

FROM: PUS
22 MAY 1997

UNDER/ SEC 73315
23 MAY 1997
CENT SEC

- cc: PS/Mr Ingram (L&B) - O
- PS/Mr Murphy (L&B) - O
- PS/Sir David Fell - O
- Mr Thomas - O
- Mr Steele - O
- Mr Bell - O
- Mr Leach - O
- Mr Stephens - O
- Mr Watkins - O
- Mr Wood (L&B) - O
- Mr Brooker - O
- Mr Maccabe - O
- Mr Perry - O
- Mr Warner - O
- Ms Healy - O
- Mrs Evans, HOLAB

ASST/ SEC 16415
27 MAY 1997
C.C.R.U.

in Camp 20.5

PS/SECRETARY OF STATE (L&B) - O

"BLOODY SUNDAY" - OPTIONS

*Mr McCusker
Henry Smith
Are there comparable historical situations
- UWI pardons, American, Dresden
AC
30/5*

I have already minuted about the MOD's concerns that no firm position should be taken by the Government as a whole or by individual Ministers before there has been a collective consideration.

2. Mr Beeton's analysis, and the list of options he lays out, is very helpful. But I think it is right to lay emphasis on two general policy questions which underlie this issue:

- (i) Anything which imputes, or can be taken to impute, blame to individual servants of the State requires, in natural justice, a proper foundation. In discussing options which are tantamount to an "apology", this needs to be kept at the forefront of Ministers' consideration. The Widgery Report contains no such justification; and we have yet to see an argued case based on further evidence. This is not a matter of appearances, or convenience. It goes to the heart of the duty of the State to its servants, and to the interest of the State in securing future service on which it is and will always continue to be reliant. In the "Bloody Sunday" case this applies directly to soldiers, but also to the judiciary as well as indirectly (but intimately) to police officers and other Crown servants.
- (ii) The status and finality of judicial decisions must be protected against challenges other than those founded on substantial fresh evidence. The Widgery tribunal was constituted under the Tribunals of Inquiry (Evidence) Act 1921 and is the ultimate form of judicial

and to its citizens?

inquiry available to the State; there is no appeal provided for in the procedure, and it is reserved only for the most serious questions where public confidence on an issue of national importance has been shaken. Judicial review is not capable of addressing or overturning the substance of a 1921 tribunal finding, only aspects of process.

Preserving the finality of the findings of such a tribunal (save possibly as qualified above) is a matter of the highest importance - there is no higher court in such circumstances than a 1921 Act tribunal, and if its standing as a process of inquiry is undermined, the consequences are incalculable.

- (iii) None of this is to argue against a proper assessment of the significance of fresh evidence on the one hand, nor of the continuing problem posed by the nationalist community's inability to come to terms with the events of "Bloody Sunday" and the conclusions of the Widgery tribunal about them. There is also a political judgement to make whether any conclusion from any kind of review which fell short of imputing criminal responsibility would be accepted by nationalists. At this distance in time and following Widgery, the prospect of such an outcome must be highly uncertain. It is of course also necessary to keep at the front of our minds the fact of the present judicial review case, and the need to ensure that any action by Government takes account of the different outcomes that may flow from it (as well as the possibility of renewed judicial review should the present action be dropped).

curious -
phrasing

3. Finally, I ought to signal two considerations which affect the Secretary of State's colleagues and other departments. First, the Home Office may have an interest (the Northern Ireland Office had not come into being when the events of "Bloody Sunday" took place); and in the event of any action by the Government giving rise to the possibility of further claims for compensation having to be met (given the compensation that has already has been paid), the Accounting Officer of the Department concerned - probably but not certainly the Ministry of Defence - might well require a written instruction from Ministers, automatically disclosable to the Public Accounts Committee, before action is taken capable of leading to that possible contingency.

4. I am sure Mr Beeton's submission is right to propose a discussion with the Secretary of State and other ministerial colleagues here; but I think before they reach final conclusions, she would want to bring ministerial colleagues in other departments into consultation and it may be that we should discuss how to develop a draft memorandum for collective consideration by Ministers, which fully reflects, in terms acceptable to them, the interests of the other Ministers and Departments most closely concerned.

Signed

JOHN CHILCOT

22 MAY 1997