

## **CHAPTER 16**

### **“OPERATION BIRD”**

#### **Introduction**

**16.1** In volume A of the application (chapter 16.7) reference is made to what is described as new and potentially important information obtained by Forensic Investigative Associates (“FIA”), a firm of private investigators, during enquiries conducted under the codename “Operation Bird.” The enquiries were instructed on behalf of the applicant by Eversheds solicitors and most were carried out post-trial but prior to the conclusion of the appeal hearing. None of the information obtained as a result of the Operation Bird enquiries was led at trial or appeal.

#### **The applicant’s submissions**

**16.2** According to volume A information was obtained by Operation Bird which suggested:

- that in March 1988 Abo Talb (“Talb”), Mohamed Al Mougrabi, the incriminee Abu Nada of the Miska Bakery and an unnamed Iranian were present at a meeting in Malta arranged by the Iranian secret service to plan an operation against the US;
- that the leader of the PFLP-GC Ahmed Jibril (“Jibril”) was in control of terrorist cells in Malta, Germany and London;
- that Talb met with a member of the PFLP-GC, Haj Hafez Kassem Dalkamoni (“Dalkamoni”), in Malta in October 1988;
- that Talb returned to Malta at the end of November 1988; and
- that PFLP-GC operatives purchased the items from Mary’s House which were established to have been inside the primary suitcase.

**16.3** Reference is made in volume A to four reports dated 3, 9, 20 and 31 December 2001 which set out some of the results of the Operation Bird investigations.

The submissions point out that although further enquiries might discover more information, MacKechnie and Associates had been unable to pursue these due to financial constraints.

### **Materials relevant to Operation Bird**

**16.4** The following is a summary of the principal materials relating to Operation Bird, including the four reports referred to above and two other documents the Commission obtained from the defence papers.

#### *(1) Eversheds attendance note*

**16.5** The first document of relevance is an attendance note prepared by Eversheds dated 9 January 2001 (see appendix). According to the note an unnamed source had informed FIA that before Anthony Gauci picked out the applicant from a photo-spread on 15 February 1991, he had been shown another photo-spread containing photographs of both the applicant and the co-accused. The source suggested that Mr Gauci had failed to pick out the applicant or the co-accused on that earlier occasion. The source claimed that a Maltese police officer may have been present on this occasion along with British, American and German officers. According to the note FIA was authorised by the defence to attempt to trace the Maltese officer.

**16.6** However, on page 17 of the final Operation Bird report (19 January 2002, referred to below) it is stated that an unnamed source had said that this information was received from a member of the “Lockerbie investigative team”. It was said that the nationality of the individual who had reported this to the source was not known but it was not believed that the person was a participant in the “identification sub-group” (the nature of this body is not made clear in the report). According to the report FIA had not attempted to check this information because they were uncertain about its reliability and did not want to disrupt other more important investigations.

*(2) Operation Bird Report, Phase 1 (3 December 2001)*

**16.7** There are two versions of the “phase 1” report, namely a “corrected” version and an earlier version (see appendix). According to both versions FIA had interviewed an individual in the Middle East who is referred to in the report only as “S1”.

**16.8** The report states that S1 had long been active in the Palestinian Liberation Organisation (“PLO”) and appeared to have reliable information about the groups, but not about the individuals, responsible for the bombing of PA103. According to the report S1 believed that Libya, Iran and Syria would all have needed the help of the PFLP-GC and Jibril to carry out such an attack because none of those countries was capable of such an act themselves. According to the report S1 said that all of the information which had been gathered by the PLO suggested that Jibril and Imad Moughnieh (of Hezbollah) were responsible for the PA103 attack and that it was sponsored by Iran. However, the report also states that S1 claimed not to be privy to direct intelligence in support of the PLO’s finding. On the other hand, S1 was also reported as saying that almost everybody agreed that Iran was behind the bombing and that Libya and Ahmed Jibril had carried it out.

*(3) Operation Bird Report, Phase 2 (9 December 2001)*

**16.9** The second Operation Bird report (see appendix) states that on 6 December 2001 a different, unnamed individual, referred to as “SII”, had informed FIA that he had intelligence about the case which could not be discussed over the telephone. On 8 and 9 December investigators met SII in an unidentified Middle Eastern country. SII was described as the head of an “external country station” for the intelligence service of a liberation organisation in the Middle East. The organisation in question was referred to in the report as “Alpha”. According to the report Alpha received financial and other support from Iran and worked with other militant Middle Eastern liberation organisations including the PFLP-GC.

