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IRISH EMBASSY, LONDON.

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Confidential

31 August 1989

Mr. Dermot Gallagher  
 Assistant Secretary  
 Anglo-Irish Division  
 Department of Foreign Affairs

Dear Assistant Secretary

The Birmingham Six:Disbandment of The West Midlands Serious Crimes Squad

1. I refer to your minute of 16 August re the above.

A. Introduction: The Suspension of the West Midland's Serious Crimes Squad (WMSCS)

2. On 14 August, the Chief Constable of the West Midlands Constabulary, Mr. Geoffrey Dear, announced that he had suspended two officers, dismantled the entire CID operational structure of the force and moved all officers with responsibility for the Serious Crimes Squad, or who had worked in it, during the years 1986-88 to non-operational administrative duties. He said that the transfers involved 1 Detective Chief Superintendent, 4 Detective Superintendents, 2 Detective Chief Inspectors and 2 Detective Inspectors. A total of 53 officers had been moved out of CID to other duties. A copy of the Chief Constable's statement is appended (Annex I).

3. Chief Constable Dear went on to announce that he had asked the Police Complaints Authority to supervise an enquiry to be conducted by Mr. Donald Shaw, the Assistant Chief Constable of the West Yorkshire Police.

(New 20)

Tavreall

You may wish to see  
 this report. It is likely to come up  
 at the next meeting of the Conference  
 on 15 & 16 September.

Recd

cc MacNally; PSS  
 Mr. Althaus; Mr. Rowan;  
 Mr. Russell.

Seen by Tavreall

7/9

7/9

13/9

13.9.89

Mr. Dear stated that the enquiry would involve "a far-reaching investigation into the work and practices of the WMSCS". He indicated later in his statement that he would be personally closely involved with an officer of the Police Complaints Authority in drawing up precise terms of reference for Mr. Shaw.

4. This development is the latest episode in a series of events which has seen serious allegations levelled at the activities of the West Midlands SCS going back over several years. These allegations have included the fabrication of evidence as well as the falsification of confessions (including alterations to statements made by defendants) and have in recent months been highlighted by the dropping of charges and the quashing of convictions in a number of criminal cases. The cases have included those of (a) Paul Dandy, freed after spending 12 months in custody when it emerged that part of his alleged confession statement had been falsified; (b) Ronnie Bolden, accused of two armed robberies in Birmingham and acquitted by the jury after a trial in which the judge strongly criticised some of the police evidence; (c) Keith Parchment, whose 5-year sentence for armed robbery was quashed after it emerged that his alleged confession had been made at a different time to that given by the detectives; (d) Derek Gordon, awarded £20,000 in 1987 for false imprisonment after he was held for 9 months on a murder charge to which police claimed he had confessed. (Another man was charged while Gordon was in custody).

5. The immediate cause for the Chief Constable's action concerned action by members of the Squad in another case - that of Michael Bromell, serving 7 years for shotgun offences. Bromell, who has consistently maintained his innocence (though with a previous record), requested that his case be reopened upon hearing that allegations had been made against members of the WMSCS. Two investigating policemen discovered, on 11 August, in Warwick Crown Court, that two members of the SCS had called to the court the previous day and removed papers from the case file (these are the two policemen who have been suspended).

B. The Official Enquiry

5. From information supplied by the Police Department of the Home Office we have learned the following:

(i) The number and types of convictions being investigated

Initially the investigation, under the direction of the Deputy Chairman of the Police Complaints Authority, will focus on the period 1986/88 and will review all convictions in which the West Midlands Crime Squad were involved in that period.

(ii) The terms of reference of the enquiry

These are:

"To investigate the work and practices of the West Midlands Serious Crimes Squad and matters arising therefrom".

They therefore do not limit the scope to the period 1986/88. There is no time limit. A decision to confine the enquiry to that period in the first instance was taken for practical reasons, to make the task more manageable. It is anticipated that the investigation of the 1986/88 period will take a few months. A decision on any further investigation will then be taken. The investigation commenced during the week beginning 21 August 1989.

