



## **An Chartlann Náisiúnta** **National Archives**

<b>Reference Code:</b>	2020/17/50
<b>Creator(s):</b>	Department of the Taoiseach
<b>Accession Conditions:</b>	Open
<b>Copyright:</b>	National Archives, Ireland. May only be reproduced with the written permission of the Director of the National Archives.

*h. ledman  
pt. 1/11. re p. 4  
27/3  
B. G. 2*

Birmingham Six

General Reference Brief

1. History of Case

1.1. Bomb explosions in two Birmingham pubs on 21 November 1974 killed 21 people. Later that night the police arrested five Northern Ireland men (but settled in Birmingham) at Heysham about to board a ferry for Belfast. A sixth man, Hugh Callaghan, was arrested in Birmingham the next day. Gerard Hunter, Patrick Hill, John Walker, Richard McIlkenny, William Power and Hugh Callaghan were convicted of the Birmingham pub bombings and sentenced to life imprisonment on 15 August 1975.

1.2. Their convictions were founded in part on forensic evidence and in part on confessions. Both of these factors have continually been questioned publicly. The soundness of the forensic evidence and the claim by the defendants that the confessions were extracted under duress have been the subject of two unsuccessful appeals against the convictions. In addition, attention has been focussed on a number of apparent anomalies in the case:

\_ contradictions between the confessions as to the number of bombs planted, as who planted them and as to the location of the bombs;

\_ discrepancies between the confessions and the forensic evidence;

\_ unlikely character of defendants as terrorist bombers.

1.3 On 30 March 1976, the Birmingham Six applied for leave to appeal to the Appeals Court. The application was refused.

1.4 When the Six were remanded in custody to Winson Green Prison on 25 November 1974, they suffered a serious beating at the hands of the prison guards. This had the effect of masking any injuries sustained while in police custody. In December 1974, Mr Davies Owen, Assistant Chief Constable of Lincolnshire, was directed by the Home Office, *to enquire* into the circumstances of their injuries. His report was submitted to the Director of Public Prosecutions in May 1975. This report has never been published.

1.5 On 30 December 1975, 14 prison warders were charged with assaulting the Six. They were acquitted on 15 July, having refused to give sworn evidence.

1.6 Following this acquittal, the Six took out a civil action against the Chief Constables of the West Midlands and Lancashire and the Home Office for the injuries they claimed to have received in police custody. The action commenced in November 1977. The police applied to have the action struck out. In November 1978, the police application was dismissed. The police then appealed to the Court of Appeal, which ruled in favour of the police in January 1980. The judgment was given by Lord Denning, who spoke of the "appalling vista" should the Six win their case for damages and thereby show the police guilty of violence and perjury. Lord Denning's judgement was upheld by the House of Lords in November 1981.

1.7 On 20 January 1987, following allegations by ex-policeman Thomas Clarke that he had seen ill-treatment of the Six while in police custody, the Home Secretary referred the case to the Court of Appeal, and ordered the Devon and Cornwall Police to undertake whatever enquiries they thought necessary into these allegations. A second basis for the referral was the doubts on the forensic evidence. After a seven-week hearing beginning on 2nd November 1987, the Court dismissed all the appellants' grounds for appeal. On 15th April 1988, the House of Lords Appeal Committee refused the Six leave to appeal to the House of Lords.

1.8. On 19 December 1989, the legal representative of the Six presented to the Home Office a submission containing arguments for the reopening of the case and providing material not used before by the defence in Court. The Home Secretary announced on 21 March that he had asked the Chief Constable of the West Midlands Police for a report on "a number of specific points" arising and that the Devon and Cornwall Police would be investigating these. He would, he said, consider any further intervention by him in the light of the outcome of this investigation. The Home Secretary has refused to divulge the terms of reference of the Devon and Cornwall investigation, but it is understood from press reports that these are based on ten specific questions which he put to the West Midlands Chief Constable. From informal contacts with the Home Office, it is understood that one of these relates to the absence of custody records relating to the Six. From such contacts, it is understood also that the investigation would not be strictly limited to the questions put by the Home Secretary but could follow any leads which came up. It could also look at any new material which presented itself. X