**16.10** According to SII a member of the Iranian secret service convened a meeting in Malta in March 1988 which was attended by eight people. They included Talb and

an Alpha representative referred to in the report as “Ivan”. The purpose of the meeting was to agree and plan an operation against the US. SII said that Iran was the “proponent” of the operation and would be the paymaster. The precise target of the operation was not specified at the meeting. SII said that Ivan had told Alpha headquarters about the meeting on the day after it had taken place. About 15 days later Alpha headquarters responded saying that it did not want to be officially involved in the operation against the US, but that if individual Alpha members wanted to be involved then that would be up to them.

**16.11** The report went on to say that SII was informed that around 20 October 1988 Ivan attended another meeting in Malta. Two Palestinians with Swedish passports, namely Talb and Dalkamoni, were present at that meeting. Dalkamoni, who was said to be very close to Jibril, was described as being over 50 years old and as having had a leg amputated. It was said that Dalkamoni went to Neuss, West Germany, after the meeting.

**16.12** According to the report SII was told that Talb travelled to Malta in December 1988 and later flew from there to Frankfurt. SII said that one of Ivan’s people drove Talb to the airport. SII said he believed from what he had heard that Talb headed the operation to destroy PA103 and that the bomb was loaded in London. SII was of the view that he could obtain the name and the nationality of the passport which Talb had used to travel to Malta in March and December 1988. SII could also obtain the same for Dalkamoni’s visit to Malta in October 1988. He believed he could also obtain intelligence as to how Jibril’s people had managed to obtain an MST-13 timer and how the bomb was loaded in London.

**16.13** The report concludes by stating that those carrying out the investigations had a three-step operational plan. Stage 1 involved meeting Ivan’s brother to verify that the information obtained so far by Ivan was correct and to obtain more information from Alpha intelligence files. If all went to plan, Ivan’s brother would provide an assurance that Ivan would be “receptive” and that it would be safe for SII to proceed to the next phase. Stage 2 included a 3-4 day trip to Malta to meet Ivan and two other individuals (said probably to be Palestinian). One of these individuals was said to

have driven Talb to the airport in December 1988 when he flew from Malta to Frankfurt. Stage 3 included a trip to Syria to gain further information.

*(4) Operation Bird Report, Phase 2 (20 December 2001)*

**16.14** The third Operation Bird report (see appendix) states that FIA had obtained a verbatim copy of a report written on 14 March 1988 by Ivan. The investigators considered that it was a reliable transcript of Ivan's original report. That report described the meeting in Malta on 13 March 1988 said to have been attended by Ivan, Talb and Dalkamoni. The transcript of the report suggested that a person named Abd Al Salam had invited Ivan to the meeting. The investigators suggested that this was in fact the incriminee Abu Nada of the Miska Bakery.

*(5) Operation Bird Report (31 December 2001)*

**16.15** The fourth Operation Bird report (see appendix) sets out the results of enquiries in Malta as at 31 December 2001. It does not identify any of the sources of the information but states that on 13 March 1988 Abu Nada met members of the PFLP-GC and the PPSF (the organisation of which Talb was said to be a member). According to the report Abu Nada was no longer resident in Malta at the time of FIA's investigations. The report also said that Talb and various others attended the meeting on 13 March 1988 and that Talb and Dalkamoni knew each other. According to the report Talb was in Malta in March, October and at the end of November 1989 and used a different name on each occasion. The report goes on to say that during his visit to Malta in October 1988 Talb met Dalkamoni. The report adds that two MST-13 timers had been stolen from the Libyans.

*(6) Operation Bird Report (19 January 2002)*

**16.16** The final report (see appendix) contains information said to have come from more than six sources. However, for "security reasons" the report does not attribute information to specific sources except where to do so was essential.

**16.17** In the report it is stated that Libya was not involved in the bombing of PA103 which it is said was funded by Iran and planned and executed by individuals representing the PFLP-GC, the PPSF, Hezbollah and Fatah. According to the report Dalkamoni was in charge of the operation and Talb was his deputy. However, after Dalkamoni's arrest in Germany on 26 October 1988, Talb became the leader of the operation. According to the report the MST-13 timer was obtained from the Russian mafia and provided to Iran via Hezbollah.

