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PS/Sofs (L&B)

- cc: PS/Mr Butler (L&B)
- PS/Mr Scott (L&B)
- PS/Mr Patten (L&B)
- PS/Sir P Woodfield (L&B)
- PS/Sir E Bell
- Mr Bourn
- Mr Dugdale
- Mr Buxton
- Mr Angel
- Mr Merifield
- Mr Gilliland
- Mr Doyne-Ditmas
- Mr Hammond
- Mr Buchanan
- Mr Reeve
- Mr Wood
- Mr Boys Smith
- Mr Coulson
- Mr Bickham

① Sir Ewart 18/11
 ② Mr G...
 Mr R
 P/S



KINCORA

1. In your note of 9 November you reported the Secretary of State's views on a Kincora inquiry and posed a number of questions. On 10 November Cabinet endorsed the Secretary of State's recommendations that there should not be an inquiry under the 1921 Act. The Secretary of State will now wish to know where we stand over an inquiry under the 1972 Order, and to consider the terms of his parliamentary announcement.

Terms of reference

... 2. I attach proposed terms of reference at Annex A. They have been slightly adjusted since Sir Phillip Woodfield's note of 21 October but not materially.

The 1972 Order procedure

3. The 1972 Order relates expressly to the social services. The inquiry, and the powers exercisable by it, must have a direct bearing on the past or future operation of the homes and on the activities of those responsible for them at various levels. It cannot therefore be the basis of an inquiry into the Kincora affair at large, in effect a 1921 Act inquiry under another guise. This will no doubt be

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disappointing to some, who would like an open ended examination of everything that has or might have happened in the community as a whole, either to identify the culprits or to exonerate those against whom allegations have been made.

4. The political necessities however mean that the inquiry must be thorough; must have powers to call for evidence; and must be capable of encompassing the range of factors which could have borne on the situation in the homes. We believe the terms of reference do this. They are within the boundaries set by the Order, but allow the inquiry to consider what was known to the social service authorities and so what might have been done to prevent the incidents. Allegations of malpractices unconnected in any way with the homes would be outside the terms. How far the inquiry will wish to go down the road of considering what the authorities might have known had others revealed information in their possession must depend to some extent on them. The crucial bit of the terms of reference is in (a), and in particular in the second leg which deals with what those responsible might have done to have prevented the malpractices.

Parliamentary statement

5. The draft Parliamentary statement at Annex B seeks to make the most of the investigations to date, especially as they relate on the possibility of criminal proceedings, and emphasises the need to look ahead and safeguard the position for the future notwithstanding the work of the team of experts which is already being put into effect. Although false expectations must not be aroused about the inquiry, the statement does not seek to suggest that Terry enables us to dispose finally of everything he mentioned in his report. This would be unrealistic. It is significant that in the Assembly debate people were still calling for a judicial inquiry as if it was implicit that Terry had been intended to dispose finally of the

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matter - a result we had not sought or expected. The statement's real audience will be in Northern Ireland, not the House of Commons.

Chairman

6. The Lord Chief Justice remains unwilling to offer a serving member of the Northern Ireland Bench as chairman for the sort of inquiry we have in mind. We are now told that the Lord Chancellor's suggestion to the Secretary of State on 10 November was made in the belief that Judge Higgins had retired, which he has not. The Lord Chancellor will not apparently willingly agree to the use of a serving judge. We believe it is preferable to have a High Court Judge, partly because in his statement last year the Secretary of State referred to such a person being Chairman, and partly because he would confer stature on the exercise, though we see no reason why a serving judge should be preferable to a retired one, as long as he is active. We see no special advantage in the judge coming from Northern Ireland, indeed there is some advantage in being able to point to the choice of an "outsider". The Lord Chancellor's Department has suggested Sir Hilary Talbot who recently retired from the Queen's Bench, and have offered us several alternative names from the Circuit Bench in England and Wales as well as suggesting Judge Brown, the former Recorder of Belfast. A snag about Sir Hilary Talbot is that the Lord Chancellor's Department have also suggested him to the Home Office for their proposed prisons discipline inquiry but I understand that he is not the front runner. If the Secretary of State is content we will see if we can establish first claim on him.

Members

7. The final choice of the membership must be influenced by who is appointed as Chairman, and it is right that his views should be taken into account. We are still aiming however to have a senior

senior professional from the GB social services with management experience, and a prominent member of the Northern Ireland community. We will consult the Secretary of State as soon as we know the wishes of the Chairman, but propose that the initial announcement contains only the name of the Chairman, provided that he can be identified with reasonable despatch.

Powers of the inquiry, and other forms of inquiry

8. In your note of 9 November you asked about the powers and conduct of an inquiry under the 1972 Order, alternative forms of inquiry, and the Denning inquiry into the Profumo affair. In subsequent conversation with Mr Boys Smith you asked about Parliamentary and other views on the 1921 Act procedure. These points are dealt with in Annex C.

