

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.

Mr Bollier's credibility and reliability, his stance on Lockerbie and the claimed existence of security source information are not relevant, because the issue at hand is whether or not he identified Mr Megrahi as being present at bomb tests. He did not, even in the early days of the police investigation when he was content to implicate Libya in the bombing, before he had, in Mr MacAskill's words, 'become part of the Lockerbie industry'. I note – as should you – that Mr MacAskill does not attempt to argue in his response that Mr Bollier identified Mr Megrahi as being present at the tests. We can reasonably infer from this that he has conceded that the claim was not true.

The claim that there is 'security source intelligence' to support the statement is odd, given that Mr Bollier's police interviews and trial evidence all contradict the statement. You should note that the claim that there is intelligence information to support that proposition that Mr Bollier identified Mr Megrahi as being present at the tests has never previously been made, either on the record or unattributably, by anyone involved in the Lockerbie investigation or prosecution.

It is unlikely that, as justice secretary, Mr MacAskill received briefings from the intelligence services. He was not a Privy Counsellor and it is normally on Privy Council terms that such briefings are given. As his department's responsibilities include law, order and public safety, it is possible that he received intelligence briefings on current terrorist threats, but he would not have been briefed on historical terrorist attacks such as Lockerbie. It is therefore overwhelmingly likely that his 'security source intelligence' claim is second hand as well as unsupported.

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.

Mr MacAskill's caveat is irrelevant. He accepts that Mr Giaka's evidence was rejected by the court, yet chooses to accept one of Mr Giaka's statements as fact, even though there is no evidence to support it. Incidentally, Mr Giaka never claimed that Mr Megrahi arrived in Malta with the suitcase used to carry the bomb. Rather he said that Mr Megrahi arrived with a case of a similar type and made no claim regarding the bomb.

It is unclear what Mr MacAskill means by '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'. Is Mr MacAskill suggesting that the CIA shared intelligence with Mr Giaka? If so, the suggestion is absurd, as well as irrelevant to the point at issue. (Mr Giaka was in fact a CIA intelligence asset, rather than an operative.)

It is unclear what Mr MacAskill means by 'Moreover, there is a background of intelligence information', but I shall assume that he means that there is intelligence to support his claim that Mr Megrahi arrived in Malta with the suitcase that was later used for the bomb. Again, the claim has never previously been made, either on the record or unattributably, by anyone involved in the Lockerbie investigation or prosecution. For the reasons outlined above, it is second hand as well as unsupported.

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.

The point at issue here is whether in his biography Mr Megrahi gave an explanation for his presence in Malta on 20 December. As Mr MacAskill now appears to accept, he did. Mr MacAskill might regard Mr Megrahi's account as tenuous, but that doesn't detract from the fact that he provided an account. That account is not, by the way, unsupported, as Crown witness Vincent Vassallo confirmed that Mr Megrahi's claim that he and his co-accused Mr Fhimah visited him on the evening in question.

Mr MacAskill is wrong in stating that Mr Megrahi provided no explanation for why he travelled on a false passport. In fact he offered two possible explanations, both of which are set out in the biography, and merely said that he could not recall which one pertained (which was not unreasonable given that he was not asked to account for his movements until almost three years after Lockerbie). By the way, Mr MacAskill omits to mention that, rather than destroying the false passport, Mr Megrahi kept it for over 10 years before handing it over to the Crown prior to his trial, which is hardly the action of someone intent on covering his tracks.

Mr MacAskill also wrongly characterises Mr Megrahi's defence at trial. Incrimination was, in fact, only part of a multi-stranded defence. Central to the Crown case was the allegation that on 7 December 1988 he bought the clothes used in the bomb suitcase from a shop in Malta. The defence adduced evidence that the clothes purchase took place on another date, when he

was not in Malta. This was a de facto alibi defence. They also adduced evidence that the bomb originated from Heathrow, rather than Malta, which was again a de facto alibi defence.

Contrary to what Mr MacAskill states, no security information was presented to the court that Mr Megrahi was a JSO agent. That claim rested wholly on the evidence of Mr Giaka.

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.

My point still holds: there is no evidence that Mr Megrahi was involved in the acquisition of timers and no one, including the Crown at trial, claimed that he was. Mr MacAskill is the only person to make this claim and can provide no evidence to support it.

Mr Megrahi was a partner in a company that rented office space from Mr Bollier's company in Switzerland, however, there is no evidence that Mr Megrahi was there regularly and worked in close proximity to Mr Bollier.

No one, including the Crown at trial, claims that Mr Bollier supplied 'many' timers to Libya. The evidence adduced by the Crown suggested that he supplied only 20. (Incidentally, Mr Bollier was not primarily an arms dealer, he dealt in electronic equipment, some of which was fitted to explosive devices, but it is not clear by whom.)

Regarding Mr MacAskill's 'security information' claim, see my comments above.

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.

What the police, prosecution and security services believed is irrelevant, because the point at issue is whether there was any evidence that Mr Fhimah was a JSO agent. As Mr MacAskill concedes, there was not.

Incidentally, Mr Fhimah had no familial relationship to Mr Megrahi as Mr MacAskill seems to suggest.

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.

The point at issue here is whether or not the Frankfurt airport authorities claimed that an unaccompanied case transited through the airport. They did not and it is notable that Mr MacAskill is no longer suggesting that they did.

I am not sure who the 'they' to which Mr MacAskill refers are, but assume he is referring to Mr Megrahi's supporters. He is quite wrong to suggest that the Frankfurt airport evidence is the basis of my defence of Mr Megrahi. The basis of that defence is, rather, that all the main strands of the case against Mr Megrahi are at best tenuous and at worst demonstrably untrue.

Mr MacAskill is also quite wrong to suggest that the Heathrow break-in evidence is central to my case. Had he read what I have written on the subject, he would know that I have never postulated a theory around the break in and that my belief that the bomb originated from Heathrow is based entirely on other evidence relating to the baggage loaded on to the flight and forensics. Either Mr MacAskill has failed to read what I have written on the subject or he is wilfully ignoring it.

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