**16.18** The report reiterates that Talb attended a meeting in Malta in March 1988 to discuss and plan an operation against the US. According to the report Talb arrived in Malta on 11 March 1988 and departed on 15 March 1988. It is said that Talb used a Swedish passport in the name "Fred Edwards" to enter Malta on this occasion. The report narrates that Ivan had become a resident of Malta, had seen Talb at the meeting in March 1988 and had also seen Dalkamoni and Talb at a "safe house" in Malta in October 1988. Furthermore, Ivan suggested that Abu Nada had admitted to him his involvement in the Lockerbie bombing. The report suggests that Ivan could be a witness, but says that he could not be recruited without the assistance of the authorities who would have to provide protection for him. The report reveals that Ivan had been paid as an "operative to develop critical intelligence." The report does not specify who made this payment.

**16.19** The report repeats the claim that there was a meeting on 20 October 1988 in Malta attended by Dalkamoni and Talb to discuss the plan for the bombing. According to the report Talb was in Malta from 19-26 October 1988. The report alleges that Talb had intended to use a false passport to enter Malta but for unknown reasons was unable to do so. Accordingly he travelled with a Swedish travel document in the name of "Hassan Abu Talb". The report goes on to state that Talb stayed at the home of Abu Nada for two days [REDACTED] in Malta. However, according to the report he did not stay there and instead stayed at a safe house. The report alleges that [REDACTED] this arrangement which was intended to deceive the police and divert attention away from the safe house which was where the bomb was kept. The report names [REDACTED] and suggests that he may have known Talb and Dalkamoni. According to the report [REDACTED] was a witness to other key

events including the corruption of a police officer and an Air Malta employee “for the purpose of loading the bomb at Malta Airport”.

**16.20** The report states that Dalkamoni arrived in Malta on 20 October 1988 and met Talb and others that evening. He stayed for two days and departed on 21 or 22 October 1988 travelling under a false East German passport.

**16.21** The report narrates that at the meeting on 20 October there were discussions about diverting the blame for the bombing to Libya which, after the US and Israel, was regarded as Jibril’s chief government enemy because it had forced out Jibril’s cadres in a degrading and humiliating manner in 1987. The report states it was agreed at the meeting that wherever the bomb was launched they would place it in a suitcase which through its contents would be traced to Malta in the event that the bomb was discovered before it exploded. According to the report no one anticipated that any clothing in the suitcase would be identified after the explosion. The report alleges that the conspirators knew at the meeting that the applicant was a member of the Libyan ESO (formerly named the JSO) and also a manager of “Libyan Airways” and that therefore he would be a likely suspect. He also resembled Talb and accordingly it was decided at the meeting that Talb should buy the clothing from Mary’s House.

**16.22** According to the report Talb arrived in Malta on 25 November 1988 using the passport in the name of Fred Edwards and departed on either 1 or 2 December 1988. During this visit he purchased the items of clothing from Mary’s House. The report states that this information was obtained from a “participant to this aspect of the operation”. The purchase was made just before lunchtime on an unknown date between 25 November and 1 or 2 December. Abu Nada and one other person drove Talb to the shop in a bakery van and Talb entered the shop alone. According to the recollection of the unnamed driver of the vehicle, Talb purchased a pair of trousers, a winter shirt, a bath towel or a sheet and an umbrella. Talb and the driver then went to Abu Nada’s house and put the clothing into the suitcase which contained the bomb. The report states that while ideally one would want the driver of the bakery van as a witness to Talb’s purchase of the clothing, this was not possible. According to the report Abu Nada may be dead.

**16.23** The report goes on to say that before Talb bought the clothing it was mentioned that Mary's House was near to the Holiday Inn and that the applicant had a mistress whom he sometimes took to the Holiday Inn.

**16.24** The report also states that [REDACTED] was present at the meeting on 20 October 1988 and that he helped to put the bomb together. It is alleged that [REDACTED] had a Maltese girlfriend [REDACTED] where the meeting had taken place and so could have met Dalkamoni and Talb there. According to the report FIA was in the process of obtaining her name and address. The report states that Ivan was aware that Talb was present in Malta after October 1988 because Abu Nada had informed him about this. However, Ivan did not actually see Talb after October 1988.

