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MINISTRY OF DEFENCE
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3 November 1989

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Dear David,

JAMES ADAMS: THE FINANCING OF TERROR

Your Minister came over for a meeting yesterday evening to discuss Mr Adams' letter of 31st October and how best to respond to the Sunday Times' request for assistance from the Government in fighting the libel action that the Murphy family have brought against them. The Solicitor General and Miss Marsh from the Law Officer's Department, Director General Security Service and representative, Mr George (Head of Republic of Ireland Department)(FCO), Mr Manning (Cabinet Office) and Mr Colver (CPR) and Miss Muirhead (GS Sec) from this department were also present.

Opening the discussion, Mr King said that he was not clear that it was necessarily appropriate for him to be chairing the meeting but he had very strong views on the matter; he was also the recipient of Adams' letter. The implications of a successful libel action against the Sunday Times were extremely serious, for the reasons cited in Adams' letter. Moreover, there could well be criticism if it were to be perceived that HMG had done nothing to help and had stood by whilst substantial money from libel damages found its way into IRA coffers. The consequences for Anglo-Irish relations of a successful libel action could also be very adverse. Time was extremely short as the case was due to open in Dublin on 7th November but, even at this late stage, he wished to explore urgently ways in which help might be given to the Sunday Times.

In discussion, it was confirmed that there was no hard evidence (as opposed to intelligence reports) of Murphy's IRA associations which could be offered to the courts (though the RUC/Garda hoped that it would be possible, in due course, to bring charges against him for tax evasion and fraud). The arguments against providing members of the Security Forces to give evidence remained cogent and as stated in the minute from Mr Woolley to Mr Powell of 13th September 1988. There was also apparent confusion at the Sunday Times about how best to proceed with the case. The Solicitor General commented that his understanding was that it would be a libel case, in front of a jury. The basis of the

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plaintiff's case was that the remarks in the book were defamatory; the only acceptable plea that the Sunday Times were likely to be able to make in their defence was one of justification which would require clear supporting evidence; though there was also the option of a plea of fair comment in the public interest with a sub-stratum of fact. The basic difficulty remained that there was no member of the Security Forces who was in a position to give admissible evidence in court; the advice that he had given many months before, namely that there was no way in which HMG could offer the help for which the Sunday Times was asking, still stood.

Discussion then turned to other ways in which it might be possible to help.

Provision of a Character Reference for James Adams

Mr King suggested that, if it was not possible for a member of the Security Services to give evidence in court, he might provide a statement or character reference for Adams with a view to persuading the court that, even if they found in favour of the plaintiff, only token damages should be awarded. The kind of reference he had in mind would explain the difficulties of evidence in terrorist cases, stress Adams' reliability as a respected defence correspondent, and state that he was in no doubt from the intelligence reports that he had seen cross his desk that Adams' allegations were soundly based.

The Solicitor General said he would, of course, wish to study the text of any such statement before giving firm advice but he had two immediate comments. Such a statement could leave the Defence Secretary open to the risk of an action for libel unless it were made in a forum of absolute privilege such as the Court, or if he were to bring forward documents to substantiate his statement, which would be very difficult as such documents would be of the kind normally protected by a Public Interest Immunity Certificate. Mr King would enjoy absolute privilege if the statement were to be made in Parliament, and could not be sued in the British courts; he would need to check the position in relation to Irish courts but suspected that they would respect the parliamentary privilege of a friendly state. In that event, however, consideration would still need to be given to whether it was right and proper for a British Minister to make a statement which could not be substantiated. Secondly, he doubted whether such a statement would be admissible as evidence. It would have to be disclosed to the plaintiff, in advance, who would certainly object to its admissibility. Moreover, as it was not Adams' character which was at issue the case, it was probable that the judge would rule in the plaintiff's favour.

In discussion, it was pointed out that such a statement might be perceived as an attempt to interfere in or to abuse the



proceedings of an Irish court; that it could prove counter-productive, therefore, in terms of Anglo-Irish relations; and that such a device was open to the risk of ridicule, if it was ruled inadmissible. Mr King took note of these arguments but commented that there could still be some presentational advantage in such a statement, even if ruled inadmissible as evidence.