## 2. Government Position

2.1. The Government have consistently supported the aim of the Birmingham Six to clear their names. The matter has been raised regularly with the British Government at Ministerial and official level. The Minister for Foreign Affairs and his predecessor have had a number of meetings with the Home Secretary to discuss this and related cases. The Government were represented by the Ambassador, London, at the Court of Appeal hearings in November/December 1987 and later expressed great regret and disappointment at the decision of the Court to uphold the convictions, stating that the judgement had not removed the Government's serious concern that there may have been a miscarriage of justice in this case. On 14 April 1988, the

Tánaiste issued a statement on behalf of the Government expressing regret at the decision to refuse leave to appeal to the House of Lords and spoke of "compelling humanitarian reasons" for the Home Secretary to consider using his powers in relation to this case.

2.2. Following the developments in the Guildford Four case which led to the quashing of their convictions, the Taoiseach has on a number of occasions called for a complete review of the Birmingham Six case. The Minister for Foreign Affairs subsequently met Patrick McIlkenny and Breda Power brother and daughter of two of the Birmingham Six on 17th November. Senior Departmental officials met Ms Gareth Pierce, Legal Advisor of the Six, in London on 30 October to review the position in the light of the quashing of the Guildford convictions.

2.3. The Taoiseach raised the question of the Birmingham Six with the British Prime Minister when he met her after the European Council on 9 December. As well as calling for a review of the case, he urged that the Six be transferred to an open prison.

2.4. The Minister met the Home Secretary on 8 January in London to discuss the case. The meeting focussed mainly on the new material presented to the Home Office on behalf of the Six and an extension of the West Midlands investigation to the Birmingham Six case. They agreed to meet again in about two months to review the case.

2.5. In the course of his visit to Geneva on 2 February to address the UN Commission on Human Rights, the Minister briefed UN Under Secretary General Jan Martenson on the case.

2.6. In response to the announcement on the new investigation by the Devon and Cornwall Police, the Taoiseach welcomed the development, adding "I hope that today's decision will bring us closer to an early and satisfactory resolution of this case."

### 3. International Action

3.1. European Convention on Human Rights. Article 25 of the Convention provides for applications by individuals to the European Commission of Human Rights on alleged breaches of the Convention. In March 1988, the legal representatives of the Six submitted an application on their behalf. The grounds for the application were: (a) no new trial ordered to enable evidence to be assessed by jury; (b) Court of Appeal reversed burden of proof and acted on assumption that applicants were guilty; (c) they have no effective remedy for alleged violation of human rights. This application was ruled inadmissible by the Commission in July 1989. A further application has been prepared but has not yet been submitted; it is being held in reserve for use if current developments do not lead to the case being reopened. The grounds of this second draft application are that the Appeals Court judge, Lord Lane had had sight, prior to appeal hearing, of confidential Home Office documents on the Six.

3.2. One of the Six, Richard McIlkenny, wrote to the Taoiseach asking



Discussed with Richard Fallon today.  
He feels that maybe his  
Minister wrote. However, he  
- 4 - looks and says us back 3

that the Government endorse their petition. He was informed that it is not the practice for a State to support an individual's petition. Another of the Six, Patrick Hill, asked the Government to initiate proceedings under Article 24 of the Convention, which provides for referral by member State of an alleged breach of the Convention by another member State. ~~He was told that the Government felt it more useful to concentrate on pressing the British authorities to reopen the case. It is considered that such an action would have a negative impact on relations between the two countries and would be counter-productive to our efforts to have the British reopen the case.~~

3.3. None of the Birmingham Six has recently raised this question, no doubt because they see more promising developments elsewhere.

3.4. U.N. Commission on Human Rights. A statement sponsored by the International Association of Democratic Lawyers was made to the annual session of the UNCHR on behalf of Mr Kadar Asmal on 19 February. The statement held that the Six were discriminated against because they were Irish.