(iii) Suspended officers who were involved in the Birmingham Six case

The Home Office professes not to know which officers have been suspended or are under investigation. It thinks, however, that three officers who were involved in the Birmingham Six case were operational in the squad at the time of its disbandment.

C. The WMSCS and the Birmingham Six

6. Chris Mullin, the Labour MP, has been prominent in exposing and publicising the misconduct of the West Midlands SCS. As a result of a PQ he put down on 11 July 1989 it has been established that of 15 identifiable West Midland officers who questioned the Birmingham Six, 10 served in the SCS at some time. Three, Detective Chief Inspector Bennett, Detective Inspector Peter Higgins and Detective Sergeant Hornby were serving in the SCS at the time of its disbandment. Further PQs have established that officers who questioned the Birmingham Six were involved in the cases of Ronnie Bolden and Derek Gordon. None have been identified although Chris Mullin is of the opinion that one is Detective Sergeant Michael Hornby.

7. One of the Birmingham Six, Hugh Callaghan, claimed that while clad only in a blanket, he was threatened with violence by Hornby and forced to sign a confession. (Higgins was also involved in obtaining a confession from Callaghan). Hornby has been the subject of a number of complaints since 1974 although disciplinary charges were brought in only one case in 1980. Minister Hogg, in a PQ reply to Mullin, said that details were no longer available of the nature of the disciplinary action taken. Four further complaints have been made against Hornby in the last seven years - one in 1983, two in 1986 and one in 1987, without any disciplinary action being taken. The other surviving member of the SCS who questioned the Six is Detective Chief Inspector Ray Bennett who was a Detective Sergeant in 1974. While there has been as yet no information regarding complaints against Bennett, another of the Birmingham Six, Paddy Hill, has always maintained that he was assaulted by Bennett during questioning.

8. The original trial in 1975 considered defence allegations of police misconduct. The jury did not accept these submissions. The Judge (now Lord Bridge) endorsing the jury's verdict, said "I am entirely

satisfied that the investigations were carried out with scrupulous propriety by all your officers". He also said that if the Six were telling the truth the police had been involved in a conspiracy unprecedented in the annals of British Criminal history. "It involved giving perjured evidence in which the police must have spent many hours ... trying to ensure that their various lies would accord with each other." He went on to say that he was being asked to "suppose that a team of some 15 officers had conspired among themselves to use violence on the prisoners and to fabricate evidence."

9. In refusing leave to the Birmingham Six to institute civil assault proceedings against West Midlands Police, in 1980, Lord Denning, Master of the Rolls, said that "if the six men win, it will mean that the police were guilty of perjury, that they were guilty of violence and threats, that the confessions were involuntary and improperly admitted in evidence and that the convictions were erroneous. This would mean that the Home Secretary would either have to recommend that they be pardoned or he would have to remit the case to the Court of Appeal. This is such an appalling vista that every sensible person in the land would say: It cannot be right that these actions should go any further".

10. New direct evidence of police misconduct in the case was presented to the Court of Appeal in 1988 by former police officers (Clarke and Lynass) and was rejected by the Court. (In the judgement on the Appeal, in January 1988, Lord Lane said that Justice Bridge had left the jury "in no doubt but that the truth and voluntary nature of the statements were the foundation of the prosecution case and if they thought that the account given by any of the six appellants of the way his statement was obtained might be true they should acquit all six, since the other evidence against them was, without the statements, insufficient to prove guilt".)

D. Media Coverage of the disbandment of the  
West Midlands Serious Crime Squad

11. There has been considerable media coverage of Chief Constable Dear's announcement and decision with, e.g. the ITV News at Ten on 14 August demonstrating in detail how alleged confessions were altered and added to. However, while there has been some editorial comment, none has focussed on the implications of Dear's decision for the case of the Birmingham Six. In their reporting, newspapers have concentrated on the background to the disbandment of the SCS, interviews with Dear and analysis of the various instances of malpractice which have come to light. They have also reported Chris Mullin's calls for the review of the case of the Birmingham Six but none have, either in leaders or articles, associated themselves with his position. The Government's statement, in particular the announcement that the Government was seeking an urgent report from the Embassy in London, was covered by most newspapers.

