

Dear Mr Ashton,

Please accept my apologies for the delay in responding substantively to your complaint about The Sunday Times's extract from Kenny MacAskill's book, published in its Scottish edition on 15 May this year. I had mistakenly understood the publishers would be responding.

The responses to your complaint which I detail below have been provided by Mr. MacAskill.

1. *"[Mr Megrahi] had after all been identified by Edwin Bollier, owner of the timer manufacturer MEBO, as being at test explosions of the timers in Libya."*

Mr Bollier in fact said that Megrahi was not present at the test explosions and no one, including the prosecution at Mr Megrahi's trial, claimed that he was.

Mr Bollier is an arms dealer whose evidence was treated damningly by the court as was his credibility as a witness. Both his credibility and reliability were challenged in the trial and appeal and commented on in the judgement. His evidence has also varied on many occasions which no doubt explains the courts' position. It is also noted that he changed his email address to "MrLockerbie" suggesting more than an impartial position. He has, like others, become part of a Megrahi industry and seems more of a participant than witness nowadays. There is security source intelligence supporting this statement.

2. *"And so it was to be. Megrahi flew in to Malta with the suitcase that was to transport the bomb."*

Records from the Air Malta flight that Mr Megrahi took to Malta show that he checked in no luggage and the Lockerbie suitcase was too big to have been cabin baggage. The only witness who claimed to have seen him arrive with a suitcase, Magid Giaka, did not mention having done so until three years after the event, despite having been a CIA asset since before Lockerbie. Megrahi's trial judges rejected his evidence as lacking credibility.

The evidence of Magid Giaka was rejected comprehensively by the court. I have accepted that and indeed referenced in the book their position taken on him. However, just because a witness lies on some aspects does not mean he lies on all. Giaka refers to aspects that are also part of intelligence information gathered by security services. He was after all a CIA operative at some stage and certainly when giving evidence. I accept that Giaka's comments need to be taken very cautiously but have caveated that with an explanation of the comments on him. Moreover, there is a background of intelligence information.

3. *"Moreover, [Mr Megrahi] was unable to give any explanation for his journey[to Malta the day before the bombing]. While a court of law does not oblige an accused to testify, the court of public opinion most certainly does. Even in his own biography professing his innocence he simply says he can't recall why he went. It seems entirely incredible that anyone would fly to*

*a foreign country for one night only, using a false passport and have no idea or recollection why they had done so."*

Mr Megrahi in fact gave a full explanation in his biography (which I wrote) for his trip to Malta. The explanation went as follows: "[Lamin Fhimah] told me he was thinking of travelling to Malta on 20 December to finalise the company paperwork and invited me over to see its offices and meet his business partner Vincent Vassallo. I accepted the invitation, partly because I also wanted to buy some more things for the house, in particular carpets."

Mr MacAskill omits to mention another possible explanation for Megrahi's presence in Malta, the widely reported fact that he had an affair with a Maltese woman.

The position taken at trial by Megrahi was one of a defence of incrimination not alibi. The position referred to by Mr Ashton was neither given at the trial or appeal or any time until the book, as I understand it. It was never able to be challenged either in court or pursued by the investigating authorities. There is a reference in Mr Ashton's book to an alternative reason but it is tenuous and unsupported. No explanation is given as to why Megrahi travelled on a false passport that he rarely used and never used again. The suggestion of chumming a friend is frankly fanciful. There is also security information on Megrahi being a JSO agent which was upheld by the court. He was not an innocent abroad as Mr Ashton seeks to portray.

*4. "Though Megrahi had been involved in the acquisition of timers, and even witnessed their use in tests in Libya, he would not be the bomb maker."*

There is no evidence that Mr Megrahi was involved in the acquisition of timers and no witness in the case claimed that he was. As stated above, no one claimed that Mr Megrahi witnessed the tests.

I refer to point 1 on Mr Bollier. He was an arms dealer who specialised in timers many of which were supplied to Libya and used in military actions. Megrahi operated in close proximity – along the corridor in Switzerland – and interacted with him by his own admission. Again, there is security information on the roles of both which were far from benign.

*5. "Megrahi had arrived at Malta's Luqa Airport on December 20 at about 5.30pm, accompanied by Lamin Fhimah, a JSO agent who had been the LAA manager for Malta based at the airport."*

There is no evidence that Mr Fhimah was a JSO agent and the only witness to claim that he was, was Mr Giaka – see above – whose evidence was rejected by the trial court judges.

The police and prosecution believed him to be so though were unable to substantiate that and did not proceed with it at trial. However, they did not vary in their thoughts even if the evidential basis was not there. The security services also maintained that belief. Moreover, given the nature of his job and the family ties with Megrahi it is incredible that he either was not or would not have supported and assisted if asked.

6. *"Not only was the purpose of [Mr Megrahi's trip to Malta the day before the bombing] trip never answered but why he landed with a bag and travelled back without one remained unexplained."*

This is wrong on both counts – see above.

[Please see my response to point 3 above.](#)

7. *The bag that Megrahi had brought in was placed on to the Air Malta flight to be transferred at Frankfurt for the fateful rendezvous in Heathrow. The records show that an unaccompanied bag was unloaded at Frankfurt from the Air Malta flight, yet the records from Luqa do not disclose that piece of unaccompanied luggage being loaded. There is no suggestion, though, that the Frankfurt airport authorities are mistaken.*

The Frankfurt airport authorities never claimed that an unaccompanied case transited through the airport, rather this was an inference drawn by the police. Furthermore, as evidence adduced by the defence at Mr Megrahi's trial demonstrated, there were plenty of reasons why the Frankfurt records could have been inaccurate.

[This is the nub of the case and the basis of Mr Ashton's defence of Megrahi. They postulate a theory of a break-in at Heathrow though do not say by who or how, and the placement of the bag there. However, the arrival of an unaccompanied case has been accepted by all courts whether the Fatal Accident Inquiry, the trial or subsequent appeals. There is clear evidence a case was unloaded at Frankfurt that had come from Malta. I have no doubt Operation Sandown that is investigating the break-in will disclose no link and the evidence from all courts remains clear. The bag came from Malta and was interlinked through Frankfurt to Heathrow. Both civil and criminal courts have accepted that and even Pan Am did so.](#)

I would like to make one final point, Mr Ashton. The full story of the downing of Pan Am flight 103 over Lockerbie may never be known. You have your own views and theories and have made it clear, both publicly and privately in the past, that Mr MacAskill's account does not accord with what you believe happened. That does not mean his account is wrong and we do not accept that anything in The Sunday Times's serialisation of the book requires correction.

Regards – Pat Burge

13 July 2016