3.5. European Parliament. On 22 November the European Parliament passed a resolution on the Birmingham Six calling for a thorough review of the case and an investigation of the West Midlands Serious Crimes Squad which would include the Birmingham Six case. The resolution also instructed the Parliament's Legal Affairs Committee to draw up a report on the case. The voting was 78 in favour to 23 against with eight abstentions. The resolution was noted by the Council of Ministers on 18 December where the Irish representative welcomed it. The Legal Affairs Committee has appointed one of its members, Mr Bontempi, an Italian lawyer, to compile a report on the case. It is understood that he proposes to visit the Six.

3.6. United States. When in Washington to publicise the Birmingham Six case, Gerry Conlon of the Guildford Four was introduced by the Embassy to a number of congressional figures whom he interested in the case, in particular Congressman Brian Donnelly (Chairman of the Friends of Ireland), Congressman Joe Kennedy, Congressman Bill Coyne, Congressman Tom Lantos (Chairman of the Congressional Human Rights Caucus) and Senator Edward Kennedy.

Congressman Donnelly (who visited Paddy Hill on 19 January 1990) has tabled before Congress on 30 January a motion on the Birmingham Six. To have this motion debated it will be necessary to obtain over 218 co-sponsors by May 1990. As at 9 March, he had 53. The Motion calls for (a) the current enquiry into the West Midlands Serious Crimes Squad to be extended to the Birmingham Six case; (b) the reopening of the case; (c) the quashing of the convictions of the Six; (d) the US President to raise the case with the British Prime Minister. It is understood that the British Embassy is actively lobbying against the motion.

Senator Joseph Biden, second ranking Democrat in the Senate Foreign Relations Committee, introduced a broadly similar motion in the Senate on 9 March. Co-sponsors include Senators Edward Kennedy and Patrick Moynihan.

The Congressional Human Rights Caucus held a hearing on the case on 12 March co-chaired by Congressmen Tom Lantos and Joseph Kennedy. Witnesses included Gerry Conlon, Lord Gifford, Mr Seamus Mallon, MP, Mr David Andrews, TD, Professor Robert McKay (New York University Law School) and Mr David Assen (Amnesty International). A statement by the Home Secretary was read to the hearing. Written submissions can be made up to 2 April. Thereafter the Executive Committee of the Caucus will make a recommendation.

3.7. Amnesty International. In March 1988, Amnesty International wrote to the British Government that the allegations of ill-treatment should be subject to further review. Since then the organisation has continued to urge the British Government to review the case once again. In its 1989 annual report, AI expressed "grave doubt" about official denials that the prisoners had been mistreated while in police custody.

#### 4. The West Midlands Serious Crimes Squad

##### Shaw Enquiry

4.1. On 14 August last, the Chief Constable of the West Midlands Constabulary, Mr. Geoffrey Dear, announced the disbanding of the West Midlands Serious Crimes Squad (WMSCS) and an inquiry into its work and practices, to be conducted by Mr. Donald Shaw, the Assistant Chief Constable of the West Yorkshire Police, supervised by the Police Complaints Authority. This followed the dismissal of a number of cases where the Court was provided with evidence of police fabrication of confessions. The terms of reference of the inquiry are: "To investigate the work and practices of the West Midlands Crimes Squad and matters arising therefrom." It will be focussing on the period 1986/88 (on the basis that new rules for evidence came into effect in January 1986), but will also examine cases where a complaint was made before 1986, going back to April 1984, the cut-off date for the Police and Criminal Evidence Act, 1985, under which the inquiry is being conducted.

##### Implications for Birmingham Six Case

4.2. This development has clear implications for the Birmingham Six case in view of the significant overlapping of police personnel involved. Of the identifiable 20 West Midlands policemen who questioned the Birmingham Six at the time of their arrest, ten of them have served in the Serious Crimes Squad at some time and four of these were serving in it at the time of its disbandment. This last fact emerges from a Commons reply on 5 December, which does not name the officers concerned. From press reports it is understood that these are

Chief Inspector Ray Bennett, head of Squad  
Detective Inspector Peter Higgins  
Detective Constable John Davies  
Sergeant Michael Hornby

Another name officially revealed has been that of Detective Inspector Paul Matthews, who was required to resign from the police in 1986 for disciplinary reasons. Sergeant Hornby had been involved in at least two cases in which the Court found that evidence had been fabricated, those of Clifford Jones and Ronnie Bolden. Since the disbanding of the WMSCS, Hornby has taken early retirement.