E. Reactions of Chris Mullin, M.P. and Gareth Pierce

12. The Embassy has been in contact with Chris Mullin both shortly before and since Chief Constable Dear's announcement. Mullin does not see the establishment of an enquiry as necessarily a turning point in the case. He regards it as just the latest development in a long saga. He termed it, "the beginning of Round Two", "Round One" being the process that resulted eventually in the case going to the Court of Appeal in 1987. He saw Dear as having very little option but to act as he did. He had to act because he had reached a situation where juries were unwilling to convict on the evidence of officers of the WMSCS. He had "spent the last ten years ignoring complaints "about the operation of the squad. Mullin was sceptical about the enquiry producing anything more than what he claimed Dear had been quoted as expecting as an outcome i.e. that "nine or ten rather junior officers were involved in irregularities in



paperwork". He felt that anyone anxious to secure action favourable to the Six would have to press hard and that "nothing at all will happen unless everyone involved presses hard". Mullin's most recent action has been to write (on 20 August) to the Home Secretary, arguing that the case of the Six should be referred back to the Court of Appeal. The letter was released to the press on 25 August. A copy is appended (Annex II).

13. Mullin observed that the problem from the Home Secretary's point of view was that he knows the judges will not admit that they were wrong and have told him so already (a reference to Lord Lane's observation given as part of the verdict of the Court of Appeal that "as has happened before in references by the Home Secretary to this Court ... the longer this hearing has gone on the more convinced this Court has become that the verdict of the jury was correct). Despite this, Mullin's letter has specifically requested the Home Secretary to refer the case back to the Court of Appeal. This is one of three options which Mullin considers are open to the Home Secretary and which are discussed in greater detail below. Mullin's thinking appears to be that even if the Court of Appeal rejected the referral for a second time the event and the publicity would of themselves increase pressure on the Home Secretary to take some further action regarding the Six.

14. As already reported by the Embassy, Mullin hopes that, in any discussions which the Irish Government has with the Home Secretary, he could be brought to consider one of the following courses of action:

- (i) Referral back to the Court of Appeal. (A precedent for successive referrals of the same case is provided in the Luton robbery case ten years ago, where the conviction of Cooper and McMahon for the murder of a postmistress was referred back no less than four times as successive new evidence appeared).



- (ii) Simply to release the Six (which is within his power). Again, a precedent exists in the previously-mentioned case where, after successive appeal hearings which did not finally result in acquittal, the Home Secretary (Whitelaw) simply released Cooper and McMahon. Despite protestations to the contrary Mullin would contend, however, that a precedent has effectively been set.
- (iii) Referral to an independent review tribunal, as recommended by the Home Affairs Select Committee in 1982 for cases involving alleged miscarriages of justice.

15. Ms. Gareth Pierce could not be contacted prior to the completion of this report as she will not return from holidays until later in the week. Last month she indicated that the lawyers for the Six would use the allegations of misconduct on the part of the West Midlands Serious Crimes Squad to mount pressure for the case to be referred back to the Court of Appeal.

#### F. Views of Home Office

16. Because of the holiday season, contacts we would wish to have had with politicians and senior officials are difficult and we may wish to add to this report later. However, I have had contact with a senior Home Office official, Mr. John Chilcott. Speaking off the record he began by saying that since the Police Complaints Authority has become involved, the Home Office is "blind" to developments. He had, however, been in close touch with Chief Constable Dear immediately before the establishment of the enquiry. He told me, (and insisted this is correct in spite of what Mr. Chris Mullin is saying) that none of the Detective officers from the WMSCS who are believed or suspected of being associated with the misconduct the subject of the present enquiries had any connection with the Birmingham Six case. He said that Geoffrey Dear had thought he had got to the root of the matter with the review of the work

