

An Chartlann Náisiúnta
National Archives

Reference Code:	2022/84/11
Creator(s):	Department of the Taoiseach
Accession Conditions:	Open
Copyright:	National Archives, Ireland. May only be reproduced with the written permission of the Director of the National Archives.

AN ROINN GNOTHAI EACHTRACHA
TELEPHONE (01) 4082261
TELEFAX (01) 4757822

DEPARTMENT OF FOREIGN AFFAIRS
ANGLO-IRISH DIVISION
IVEAGH HOUSE
80 ST STEPHEN'S GREEN
DUBLIN 2

23 MAR 1999

Secure Fax

To: Mr. Paddy Teahon

From: Yvonne Ellison, Secretary to Dermot Gallagher

Date: 23 March 1999

Pages: 1 + 9

London Report

-- Home Secretary's Decision on Judicial Review of Prisoner Releases

Belfast Report

-- Judicial Review action by Home Secretary

-- Independence of Phillips investigation

©TSCH/2022/84/11

AMBASÁID NA hÉIREANN, LONDAIN
IRISH EMBASSY, LONDON

17, GROSVENOR PLACE,
SW1X 7HR
Telephone: 0171-235 2171
Direct Line: 0171-201 2
Fax: 0171-245 6961

Messrs Teahon, Mansergh & Dalton; Ambassadors London & Washington, Joint Secretary; Counsellors A-I

23 March 1999

Mr. Dermot Gallagher
Second Secretary
Anglo-Irish Division
Department of Foreign Affairs
Dublin 2

Dear Secretary,

Home Secretary's Decision on Judicial Review of Prisoner Releases

As discussed I contacted John Sawers yesterday evening to convey our deep concern at the decision of the Home Secretary to refer four releases scheduled under the provisions of the Good Friday Agreement to the High Court in Belfast for judicial review.

I indicated that the decision was very worrying both from the point of view of substance and of timing, coming as it did in the most crucial fortnight for the implementation of the Agreement and on the eve of the Taoiseach's important meeting with Gerry Adams. I emphasised the importance of the prisoner issue for the Republican Movement and the role that the prisoners have played in achieving the cease-fire, in supporting the Good Friday Agreement, and in sustaining republican support in the difficult period since then. The prisoners could have an equally important role in coming weeks in supporting Adams's attempts to "stretch" the movement in an effort to find a way out of the decommissioning/Executive impasse. The Home Secretary's decision would be seen by Sinn Fein and the IRA as a political step, and we were concerned about its possible impact on the prospects of progress in the days ahead. It would make the Taoiseach's efforts with Sinn Fein all the more difficult. I also indicated our concern at the absence of any warning or consultation on the issue which was at odds with the generally cooperative way both sides were

©TSCH/2022/84/11

implementing the agreement and the prisoner release provisions.

Sawers defended the Home Secretary's decision. He began by saying that there had been a number of prisoner issues over the past week or so (a reference to the Restorick trial?) and that there appeared to be a presumption on the part of some that " they had a guarantee of release regardless". This had been upsetting to the Unionist side. He went on to say that the Home Secretary's decision was designed to clarify the application of the law in this area and in particular the provisions relating to the calculation of release dates for prisoners convicted in England and Wales and transferred to Northern Ireland. About eight or ten prisoners were involved and it was important to know where the law stood on the issue. There was no link between the Home Secretary's decision and our joint efforts to find a way through the implementation impasse.

On timing and consultation he acknowledged our concern but indicated that Number 10 had received news of the matter only at lunchtime yesterday.

Philip McDonagh has registered our concerns in similar terms with the Foreign Office. I should perhaps add that when I asked Philip to contact George Fergusson at the FCO earlier in the evening to enquire about wire reports of the Home Secretary's decision Fergusson was unaware of it..

It seemed to me that Sawers was using a "line to take" brief in his response to me - apart from his remarks about the presumption of release and Unionist concerns, which would suggest wider political considerations behind the decision. It is clear that the decision came quickly yesterday and that the usual interdepartmental consideration did not take place. It would appear that neither the FCO nor the NIO were made aware of it, and, if we take Sawers account, that Number 10 were not brought into the picture until midday. Nonetheless it is difficult to believe that the Prime Minister's Office were unaware of the political significance of the decision and the importance of the timing. If this is true then it must be seen as a warning to the republican movement that, as Sawers intimated, they should not presume on the willingness of the British Government to continue to play ball on prisoners without progress on the wider issues. The fact that the Government is prepared to appeal against the decision of a Body which itself had set up to implement the Good Friday Agreement suggests a hardening of attitude by the Government, or certain parts of it, and a willingness to play tough on prisoners. I would take with a grain of salt the protests about the rapidity of the decision being forced on the Government by

©TSCH/2022/84/11

yesterday's release decision by the Commission. The fact is that the issue has been the subject of an appeal procedure between the prisoners lawyers, the Home Office and the Commission for some time and I find it difficult to believe that the Home Office did not have the judicial review line worked out in advance.

