

04 MAY 1983

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Mr McMillan or
Rope RB 95.

NOTE OF A MEETING ABOUT THE KINCORA INQUIRY AT STORMONT HOUSE ON
28 APRIL 1983

Present: Mr Brennan
Mr Bourn
Mr Dugdale
Mr Buxton
Mr Angel
Mr Merifield
Mr Boys Smith
Mr McClelland
Mr McMillan
Mr Hopkins

Mr Brennan opened the meeting by outlining the background against which the discussion would take place. It was not known when the DPP(NI)'s conclusions or the Terry report would be available or consequently whether there would be any prosecutions. If the DPP did decide to prosecute, this process would almost certainly have to be completed before a public enquiry could be launched. However it was necessary for the ground to be prepared as fully as possible so that an announcement about an inquiry could be made as soon as the way was clear to proceed. The Assembly had pressed for early action and the Secretary of State had undertaken to establish a public inquiry under a High Court Judge as soon as practicable.

2. Mr Brennan suggested that the two principal questions to be examined were (a) the scope of the inquiry; and (b) its form. On (a) it was for consideration whether the review should be confined to the management of all or just a selection of homes and hostels, and at what levels of management/administration and over what period; or whether the inquiry would have to extend to the allegations of a cover-up by inter alia the RUC, the NIO, and NI politicians. If there were to be an examination of the latter, it would be necessary to resolve the relationship of such an inquiry to the criminal allegations to be dealt with in the RUC's report to the DPP(NI) as well as the Terry report. As for (b), the general view seemed to be that only an inquiry under the Tribunals of Inquiry (Evidence) Act 1921 would have the right powers but there would clearly be difficulties in persuading the senior Ministers who would have an interest, as well as both Houses, that this was a matter of "urgent public importance", the criterion in the Act. It would perhaps be prudent to examine more closely an option which

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E.R.

appeared legally feasible - the establishment of a 1921 Act tribunal by the Secretary of State without a resolution of both Houses, although such a step would be politically controversial and it seemed that witnesses in Great Britain could not then be subpoenaed. Whichever course seemed preferable, the Secretary of State would in due course be obliged to consult colleagues like the Prime Minister, the Home Secretary, the Lord Chancellor, the Attorney General, and possibly the Secretary of State for Defence, as well as the Lord Chief Justice.

3. Finally, Mr Brennan suggested that the meeting should subsequently consider the administrative points which would flow from a decision to establish a 1921 Act inquiry, such as the tribunal's composition, its staffing implications and cost.

4. There was then a wide-ranging discussion of these issues, and the following points arose:

Scope of the inquiry

- (i) Although there had been a review in 1982 by DHSS officials from London into the way in which the DHSS(NI) was carrying out its role in relation to the supervision and management of children's homes and hostels, this had been a general look at current practices and procedures in the public sector and in voluntary homes and there had been no attempt to examine the apparent failure of the child-care system to deal effectively with allegations of child abuse made throughout the 1960's and 1970's. Such an inquiry did seem essential to restore public confidence in the system and in morale among the staff. The Residential Care Association and the British Association of Social Workers were pressing for a full inquiry in the hope that there would be a general vindication (since it was so easy for ill-founded and even malicious complaints to be made by children in care).
- (ii) It would be desirable for this 'management' inquiry to concentrate on the homes where allegations of malpractices had been proved rather than on all children's homes and hostels. This would mean an examination of conduct in

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relation to three - it could eventually be four - homes. There could probably not be a limit on the period to be examined although the former Belfast City Corporation and staff of the Ministry of Home Affairs would be involved in an inquiry which went back 20 years .

- (iii) Consequently the terms of reference for this aspect of the inquiry could perhaps be along the following lines: "To look into the conduct of those persons in positions of authority in relation to children's and young persons' homes and hostels in Northern Ireland where malpractices have been substantiated; and to consider whether there were breaches of public duty and report on the implications for the child-care system".
- (iv) The non-DHSS aspects of the affair would be harder to deal with. It was for consideration whether the terms of reference should be confined to those suggested at (iii) above or should be extended to specifically deal with what seemed to be the primary area of concern among politicians and the public generally - the allegations of a deliberate cover-up of criminal behaviour. Those rumoured to have been either involved in a cover-up or in the homosexual practices themselves included leading politicians and party-workers, RUC officers, intelligence officers and senior NIO officials. It could of course be argued that anyone with serious allegations (as opposed to tittle-tattle) should have reported it to the RUC and that, with the completion of the RUC/DPP(NI) investigation and the Terry report, there would be no justification in providing for a tribunal to invite evidence on such matters. However, that ignored the reality of the situation. The rumours had spread widely and a simple decision by the DPP(NI) not to prosecute would not put public concern to rest. It was impossible to say how far the Terry report would go to restore public confidence but the published conclusions, whatever they were, were unlikely to do more than show that the RUC did (or did not) investigate allegations put to them as fully as possible. It would therefore be necessary to consult lawyers - and the Attorney General in particular - about possible