Further action

9. In the light of Cabinet's decision on 10 November and of the fact that the 1972 Order procedure falls within his responsibility, there is no need for the Secretary of State to seek further policy clearance from his colleagues. It will however be necessary in the usual way to clear the timing and content of the Parliamentary statement with No 10, the Leader and the Chief Whip. Mr Boys Smith will submit to you separately about this. (We are checking whether any clearance is necessary of the proposed Chairman.)

Conclusion

10. I should be glad to know if the Secretary of State is content with:

- (i) the terms of reference at Annex A;
- (ii) the draft Parliamentary statement at Annex B, and with the proposal it should be made next week if we are then in a position to announce a Chairman.
- (iii) the action we propose to take over the Chairman and members.

16 November 1983

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-4- (A J E BRENNAN)

"Following:

- (i) the investigations of the Royal Ulster Constabulary into possible homosexual offences related to children's homes and young persons' hostels in Northern Ireland;
- (ii) the investigation by the former Chief Constable of Sussex, Sir George Terry CBE QPM DL, and the publication and his conclusions and recommendations; and
- (iii) the report of the team of child-care experts made available by the Secretary of State for Social Services to consider the ways in which the Department of Health and Social Services (NI) carries out its role in relation to the supervision and management of homes and hostels for children and young persons,

the Department of Health and Social Services for Northern Ireland, in pursuance of the powers conferred on it by Article 54/^{of} and Schedule 8 to the Health and Personal Social Services (NI) Order 1972, hereby appoints the following persons [names of chairman and members] to:

- (a) inquire into the administration of children's homes and young persons' hostels whose residents were subjected to homosexual offences which led to convictions by the Courts or where homosexual misconduct led to disciplinary action against members of the staff, and into the extent to which those responsible for the provision of residential care for children and young persons could have prevented the commission of such acts or detected their occurrence at an earlier stage;
- (b) consider the implications for present procedures and practices within the system of residential care, including in particular the adequacy and effectiveness of arrangements for the supervision and protection of children and young persons in residential care; and

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(c) make recommendations with a view to promoting the welfare of such children and young persons and preventing any future malpractice;

and to report thereon to the Department of Health and Social Services for Northern Ireland.

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DRAFT STATEMENTKINCORA

1. With permission, Mr Speaker, I should like to make a statement about further action I propose to take over the Kincora affair, about which I previously reported to the House on 18 February 1982.

2. In 1981 5 people who had held positions of responsibility in homes and hostels for children and young people in Northern Ireland were convicted of sexual offences against those in their care. Following these convictions the police continued their investigations into a number of outstanding matters. And the Chief Constable of the Royal Ulster Constabulary asked HM Chief Inspector of Constabulary to appoint a Chief Constable of another force to investigate allegations about the way in which the police had conducted their enquiries and to have a general oversight of the continuing investigations. Sir George Terry, then Chief Constable of Sussex, undertook this task.

3. The RUC have completed their investigations. Sir George Terry's inquiry has also been completed. He has concluded that the RUC were justified in not mounting a full investigation before they did, in 1980; that there had been no concealment of evidence of a homosexual ring involving residents of the homes or others or of homosexual practices or attempts to conceal information by officials or police officers; but there were certain shortcomings as regards the administration of the welfare services. Following both inquiries the Director of Public Prosecutions received and considered all the papers. He decided not to initiate further prosecutions connected with the affair.

4. The convictions in 1981 and the events surrounding them have been the subject in Northern Ireland of allegations of misconduct and of widespread disquiet. While police enquiries were continuing,

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no other inquiry could be pursued without the risk that it would have rendered further prosecutions impossible. Sir George Terry's inquiry has been thorough, and his conclusions, as they bear on some of the wider allegations, are clear.

5. I did not wait for the completion of Sir George Terry's inquiry before taking steps to improve the administration of children's homes and hostels in Northern Ireland. My rt hon Friend the Secretary of State for Social Services arranged for a team of officers from the Department of Health and Social Security to visit Northern Ireland and to provide expert advice. The team made a series of recommendations aimed at raising of standards of residential child care in the Province and action to implement them has already been put in hand.

6. The extensive investigations which have been conducted have produced no evidence that would justify my asking the House to approve an inquiry under the Tribunals of Inquiry (Evidence) Act 1921. Nevertheless the House will wish to be satisfied that every possible step has been taken to ensure that there is no repetition of these unhappy events. I propose accordingly to establish a public inquiry under the powers contained in Article 54 of the Health and Personal Social Services (Northern Ireland) Order 1972. The Chairman of the inquiry will be [the other members will be appointed as soon as possible] [and the other members will be].

7. I will circulate the full terms of reference in the official Report. They will enable the inquiry to examine the administration of children's homes and young persons' hostels whose residents were subjected to homosexual offences which led to convictions or where homosexual misconduct led to disciplinary action against members of staff, and the extent to which those responsible for residential care could have prevented the commission of such acts or detected their occurrence; to consider the implications for present procedures and practices within the system of residential care; and to make recommendations with a view to promoting the welfare of such children and young persons and preventing any future malpractices.