4.3. Chief Constable Dear maintains that there is nothing to link the misconduct being investigated with the Birmingham Six case and that the problem relates to efforts by some police officers to circumvent the ~~the~~ requirements of the Police and Criminal Evidence Act, 1985. This view was also put by the then Home Secretary Mr Hurd when the Minister met him on 13 September 1989.

4.4. To date, three serving officers of the squad and one retired officer have been reported as having been charged with perjury and intent to pervert the course of justice by fabricating evidence. However, none of the four officers charged to date appears to have been involved in the interrogation of the Birmingham Six.

#### Other Birmingham Police

4.5. Another police officer closely involved with the interrogation of the Six, but not a member of the WMSCS, was Superintendent George Reade. Reade was the author of the so-called "Reade Schedule", a hand-written timetable of interviews of the Six found by the Devon and Cornwall police during their investigation prior to the 1985 Appeals Court hearings. This contained serious discrepancies which Reade was unable to explain satisfactorily to the Appeals Court. It has recently emerged that he was involved in the arrest in 1975 of a Phil Buckley, who successfully sued the police for assault and wrongful imprisonment.

4.6. According to press reports, of the 20 police officers involved in the interrogation of the Six, 11 have since been either disciplined, involved in criminal and civil actions for assault or become the subject of complaints about the fabrication of evidence.

4.7. It has been reported in the press (Irish Times 12/12/89) that a number of enquiries into alleged police fabrication of evidence in the Birmingham area were in train at the time of the Appeals Court hearings in 1987. This was not known to the defence.

#### Khan Case

4.8. Public attention was most recently focussed on the record of the WMSCS when the Court of Appeal quashed the conviction of Hassan Khan on 23 February 1990. The Court found that the confessions on which Khan was convicted, and which had been obtained by members of the WMSCS, were unreliable. Khan alleges that police officers interrogating him boasted that they had forced confessions from the Birmingham Six. In addition to Khan there are six other cases for civil damages pending arising from action by the WMSCS.

#### Question of Extending Enquiry to Birmingham Six Case

4.9. The Home Secretary has to date resisted urgings to instruct that the Shaw inquiry should extend back to the Birmingham Six case. Apart from the legal difficulties ( see above ), there are two apparent reasons for this:

- the Home Secretary has not accepted that the disbanding of the WMSCS has any implications for the Birmingham Six case;
- the Home Office is obviously reluctant to open up a substantial number of convictions, were the enquiry to go back 15 years.

On 22 February, the present Home Secretary, in answer to a Parliamentary question, "although their inquiry is concentrated on matters which have occurred since 1986, if they wish to take their inquiries back in time because of matters which come to their notice, I am absolutely sure that they will do so". His predecessor had told the Minister last September that, if the investigation produced anything new or substantial in relation to the Birmingham Six case, he would refer it again to the Court of Appeal.

4.10. On the face of it, the possibility of the Shaw inquiry addressing the Six's allegations of forced confessions seems unclear, given the legal limitation of the inquiry under the Police and Criminal Evidence Act to actions after April 1984. Before that date, such complaints are dealt with by the Police Complaints Board under a 1977 Act. But this in turn cannot deal with cases arising before 1977. Before that date, complaints can be dealt with only by the police force concerned. In practical terms, therefore, an extension of the current investigation to cover the Birmingham Six case would seem to have to take the form of a special inquiry ordered by the Home Secretary or, perhaps, by the DPP.

4.11. Notwithstanding this difficulty, Embassy contacts with the Home Office at official level have suggested that there was a distinct possibility of the WMSCS investigation bearing on the Birmingham Six case. If the conclusions of the investigation were such that a pattern of misconduct was indicated going back before 1984, then the way might be cleared for a new review of the case.