CONFIDENTIAL

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approaches to allegations of criminal misconduct. It was for consideration whether the public should be reminded of the need to report allegations to the RUC both before the tribunal met and during its hearings, making it clear that this was not the forum for such matters; or whether, as was more likely, the tribunal should take the RUC/DPP(NI) and Terry reports into account but be prepared to listen to any serious allegations which could or could not be of a criminal nature, immunity from prosecution having been granted by the Attorney General. (Complaints involving members of the Security Service could probably be taken in private and this part of the report not be published). It was not known what precedents there were for such situations and the meeting agreed that it was important for this issue to be examined carefully with lawyers.

Type of inquiry

- (i) Although the general view was that a 1921 Act inquiry could probably not be avoided, Ministers would wish to consider all the options before them.
- (ii) A non-statutory inquiry seemed a non-starter because of a lack of powers to subpoena and call for papers.
- (iii) An inquiry under Article 54 of the Health and Social Services Order 1972 could probably look effectively at the DHSS aspects dealt with in 4(i) - (iii) above, but the committee could not subpoena anyone from outside Northern Ireland or, more to the point, examine the cover-up allegations. This could only be a starter if the present investigations - and the Terry report in particular - allayed public fears more than was anticipated.
- (iv) There could perhaps be a new Order-in-Council to provide for a wide-ranging inquiry: this would have to be debated in both Houses but the "urgent public importance" criterion could be dropped and it could either be tailored for the Kincora affair or be of general application. Any recognised defects in the 1921 Act could be remedied. There could be

CONFIDENTIAL

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difficulties about immunity but the major flaw would seem to be that the committee could only subpoena people in the Province. This proposal was perhaps worthy of further consideration with lawyers however.

- (v) Finally there was the 1921 Act inquiry, with or without a resolution of both Houses. This would be a lengthy and costly exercise and one which would not strictly meet the terms of the Act (although it could perhaps be argued that there had been impediments to its establishment at an earlier stage). It was likely that the extent of concern in the Province would mean that only the institution of such a wide-ranging and powerful inquiry would represent a sufficient response by Government.

Cost, Composition and Administrative Arrangements

- (i) The Scarman Tribunal cost the equivalent of nearly £2 million today and, while it was clearly impossible to predict the cost of the proposed 1921 Act inquiry into Kincora at this stage, it was likely to be in the region of £2-3 million, a large part of this being spent on legal fees. Although we would have to provide for this expenditure in a Winter Supplementary Estimate, there would be no difficulty about drawing from the Contingency Fund in the meantime.
- (ii) Early thought should be given to candidates for the Chairmanship. It would be preferable for this to be an Northern Ireland High Court Judge - perhaps one who was about to retire and could be replaced earlier than would otherwise have been the case. Alternatively an English judge in this category could perhaps be identified. Officials would need to consider the field and suggest an approach to the Lord Chief Justice and/or the Lord Chancellor at the appropriate time.
- (iii) The other two members would ideally be a prominent layman from Northern Ireland and a senior social work administrator from Great Britain. Senior officials in Northern Ireland would give this further thought (perhaps informally consulting the DHSS in London and the SHHD about possible candidates for the latter post).

CONFIDENTIAL

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E.R.

- (iv) It would be necessary to consult the Attorney General about the appointment of Counsel, perhaps from the English Bar as well as the Irish Bar, and to consult the Treasury Solicitor about the provision of lawyers. (It seemed that the Crown Solicitor would be able to provide only one).
- (v) The Secretary to the Inquiry should perhaps be from Great Britain and in any event he and other supporting staff should certainly not have a DHSS(NI) background for presentational reasons. This needed further thought, as did the question of accommodation.

5. The meeting agreed that there were a number of aspects which could be pursued informally - with representatives of other Departments where necessary - while the results of the current enquiries were awaited. Once the DPP(NI)'s and Sir George Terry's views were known, there would have to be a further meeting - to which lawyers would be invited - so that recommendations to Ministers could be formulated and the Secretary of State could write to colleagues.

M W Hopkins

M W HOPKINS
SIL DIVISION
29 April 1983

Copied to:

PS/SoS (L&B)	Mr Merifield
PS/PUS (L&B)	Mr Coulson
PS/Sir Ewart Bell	Mr Reeve
Mr Brennan	Mr P N Bell
Mr Bourn	Mr Boys Smith
Mr Dugdale	Mr McMillan
Mr Erskine	Mr McClelland (DHSS)
Mr Angel	Mr A H Hammond
Mr Buxton	(Home Office)
Miss Davies	
Mr Doyne Ditmas	
Mr Gilliland	
Mr Norris	

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