Action after a Judgement in favour of the Plaintiff

In contrast, it was suggested that a statement to Parliament after the court had reached a judgement in favour of the plaintiff, deploring the circumstances and the benefit that would result for IRA funds, might be received sympathetically on both sides of the Irish Channel; it might also result in renewed impetus to find a way of preventing a repetition which would be all to the good.

There was also a brief discussion of the suggestion, considered at an earlier stage, that the Crown should support an application by the Sunday Times to a British court to stop payment of damages on the grounds that the money would go to finance terrorism. The Solicitor General reiterated his earlier advice that this was not a viable option. There was no basis in law for refusing to enforce the judgement of an Irish Court; there was also general agreement that any attempt to do so would set a very bad example in terms of respect for the rule of law.

Action by an Irish court to stop payment of damages.

At present, there is apparently no point of dialogue with the Irish Government on the handling and implications of the case; it emerged, however, that one point well worth pursuing with them was whether the terms of the Offences against the State Amendment Act would enable the Irish government to seize moneys believed to be owned by, or destined for, a terrorist organisation; on a technical point, it would be important to be clear, under the terms of the Act, that the damages would be paid to a bank account and not to the court. On the mechanics, it would be necessary for the Garda to convince the Minister of Justice that the funds were destined for the IRA, and that he should sign a certificate preventing this; the certificate would then place the onus of proving that the damages would not be used for terrorist purposes on the Murphy family - the reverse of the position Adams and the Sunday Times faced.

In discussion, it was pointed out that the political prospects of the Justice Minister agreeing to issue such a certificate, immediately after the Court had ruled that an Irish citizen had been grossly defamed, were not high but that the feasibility of the option should be explored further. It was also important to ensure, via the RUC, that the Garda were up to date with the intelligence on Murphy and best placed to make such a case to the Justice Minister. More generally, it was agreed that urgent



contact should be made with the Irish government about the case and its implications; this might best be done between the Secretary of State for Northern Ireland and Mr Collins in the first instance and in the broad context of asking Mr Collins for his views on the handling of the case; a reference to the possible option of a certificate under the Act might be worked into the conversation; Mr King would be prepared, as necessary, to speak subsequently to Mr Lenihan.

Meeting with Sunday Times

Mr King reverted to the unclarity over how the Sunday Times intended to proceed, whether they intended to make a plea of justification and the need to respond to the request in Adams' letter for a meeting, with lawyers present. He could see advantage in this in presentational terms; it could also be appropriate for the Government's lawyers to ask to be informed about what was happening.

The Solicitor General cautioned that any contact should be handled very carefully; it was not a wise tactic to get close to the Sunday Times lawyers when there was no way in which HMG was in a position to help (as had been made clear already). The Sunday Times were not babes in arms; they knew precisely what they were getting into; it was for them to decide how to handle their case. For his part, he was not handicapped by any lack of detail about their actions and remained of the view that it was virtually impossible to do anything to help in advance of the outcome of the court case but that the likely and subsequent public outrage could be turned to HMG's advantage. After further discussion, it was agreed that for the Sunday Times should be offered a meeting, with lawyers, to clarify matters, without commitment and without raising undue expectation of what HMG might be able to do to help.

Way ahead

Concluding the discussion, Mr King said that it had been agreed that:-

- a) a reply, at Private Secretary level, should be sent to Mr Adams. (I attach a copy of my letter, which was cleared with the Solicitor General. Mr Neill phoned earlier this morning to say he was grateful for the letter and would like a meeting to-day, with Mr King and lawyers; I explained that Mr King was not available and that it was a meeting between lawyers that was on offer; Mr Neill accepted this and the Solicitor General's office are now in touch with his lawyers);
- b) the Secretary of State for Northern Ireland should be invited to speak to Mr Collins, as soon as possible, on the lines set out above; and the NIO would clarify the position

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on the Offences against the State Amendment Act and ensure that the Garda had the most up to date intelligence;

c) the Solicitor General's department would clarify the position on Parliamentary privilege in relation to Irish Law.

He would be grateful to be kept closely informed of developments please.

I am sending a copy of this letter, and attachment, to the Private Secretaries to the Prime Minister, Home Secretary, Foreign and Commonwealth Secretary, Northern Ireland Secretary, Solicitor General and Director General Security Service and to Trevor Woolley (Cabinet Office).

Your sincerely
B R HAWTIN

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Private Secretary