**16.25** It is alleged in the report that the bomb was loaded at Heathrow airport and that Talb was in London from 20-22 December 1988 to ensure that it was placed on board PA103. Imad Chabaan and Abu Elias assisted him in this. In the early morning of 21 December Talb and Imad Chabaan arrived in London by merchant ship (the inconsistency between this and the earlier claim in the report that Talb was in London from 20 December is not explained). When the suitcase containing the bomb arrived in London Talb, Chabaan and Abu Elias were waiting for it. They had already agreed to pay a British Airways employee to load it onto PA103 without it being opened or inspected or passing through the x-ray machines.

#### **Further enquiries**

**16.26** The Commission raised the issue of the Operation Bird enquiries with the applicant's former representatives at interview.

**16.27** Mr Beckett said at interview (see appendix of Commission's interviews) that there was no evidence to back up what the Operation Bird reports claimed. He said that he was extremely sceptical about the results of the investigations and that they looked like a concoction based on the submissions at trial. When asked if any of the individuals were precognosed in advance of the appeal he explained that the reports came in very late and there was little pointing to any evidential basis for the claims in



them. He did not have any recollection of precognitions being taken from the informant named Ivan or the individuals designated S1 and SII.

**16.28** Mr Duff said that in his view the reports all remained at the level of gossip but that the defence had nevertheless allowed the private investigators to continue with their enquiries (see appendix of Commission's interviews). When asked whether Ivan was precognosed, Mr Duff replied that this was not done to his knowledge. Mr Duff also did not recall issuing instructions for [REDACTED] to be precognosed.

### **The applicable law**

**16.29** By virtue of section 106(3)(a) of the Act the High Court has the power to review an alleged miscarriage of justice based on the existence and significance of evidence which was not heard at the original proceedings. The tests applied by the court in assessing the significance of evidence led under that provision are set out in *Al Megrahi v HMA* 2002 SCCR 509. For present purposes, it is sufficient to note that in order to hold that a miscarriage of justice has occurred in the applicant's case the court requires to be persuaded that the evidence not heard in the original proceedings is: (a) capable of being regarded as credible and reliable by a reasonable court; and (b) likely to have had a material bearing on, or a material part to play in, the determination by such a court of a critical issue at trial.

### **Consideration**

**16.30** Bearing in mind that it requires to be satisfied only that a miscarriage of justice may have occurred, the Commission has considered whether the results of the Operation Bird investigations as set out in the various reports referred to above could meet the criteria of section 106(3)(a) and *Al Megrahi*.

**16.31** The first issue is whether the reports constitute admissible evidence which the court may hear under section 106(3)(a). In the Commission's view the contents of the reports are generally inadmissible because they contain only hearsay evidence to

which none of the exceptions under section 259 of the Act or under the common law apply.

**16.32** In any event, the Commission considers that certain of the allegations made in the reports are implausible. In particular, the allegation that Talb bought the clothing from Mary's House in order to implicate the applicant appears wholly incredible.

**16.33** As regards the suggestion that Anthony Gauci was shown a photograph of the applicant prior to 15 February 1991, a similar allegation was made in a separate submission to the Commission which was based on accounts attributed to the Golfer (see chapter 5). At interview the Golfer distanced himself from that allegation. However, as stated in chapter 26 the Commission has found no evidence to suggest that the police showed Mr Gauci a photograph of the applicant on any occasion other than 15 February 1991. Furthermore, it is suggested in the final report that the purchase took place just before lunchtime which is clearly at odds with Mr Gauci's account that it occurred at around 6.30 pm.

**16.34** The reports also refer to a meeting in Malta on 20 October 1988 said to have been attended by *inter alia* Dalkamoni and Talb. While Talb accepted at trial that he was in Malta from 19-26 October 1988, there is no evidence that Dalkamoni was present in Malta on 20 October 1988.

**16.35** It is also said in the reports that Talb was in London from 20-22 December 1988 to ensure that the bomb was placed on board PA103. However, there is no evidence to suggest that Talb travelled to London at any point in 1988. Nor is the Commission aware of any evidence to support the claim that Talb was in Malta in March 1988 when a meeting is said to have taken place there.

**16.36** Moreover the first report also suggests that Libya was involved in the bombing which clearly would not have been helpful to the defence even if any of the information in the reports could have been converted into evidence.

## **Conclusion**

**16.37** In the Commission's view, the information in the reports constitutes inadmissible hearsay and as such does not meet the requirements of section 106(3)(a). Furthermore, in terms of *Al Megrahi* the Commission considers that many of the central claims in the reports are incapable of being regarded as credible and reliable by a reasonable court. In these circumstances the Commission does not believe that a miscarriage of justice may have occurred in this connection.