8. The inquiry which I propose to appoint will be able to consider what more should be done. It will be for the inquiry to determine its mode of operation and from whom it will seek evidence. It will be able to sit in public if it wishes. Those who give evidence in good faith will as a matter of law have protection from proceedings for defamation. I believe that the enquiries by the RUC and Sir George Terry, taken with the decision of the Director of Public Prosecutions, mean it is exceedingly unlikely that fresh evidence justifying prosecution will emerge. But, in the event that it might, or that people fear they could incriminate themselves, my rt hon Friend the Attorney General has undertaken to give immunity from prosecutions for evidence which would incriminate a witness in respect of offences involving homosexual relations between males and related offences such as counselling, procuring or soliciting. The inquiry will have power to subpoena evidence in Northern Ireland and its report will be published.

9. The terms of reference will allow the inquiry to look into the situation in the homes and hostels and into the availability or otherwise of information which might have allowed preventive action to have been taken. I believe that an inquiry of this kind will enable such lessons as there are to be learnt and acted upon and that it will provide the best basis on which there can be confidence in the future in the provision made in homes and hostels for children and young persons.

POWERS AND CONDUCT OF THE INQUIRY

1. The inquiry's powers are conferred on it by the 1972 Order. They are confined to Northern Ireland. It can require anybody to attend to give evidence at the time and place it specifies; to produce any papers he has bearing on the inquiry; and with reasonable notice to supply any information the inquiry thinks is needed and he is able to provide. Witnesses can be required to give evidence on oath. The same grounds for refusal to produce evidence for reasons of privilege will apply as they would if it was a court.
2. People who fail to comply with a request from the inquiry may commit an offence for which they can be fined up to £20 or sent to prison for up to 3 months. The offence of perjury applies to evidence under oath as it would in a court of law.
3. It is for the Chairman and members of the inquiry to determine how they will conduct themselves. But, though the presumption must be that they will operate in public, there is nothing to stop them holding sessions in camera if they wish

OTHER FORMS OF INQUIRY

4. There is no other form of inquiry which would meet the case. The only UK wide general provision is that in the Tribunal of Inquiry (Evidence) Act 1921, which Cabinet has now agreed is not appropriate. There is no comparable provision in Northern

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Ireland allowing an inquiry with powers into any area of business. Within the social services sphere the only powers are those in the 1972 Order under which it is proposed the inquiry should be set up.

5. The alternative approach is a non-statutory inquiry. Precedents in Northern Ireland are the Compton inquiry into alleged brutality when internment was introduced in 1971, and the Bennett inquiry into police interrogation procedures in 1979. A non-statutory inquiry would be easier to set up, but it would have no powers to take evidence on oath or to require the production of evidence or documents. Bennett and Compton found this a handicap, but were for the most part dealing with people who wanted to give evidence or were told they had to. The absence of powers would in our view mean the inquiry/would neither command confidence nor be effective. Though this option was considered when preparing advice for the Secretary of State it was ruled out at an early stage.

DENNING INQUIRY (1963)

6. The Denning inquiry into the Profumo affair was non-statutory. Lord Denning was appointed by the Prime Minister to conduct his inquiry on his own, and he held his hearings in private. He recorded in his report that he had not been hampered by lack of powers, but said this was because those from whom he had wanted evidence had willingly come forward. He pointed out that he was able to draw inference only when the facts were beyond dispute,

but not if there was doubt. The Salmon Commission on Tribunals of Inquiry (1966) noted that Lord Denning's report was widely accepted by the public, but thought this was an exception to the general rule when inquiries were conducted under these conditions, which they put down to Lord Denning's reputation and personal qualities.

7. The Denning precedent does not usefully help over Kincora. Even supposing somebody of sufficient quality could be found to undertake it, the absence of powers would for the reasons mentioned above be a fundamental handicap in the particular circumstances of Kincora. And his method of working (whereby he was detective, judge and jury, and all evidence was given in private so that nobody heard what was being said about them) would undermine confidence in the outcome. It would also be an unusual and inappropriate way of handling the purely social work aspects.

VIEWS EXPRESSED ABOUT INQUIRIES UNDER THE 1921 ACT

The establishment of a 1921 Act inquiry requires the approval of both Houses of Parliament. An initial statement is usually made by the Prime Minister; he or the responsible Minister will then lead in the subsequent debate. On recent occasions there has not been significant opposition in the House, though apprehension has sometimes been expressed about the consequences of an open ended and predominantly public inquiry of this kind. There has however been widespread acceptance of the need for such inquiries to be used sparingly, and since the Salmon Commission in 1965 for them to follow its guidelines and those set out in the eventual

Government response in 1973. The White Paper in 1973 said -

"The Government accepts the recommendation of the Royal Commission that the use of Tribunals of Inquiry should be limited to matters of vital public importance concerning which there is something of a nationwide crisis of confidence which renders any other method of investigation inadequate".

The Government accepted inter alia the recommendations that the Tribunal should be served by its own counsel; that there should be careful safeguards over the examination of witnesses, who should be entitled to legal representations at public expense and whose evidence should be capable of being tested in cross examination by the legal representatives of other witnesses; that there should be full civil and criminal immunity; and that the Tribunal should continue to have the full powers of contempt available to the High Court.