The prisoner issue is of course, as we have reported, a charged issue in British politics and in public opinion and we should not underestimate its significance for the Government in its handling of the Good Friday Agreement.

Yours sincerely,

Edward Barrington
Ambassador

©TSCH/2022/84/11

Secure Fax: 1898

23 March 1999 **No of pages including this one: 4**

To: HQ **From: Belfast**
For: Secretary Gallagher **From: Joint Secretary**

Subj: Judicial review action by Home Secretary

1. To confirm our conversations last night, it is clear that the action taken by the Home Secretary to seek judicial review of the decisions made by the Sentence Review Commissioners in respect of Paul Kavanagh, Thomas Quigley, Gerard McDonnell and Patrick Magee took the NIO entirely by surprise.

2. While we are checking further this morning, it seems that the Home Office did not consult the NIO beforehand, as might reasonably be expected in relation to a prisoner release scheme which is being operated very largely under the aegis of the Secretary of State for Northern Ireland. Ministers and officials alike in the NIO seem to have heard of the matter initially from media reports. (I was present for a number of phone conversations between Peter Bell and his colleagues after we raised the matter and it was clear that there was considerable consternation within the NIO about the Home Secretary's solo run).

3. The formal position, as you are aware, is that the prisoners concerned - "lifers" with average tariffs of some 40-50 years who were convicted of offences committed in Britain and are on restricted transfer to Northern Ireland - remain under the Home Secretary's jurisdiction. In a technical sense, accordingly, no consultation of the NIO is required. However, the Home Secretary's failure to discuss with the NIO a move which appears to set aside the authority vested legislatively by the British Government in the Sentence Review Commissioners, which has serious implications for release arrangements which the two Governments have jointly agreed and are jointly implementing and which has immediate ramifications for the efforts being

©TSCH/2022/84/11

made by both Governments to produce a climate favourable to a deal on decommissioning betrays a breathtaking lack of political sensitivity.

4. We have registered a strong complaint here about the failure of the British system to alert, let alone to consult, our Government on this step. The NIO are not disguising their chagrin at the Home Secretary's action, both on its substance and the lack of advance consultation, and regard our dismay on both counts as entirely legitimate. Bell initially suggested that we might view the contact between George Ferguson and Philip McDonagh yesterday afternoon as constituting official notification to us of what was happening. We have since pointed out that this contact was initiated by the Embassy and that Ferguson had to brief himself on the matter before he was in a position to respond.

5. We have also suggested that contact might have been expected between No. 10 and the Department of the Taoiseach yesterday afternoon, given that No. 10 (as Bell confirmed to us) had some prior knowledge of Straw's intentions.

6. On the substance, I attach a Home Office statement which we received last night. The spin which is being put out by the Home Office is that the judicial review application is a purely technical matter, designed to obtain clarification of the basis on which release dates should be calculated for prisoners eligible for release who are serving GB tariffs. They claim that it has no bearing on the prisoner release scheme as such and are emphasising that, if the application is upheld in the High Court today, this will mean merely a year's delay before the four men are released, as their release by May 2000 is certain. The Home Office and the NIO are also suggesting that a decision in the Home Secretary's favour should not be taken for granted and are asking us to refrain from judgement and comment until after today's proceedings.

7 We have pointed out that it is naive in the extreme to imagine that the move can be passed off as having a purely technical or legal purpose. Already (as we predicted yesterday) it is being represented in nationalist and Republican circles as gross interference by the British Government with obligations which it has entered into under the Agreement and legislative arrangements which have been approved by Parliament. It raises immediate questions about the British Government's commitment to implementing the Agreement, at a time when such questions could not be less helpful if progress is to be achieved on the decommissioning front. Indeed,

©TSCH/2022/84/11

the move will probably be perceived as a crude attempt to put pressure on Sinn Fein in the latter context, pressure which is likely to be entirely counter-productive.

8. There is, of course, a clear domestic political background to Straw's action and the NIO, while accepting that the line about technical clarification is disingenuous, are pointing to this. They relate the move to the widespread concern in Britain about prisoner releases continuing in the absence of decommissioning and in an environment of continuing terrorist violence of various kinds. These concerns would have been heightened by the behaviour of those sentenced for the Restorick killing last week. They are also suggesting that the Prime Minister is very sensitive to this dimension and would have had no difficulty with Straw's action.