of the Squad reported to the Police Authority in June 1989 and the consequent limited disciplinary action and reorganisation of the SCS. It was only with the discovery on 11 August that papers had been removed from files that Dear had decided that he could not take further risks and that he had decided to move all 53 officers who have worked in the SCS in the period 1986/88. However, Chilcott said, there was no reason to believe that the great majority of these officers were in any way associated with the small number of officers now actually implicated. Chilcott qualified the above by saying that how long this situation will hold remains to be seen - it could go further in the course of the enquiry - but he repeated that there is no established connection between any officer against whom there is now a prima facie case and the Birmingham Six case.

17. When I told Chilcott that the Minister is likely to seek an early meeting with the Home Secretary, he volunteered that the advice the Home Secretary is getting is that there is no reason to have doubts about any cases other than those recent ones on which, for example, papers had been removed from files and that there is no evidence available which bears on earlier cases. Finally, Chilcott said it is felt that what has occurred may have been attempts by certain police officers to "polish up" evidence to fit the new PACE rules, in cases which were in fact already soundly based.

#### G. Embassy Assessment

18. The enquiry may be a lengthy one. There is likely to be an establishment wish to limit the damage and to restrict the scope of the enquiry to a recent period (as in previous major investigations such as "Operation Countryman" and the Mark's investigation into the Metropolitan Police). On the other hand the Home Office does not exclude an extension in time of the scope of the enquiry and there will be continuing pressure, from Mr. Chris Mullin in particular and probably from solicitors for a number of those sentenced in recent years as a result of

the activities of the WMSCS, which may result in establishing a pattern of misconduct by the squad going back closer to the period of the Birmingham Six trial. If so this will reinforce the impression which must already have been created, at least to some extent, in the public mind by the news of the disbandment of the WMSCS that the credibility of the misconduct allegations made by the Birmingham Six is enhanced and that the successive judgements dismissing the possibility of police misconduct are correspondingly discredited.

19. This in turn would increase public pressure on the Home Secretary to reopen the case. However, it is important to keep in mind the limitations which the Home Secretary insists apply: he has maintained the principle that he should not interfere with the verdict of a court unless there is some new evidence or new consideration of substance which casts doubt on the safety of a conviction. The fact that allegations of misconduct by the police in this case have on several occasions been considered and dismissed by the courts may be used as an argument that no new consideration of substance now arises. The Home Secretary has also ruled out (in a letter to Tom King which we have seen) the exercise of the Royal Prerogative of Mercy "in the absence of any indication from the courts that he should do so". The solicitor Gareth Pierce has told us that the possibility of a pardon or of release on compassionate grounds are also ruled out.

20. The prospects for the reopening of the case therefore depend, in the Embassy's view, on the extension of the enquiry to cover the activities of the WMSCS in the 1970s and on the enquiry producing evidence or considerations of substance relating to the case which have not previously been before the courts.

#### H. Recommendation

21. Even if our assessment is that the recent revelations do not necessarily have positive implications, at least in the short term, for

the Birmingham Six case, it would be appropriate in our view to continue and indeed to increase our representations in the case, on the following lines:

- that the concern which is widespread in Britain and in Ireland about the case has been increased by the recent revelations about malpractice in the WMSCS;
- more specifically, that the credibility of the allegations of malpractice made by the B6 since 1974 has been increased by these revelations and that if present information had been available in time, the courts would surely have taken account of it; and
- that the continuing public concern that a miscarriage of justice may have occurred has a serious negative affect on Anglo-Irish relations, on the improvement of which so much effort and goodwill has been concentrated, with good results, in recent years.

It is recommended that representations on these lines continue to be made on all appropriate occasions, viz. Ministerial, parliamentary and official contacts - on a confidential basis, as heretofore.

As instructed, we have informed the private office of the Home Secretary that the Minister will be making contact after the holidays with a view to an early meeting.



Andrew O'Rourke  
Ambassador