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# **PROTECTING THE PEOPLE, PATTEN AND POLITICS**

## **SDLP RESPONSE TO MI5 PAPER**

**A Better Way to a Better Ireland**

## **SDLP RESPONSE TO BRITISH GOVERNMENT PAPER**

### **“FUTURE NATIONAL SECURITY ARRANGEMENTS IN NORTHERN IRELAND”**

#### ***Introduction***

The SDLP notes that this is the first paper produced by the British Government on MI5 ever supplied to political parties.

By no means is it sufficient, but it is a basis upon which proper negotiations can commence.

The SDLP notes the following developments:

- Acceptance by the British Government of the five principles set out by Assistant Chief Constable Sheridan designed to ensure the sharing of information between the PSNI and MI5, principles which can be developed and enlarged.
- Acceptance of the SDLP demand that the British Government publish the memoranda of understanding between the PSNI and MI5;
- Acceptance by the British Government of the SDLP suggestion that the Policing Board's human rights advisor would be involved in auditing these memoranda of understanding. We also note that the Government is considering the SDLP's suggestion that the Human Rights Advisor be able to bore into the detail of MI5 operations to see how these are carried out.
- Consideration to be given to an equivalent complaints procedure.

However, serious concerns remain outstanding. These are set out below.

#### ***No proper complaints procedure like Police Ombudsman***

Contrary to the assertion in the document, the transfer of work to MI5 will diminish accountability in practice. That is because work which formerly was done by the PSNI will be subject to the Police Ombudsman.

While the Police Ombudsman will be able to investigate criminal or disciplinary wrongdoing by PSNI officer seconded to MI5, the plain reality is that she will not be able to investigate MI5 officers for criminal or disciplinary wrongdoing or exercise her associated powers to arrest, question, seize documents or even to compel documents.

Instead, the relevant body for complaints will be the Investigative Powers Tribunal. The SDLP does not believe that this provides equivalent levels of accountability for the following reasons:

- **Powers:** The Investigative Powers Tribunal has merely the power to require disclosure of documents and information (s.68(6) RIPA). By contrast, the Police Ombudsman has powers of police constables, including arrest and seizure, as well as the power to compel information and documents in non-criminal cases.

- **Reasons:** The Police Ombudsman gives as detailed reasons as possible for decisions. By contrast, the Tribunal is confined to saying whether the complaint is upheld or rejected. S.68(4) RIPA.
- **Not victim focussed:** The complaints mechanism is focussed on those who have been surveilled etc. – s.65(4) RIPA. It is not focussed on failures to intercept/conduct surveillance or issues of sharing of information with police and acting to ensure prosecutions. Yet most of the key cases have been about these issues. (e.g. McCord, Finucane). Indeed, it is beyond belief that a complaint could be brought against MI5 by a terrorist suspect that they are monitoring, but not by any of his or her victims. Why, for example, should suspects in the Omagh bombing who may have been subject to surveillance by MI5 be in a better position than the Omagh families – who were let down by MI5's failure to pass on to the PSNI threat warning that they had about the Omagh bomb for eight years?
- **Not responsive:** By 2002 there had been 71 complaints. Not one was upheld. We understand that the figure is now 400 – with again not one upheld.
- **Criminal/Disciplinary focus:** The Police Ombudsman is looking at issues of criminal or disciplinary wrongdoing and is integrated with the structures for prosecutions and police discipline – as opposed to damages or cancelling authorisations to intercept etc. Merely awarding damages – as the RUC did for illegal beatings and killings – is totally unacceptable.
- **NI specific and NI confidence** – The Tribunal is not NI specific and does not have NI confidence.

The SDLP calls for the Police Ombudsman's jurisdiction to be extended to MI5's work on domestic terrorism in Northern Ireland or for a statutory complaints mechanism that is equal in every respect to be established.

### ***Special Branch officers***

The SDLP notes the claim that for operational reasons MI5 intends to employ ex police officers who have working experience of the arrangements under which the PSNI currently operate.

In particular, this means that people with long service and senior rank in RUC Special Branch will go on to serve in MI5. This is a matter of profound concern. The fact that they may have some experience, however short, of working under the new arrangements for the PSNI is in no way a sufficient reassurance.

This proposal needs fundamental reconsideration because of its obvious grave risks.

### ***MI5 agents***

The SDLP does not believe that MI5 should be running agents in Northern Ireland. That should remain the responsibility of the PSNI.

## ***Rebutting false arguments***

In addition, the SDLP wishes to rebut some false arguments and justifications in this paper for expanding MI5's role.

### ***Contrary to what the paper states:***

- ***This move will not improve efforts to combat international terrorism.*** At a time when MI5 lacked the resources to monitor those who went on to carry out the 7/7 bombings, the extension of MI5's role to Northern Ireland domestic terror is a dangerous misdirection of resources.
- ***This move will not improve protection against NI terror.*** Indeed, MI5 has historically been slower to react to paramilitary activity. And no case has been made as to why MI5 would provide better accountability. Moreover, the new standards for the recruitment of agents and the management and dissemination of information have created better flows of information and intelligence to the PSNI making them fit for purpose for national security functions in the North.
- ***This move will not improve protection against crime or “strengthen the PSNI’s criminal intelligence capability.”*** Organised crime and terror are interrelated in Northern Ireland. As the document concedes, there is a “*unique interface in NI between national security and serious/organised crime*”. It is precisely for that reason that the PSNI should remain responsible for this issue.
- ***This move does not “preserve and build upon the Patten reforms.”*** The Patten report was clear that “*the police service must remain equipped to detect and deal with terrorist activity, and for this they will need **good intelligence capability***.” Accordingly, the Patten report did not recommend the disbandment of Special Branch, but rather made a number of recommendations to end the “*force within a force*” by ensuring its proper integration into the rest of the police service. Putting MI5 in the lead on intelligence gathering and security policing would run down police intelligence capability, contrary to Patten.

Further, while Patten did not recommend the devolution of national security matters, he did -

*“strongly recommend that the powers of the Policing Board .... In relation to both government ... and the Chief Constable, be in no way diminished when the government role in the tripartite arrangement passes to the Northern Ireland Executive.”*

This move will not achieve the intention of the Patten recommendations above since there will not be the same oversight of national security work upon transfer to MI5.

- ***This move does not “prepare the way for devolution [of justice].”*** Rather, the failure to deal properly with the MI5 issue complicates its achievement. Nor is it required for the devolution of justice. Patten was clear that the *Chief Constable* should continue to report to the Secretary of State on national security – not the devolved minister. That suggests that national security work should continue to remain with the *Chief Constable* upon devolution – and not be transferred to MI5. Further, nobody has suggested at any stage that the Chief Constable should report to the devolved minister on these matters.

### ***Taking the process forward***

The negotiations on the role of MI5 have now opened up. They are not concluded.

The SDLP calls on the Prime Minister to recognise the serious and well founded concerns around MI5 and primacy. These concerns go to the heart not only of policing confidence and institutional stability, but also are about the deliver of effective protection against crime and terror.

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