9. Our impression here is that the Sentence Review Commissioners may initially have set release dates for these four prisoners which reflected their GB tariffs (rather than the more liberal NI regime). These dates were challenged by the prisoners and the Commissioners appear to have decided that the NI practice should be followed, settling on the release of three of them with effect from this morning and a fourth (Magee) in June. We understand that the Home Office may only have been apprised of this yesterday - hence the suddenness of the Home Secretary's action. We are endeavouring this morning to confirm these details. We will of course be in touch as soon as the outcome of the judicial review application is known.

©TSCH/2022/84/11

Galley

Home Office statement re Northern Ireland prisoners' release

The Home Secretary has today sought a judicial review of the decision by the Northern Ireland Sentence Review Commissioners in respect of 4 IRA prisoners (Paul Kavanagh, Thomas Quigley, Patrick Magee and Gerrard McDonnell). This followed a decision of the Commissioners earlier today which would have resulted in the immediate release of Kavanagh, Quigley and McDonnell.

The Home Office confirmed that the Government had obtained an interim order setting aside the Commissioners' determinations. This has halted the releases. A hearing will take place tomorrow (Tuesday 23 March). The precise timescale for any further action will be a matter for the courts.

A spokesman said " The Government is committed to meeting our obligations under the Good Friday agreement. The Government thinks that it is important to clarify the application of the law (the Northern Ireland (Sentences) Act 1998)) as it applies to prisoners transferred from England & Wales to Northern Ireland. "

Notes for editors

The Northern Ireland Sentence Review Commissioners were established under the Northern Ireland (Sentences) Act 1998. If circumstances permit all qualifying prisoners will be released under the terms of the Good Friday agreement by July 2000.

The Commissioners' decision would have resulted in the immediate release of Kavanagh, Quigley and McDonnell and the bringing forward of the release date of Magee.

Kavanagh and Quigley were sentenced to life imprisonment on 7.3.85 on three counts of murder and possession of explosives. They were responsible for three deaths following explosions in London.

McDonnell was convicted of conspiracy to cause explosions likely to endanger life on 23.6.86 and was sentenced to life imprisonment.

Magee was convicted of five counts of murder, conspiracy to cause explosions and causing explosions likely to endanger life on 23.6.86. He was convicted of planting a bomb in the Grand Hotel Brighton in September 1984.

PREM 19/180

©TSCH/2022/84/11

Secure Fax: 1899SF

23 March 1999 No of pages including this one: 2

To: HQ
For: Secretary Gallagher

From: Belfast
From: Joint Secretary

Subj: Independence of Phillips investigation

1. As you know, we have been pressing over the last few days for clarification of the structure of the inquiry into the Rosemary Nelson murder.

2. We have been asking what the various assurances given by the Chief Constable and the Prime Minister last week about the independence of the inquiry and the latitude of Phillips' role will mean in practice. The statement issued by Phillips himself on Friday was disquieting in terms of the emphasis he placed on RUC primacy and a number of questions need to be answered as a matter of urgency. Among the points of concern arising from Phillips' statement were whether his role will amount simply to general oversight of an investigation carried out mainly by the RUC or whether (as we have understood hitherto) he is to have a "hands-on" role running the operation directly and instructing e.g. that certain parts of it be handled exclusively by non-RUC personnel. The failure to mention that he may be bringing in staff of his own was unhelpful - and puzzling, as we understood here that such plans existed.

3. We have been highlighting in this context the pressure on our Government to support the calls from the SDLP, Sinn Féin and a wide range of reputable human rights groups for an entirely independent investigation. Making clear that in the circumstances of the Nelson murder the Government's room for manoeuvre is extremely limited, we have suggested that our Ministers will require satisfaction on all points of concern to them if any support for the Phillips inquiry is to be forthcoming.

4 By way of initial response, Peter Bell came back last night with the following message from David Watkins, who had talked earlier to the Chief Constable.

©TSCH/2022/84/11

2/2

First, Flanagan "has no doubt in his mind" that Phillips will have an entirely independent role, that he will be actively in charge of the inquiry and that no restrictions of any kind will be placed on him in this respect.

Second, Watkins characterised last Friday's statement as the product of an unduly cautious demeanour on Phillips' part at the outset of this inquiry. Bell's private comment was that Phillips was "a bit iffy and wimpish" in his first moves. (Comment: It is to be hoped that this will not be a lasting phenomenon).

Third, the force of the points we have made about Friday's statement is recognised and consideration is given to the possibility of the Chief Constable, or maybe the Secretary of State, issuing a more "robust" corrective over the next few days. They envisage that the ordinary investigative work will be carried out by the RUC (which they judge to be the route most likely to produce a successful outcome) but that this will be done under Phillips' direction and in complete transparency and that it will be for Phillips to decide how he wishes to use either the FBI people or any outsiders of his own whom he brings in.

5. We will be pursuing this issue further with the British Government and RUC contacts.

©TSCH/2022/84/11