bar bombing. He held the findings of the report, that there was no evidence of investigative bias by the Royal Ulster Constabulary ("RUC") were irrational and it was not possible to remedy this by removing the contentious parts.

Bridget Irvine ("the applicant") lost her mother in the bombing of McGurk's Bar in Belfast on 4 December 1971. In February 2011, the Office of the Police Ombudsman ("PONI") published a report into the bombing finding that an investigative bias on the part of the RUC led to the failure to examine properly evidence and intelligence attributing the bombing to loyalist paramilitaries and undermined both the investigation and any confidence the bereaved families had in obtaining justice. The finding of investigative bias was rejected by the Chief Constable of the Police Service of Northern Ireland ("PSNI").

In May 2014, the Historical Enquiries Team ("HET") undertook a re-examination of all deaths attributable to "The Troubles" to ensure that all investigative and evidential opportunities were examined in a matter that satisfied the PSNI's obligation of an effective investigation. The section of the HET report relating to the question of investigative bias made it clear that this was an issue that the team was asked to address by the families of the victims of the McGurk's Bar bombing. The report reached the following conclusion:

"When the HET commented on the decision-making of DCI Abbott in the original review summary report, it was concluded that the investigation considered all relevant lines of enquiry, but may have attributed more significance to the potential involvement of republican terrorists than the balance of evidence supported. Having closely examined the quality of the evidence underpinning the PONI findings, the HET believes this early assessment remains valid. The HET has found no evidence that DCI Abbott acted as a result of investigative bias."

In the report's conclusions, the finding in relation to DCI Abbott is extended to encompass all within the RUC. In 2015, the applicant brought a judicial review seeking to quash the HET report on the basis that its finding that there was no "investigative bias" on the part of the RUC was irrational and contrary to the weight of the evidence. In 2016, ACC Hamilton issued a statement to the effect that the Chief Constable fully accepted the findings of the PONI regarding the original investigation into the McGurk's Bar bombing, including the finding of investigative bias. ACC Hamilton said the PSNI had "redrafted the original HET report to unequivocally reflect this position". The applicant, however, contended that the entire HET report should be quashed rather than the position stated by ACC Hamilton that the relevant material and findings concerning investigative bias could be excised from the report.

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Remedy

Section 18 of the Judicature (Northern Ireland) Act 1978 provides that remedies in judicial review proceedings, including orders of certiorari, are discretionary. They are designed to give practical effect to the order of the court and the courts have an ability to tailor the making of such an order to the circumstances of any given case. The court said that in this case it may, in its discretion, either quash the HET report in full or seek to quash the offending paragraphs and excise certain findings:

“There is now no doubt, as a result of the concession made by [the PSNI] that the findings of the HET report in relation to investigative bias were wholly ill-founded, unsustainable and illogical. It is rare for a public authority to admit that it has behaved irrationally. The concession made in this case, albeit some eight years after these proceedings were instigated, is a welcome acknowledgement of wrongdoing by the HET.”

The court said there were a number of features of the HET report which were of significance on the question of the appropriate relief it should grant:

- The HET report purports to be a final and comprehensive report in line with the HET objectives;
- It is specifically stated to be, at least in part, a response to the PONI report;
- The families had specifically asked the HET to address the question of investigative bias;
- The report purports to arrive at definitive conclusions on this issue.

The court said that if it were to take the course of action proposed by the PSNI, namely to excise all the relevant portions of the report touching on the issue of investigative bias, a number of consequences would flow. Firstly, it would no longer represent a final and comprehensive report since there would be no specific findings on the evidential material relevant to the question of bias. Secondly, there would be no conclusions on the issue at all, despite the fact the families asked for it to be addressed and the HET agreed to carry out this task. Thirdly, it would not comply with its stated objective to respond to the findings of PONI.

On 14 June 2022, in order to seek to overcome these shortcomings, the PSNI proposed, in addition to the excisions, that a prologue be added to the HET report in the terms that it fully accepted the PONI report into the RUC investigation into the bombing, including the finding relating to investigative bias. The court, however, said this proposed form of words represented an addition to the HET report by way of prologue but did not cure the problems or purport to analyse the evidence relating to investigative bias, or to reach specific findings:

“It does not fulfil the obligation assumed by the HET to address the question of bias as part of its report. It therefore, by definition, cannot comply with the stated objective of being a final and comprehensive report.”

The court also noted that the proposed prologue must be read in conjunction with the statement of ACC Hamilton in 2016 in which he expressly referred to “redrafting” of the report to “unequivocally reflect the position”. It said that no such redrafting had been undertaken but, instead, a set of proposed excisions was produced to remove all references to the issue of investigative bias. The court said this “represented convenient airbrushing rather than unequivocal reflection”. The court reached the following conclusion:

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“Having carefully considered the competing positions, and recognising that there is much in the HET report which is uncontroversial, I have nonetheless concluded that the proportionate and efficacious remedy is for the court to quash the HET report in its entirety. The findings in relation to investigative bias are infected by irrationality and it is not possible to remedy this legal wrong by mere excision. To do so would cause the HET report to fail to meet its stated objectives and, in particular, render it incapable of addressing a key issue as far as the applicant and the families of the victims are concerned.”

Conclusion

The applicant’s claim succeeded and the court made an order of certiorari quashing the HET report dated 20 May 2014.

NOTES TO EDITORS

1. This summary should be read together with the judgment and should not be read in isolation. Nothing said in this summary adds to or amends the judgment. The full judgment will be available on the Judiciary NI website (<https://judiciaryni.uk>).

ENDS

If you have any further enquiries about this or other court related matters please contact:

Alison Houston
Judicial Communications Officer
Lady Chief Justice’s Office
Royal Courts of Justice
Chichester Street
BELFAST
BT1 3JF

Telephone: 028 9072 5921

E-mail: Alison.Houston@courtsni.gov.uk