## 5. Guildford Four Case -- Implications

5.1. At the hearing of the Court of Appeal on 19 October, brought forward from January 1990, the representative of the Director of Public Prosecutions announced that the Crown was no longer seeking to sustain the convictions of the Guildford Four. This decision was based on information provided by the Avon and Somerset police, which had been instructed to inquire into the grounds of the appeal. This information indicated that misleading evidence had been given by officers of the Surrey police at the trial, which undermined the credibility of the confession evidence on which the convictions had been based. The Court quashed the convictions of the Four, who were



then released, with the exception of Paul Hill who was returned to Belfast to continue his sentence in connection with the Shaw murder in 1974. Hill was released on bail on 20 October.

5.2. Immediately following the quashing of these convictions, the Home Secretary announced (a) a criminal investigation into the actions of the Surrey policemen concerned and (b) a judicial inquiry headed by Sir John May, a former judge of the Appeal Court. The terms of reference of the inquiry are

"to inquire into the circumstances leading to and deriving from the trial of Patrick Armstrong, Gerard Conlon, Paul Hill and Carole Richardson on charges arising out of the explosions in public houses in Guildford on 5 October 1974, of Patrick Armstrong and Paul Hill in relation to charges arising out of an explosion at a public house in Woolwich on 7 November 1984, and of Anne and Patrick Maguire, their sons, Vincent and Patrick Maguire, and Patrick Conlon, Patrick O'Neill and Sean Smyth on charges of possessing explosives and to report to the Home Secretary and the Attorney-General"

This inquiry will include an examination of the way the appeals machinery deals with cases of miscarriage of justice and make recommendations. Three lay assessors have been appointed to assist May: Professor John Smith (a law expert from Cambridge), Mr Alistair Graham (director of the Industrial Society and former General Secretary of the Civil and Public Services Association) and Sir Richard Barratt (HM Chief Inspector of Constabulary). According to May, the inquiry is not likely to be completed before 1991. The first public hearing of the Inquiry, which dealt with procedural matters, took place on 4 December. A further hearing, on the Maguire case, was held on 13 March. The Embassy was represented at these and will be at future public hearings. Sir John has written to the Ambassador inviting him to submit views on the facts of the case or on the wider issues involved. A submission is being prepared in response to this invitation.

5.3. For the first time, during the Commons debate on the Queen's address on 23 November, a link was made explicitly by the Home Secretary between the May inquiry and the Birmingham Six case. Having answered a point on the Birmingham Six case in the standard way (willingness to refer a case to the Court of Appeal if there is new evidence or consideration of substance; but no such new evidence available to him regarding this case), he went on to say that the May inquiry might touch on issues pertinent to the Birmingham Six case. He then volunteered: "Perhaps I should revert to what I was saying, because I notice that one or two Opposition members seemed to express surprise when I switched from the Birmingham Six to the Guildford Four. I did that intentionally because Lord Justice May's remit is wide and it would be open to him to comment on the question of reference to the Court of Appeal and, therefore, on the possibility of the substitution of some other machinery".

5.4. Subsequent contacts with the Home Office indicate that this was

a deliberate signal of an openness of mind on the subject. While Sir John May could not consider the Birmingham Six case under his present terms of reference, these could be widened in the future to include it. As the terms of reference stood, he could draw conclusions on

- the use of uncorroborated confessional evidence
- the rules relating to the disclosure of evidence by the prosecution to the defence
- changes to the present Court of Appeal
- whether an entirely new appeals structure was called for.

The Home Office has emphasised that all this does not imply an intention to leave the whole question of Birmingham Six case in abeyance until the May inquiry reports. The usual reassurance of readiness to react to new evidence was given. Most importantly, it appears that within the Home Office, at official level at any rate, there is an acceptance of a linkage between the Guildford and Birmingham cases and there are signs of a recognition that the present appeals machinery may not be appropriate to cases such as these and of a search to find a way to deal with the Birmingham Six case.

#### 6. Length of Sentence /Parole

6.1. The Birmingham Six were sentenced to life imprisonment without any recommendation as to minimum period to be served. In such cases there are no guidelines as to length of sentence. There is no remission for good behaviour for prisoners serving life sentences. Under normal circumstances, given the publicly stated policy that no life sentence prisoner should spend no more than seventeen years in prison without his case being reviewed, the Birmingham Six should be eligible to be considered for parole (strictly speaking "life licence" in their case) as from November 1991. The grant of parole is made by the Home Secretary, who is advised by an independent parole board. He requires a positive recommendation of the Parole Board before granting parole. In the event of a positive recommendation, the Lord Chief Justice and the trial judge (if available) are consulted before the Home Secretary makes a decision.

6.2. The then Home Secretary, Mr Hurd, when the Minister met him in September 1989, discouraged any hope of early parole referring to a policy decision made in 1983 by Leon Brittan as Home Secretary. According to this, parole would not be available for those convicted of terrorist offences until twenty years had been served. If the Home Secretary in 1991 feels bound by the policy decision of his predecessor, any recommendation for parole is not likely to be accepted by him. However this twenty-year rule is only a matter of current policy and has no legal basis.

6.3. From its meetings with the Six, the Embassy understand that there are mixed feelings among the Six on accepting release on this basis. Paddy Hill is particularly intransigent on accepting any solution that does not recognise their innocence and has indicated that he would refuse to sign parole papers.

## 7. Custodial Matters

7.1. Security Category. The Six have now been changed from Category A ("prisoners whose escape would be highly dangerous to the public, the police or to the security of the State") to Category B ("prisoners for whom the very highest conditions of security are not necessary but for whom escape must be made very difficult"). This means that their movements within prison are no longer closely supervised; they are no longer limited to an approved list of visitors; they are no longer obliged to change cells every three months; searches will be less frequent (eg. no longer before and after visits). Otherwise their prison regime remains the same and visits remain restricted to one per month. It is expected that they will remain in high security prisons for perhaps a year before being moved to prisons with a less strict regime. This interim arrangement is known as the "dispersal system".

7.2. A life sentence prisoner beginning in category A can expect to pass through categories B, C, and D before being released as well as spending the final year approximately in a "pre-release scheme hostel". High security prisons house Category A prisoners and, as is the present position of the Birmingham Six, Category B prisoners awaiting dispersal; "closed prisons" house Category B after dispersal and Category C; "open prisons" house Category D. There is no minimum period for the various stages: progress depends on reports by the Parole Board, progress reports on the prisoner etc.. It is a flexible system in which the Home Office has considerable powers of discretion.

7.3. Transfer to Northern Ireland. Alone of the Six, John Walker has requested a transfer to a prison in Northern Ireland, on the grounds of the ill-health of his wife, who now lives in Derry. A similar request had been previously been refused. The present request is "receiving attention". A decision will, it appears, have to be taken at a political level. To date the Home Office has been reluctant to agree to such transfers for life prisoners, as remission in Northern Ireland is more generous than elsewhere in Britain.

## 8. Options open to Home Secretary

Should the Home Secretary decide to act on developments arising from the Devon and Cornwall investigation, the Shaw investigation of the WMSCS or the May Inquiry, or to take an initiative independently of these, his options include the following:

8.1. New Full-Scale Police Enquiry. The Home Secretary could consider this justified if the Devon and Cornwall investigation comes up with something substantial or the Shaw enquiry turns up a line of enquiry leading back to 1974 (for example, a police officer involved in the Birmingham bombings investigation being found to have perjured himself in a later case).

8.2. Referral to Court of Appeal. The Home Secretary has taken the position that he would again refer the case to the Court of Appeal should new evidence or consideration of substance come to light. He

maintains, however, that this has not happened.

8.3. Royal Prerogative. The Home Secretary has it within his power to recommend this. It can take the form of a pardon, which erases the conviction. This occurs only where there is compelling proof of innocence, such as the real guilty party being found. Another form of the Royal Prerogative is the remission of the remainder of a sentence, with the conviction still standing and without compensation.

8.4. Judicial Inquiry. This could be ordered by the Home Secretary if he had doubts about the Court of Appeal's limitations in assessing new evidence. Such an inquiry could, on the basis of its findings, recommend the Royal Prerogative.

Anglo-Irish Division  
Department of Foreign Affairs

March 1990