



Controller of Prisons
J M STEELE OBE

Prison Service Headquarters
Northern Ireland Office
Dundonald House
Belfast BT4 3SU
Telephone Belfast 63255

Messrs P J McGrory & Co
Court Chambers
109 Victoria Street
BELFAST
BT1 4PD

6 September 1990

Dear Sir

You wrote to me on 17 July on instructions from Mr Mitchell McLaughlin.

My decision not to meet Sinn Fein representatives was in line with Government policy which in this regard makes a distinction between senior officials and other officials. The latter meet Sinn Fein elected representatives from time to time to deal with specific constituency concerns so as to ensure that constituents are not disadvantaged in any way.

Refusals by Ministers or by senior officials to meet Sinn Fein representatives are based solely on Sinn Fein's support of violence and not on any other grounds. Government has made this clear repeatedly and publicly.

I hope you will find this helpful in understanding the situation.

Yours faithfully

J M STEELE

Hidden Copies:-

Mr Erskine
Mr Thomas B
Mr Wilson, Central Secretariat B
Mr Wood (L&B) B
Mr D J R Hill B
Mr Blackwell B
Mr Bell B
Mr J McConnell B
Mr Clayton, Home Office

LB/PRB1/4413

DRAFT

Mrs P J McGrory & Co
Court Chambers
109 Victoria Street
BELFAST
BT1 4PD

6 September 1990

Dear Sir

You wrote to me on 17 July on instructions from Mr Mitchell McLaughlin.

My decision not to meet Sinn Fein representatives was based on and in line with Government policy which ^{in this regard} makes a distinction between senior Headquarters officials and other officials. The latter meet ^{Sinn Fein} elected representatives ^{from time to time} to deal with specific constituency concerns so as ^{to ensure} not to ^{that constituents are not} disadvantaged constituents in any way.

Refusals by Ministers or by senior Headquarters officials to meet Sinn Fein representatives are based solely on Sinn Fein's support of violence and not on any other grounds, and do not contravene any law of the United Kingdom. Government has made this clear repeatedly and publicly.

Yours faithfully

? hope you will find this helpful in understanding the situation.

J M STEELE

Mr. Steele.

McGrory's letter is flagged X

Annexed
S/S

C O N F I D E N T I A L

FROM: T. CLAIRE MARSON
CPL DIVISION
4 SEPTEMBER 1990

cc Mr Erskine
Mr Thomas
Mr Steele
Mr Wilson
Mr Wood (L&B)
Mr D J R Hill
Mr Blackwell
Mr Bell
Mr J McConnell
Mr Clayton

MR S McNEILL - B
PRISON SECRETARIAT

SINN FEIN DERRY CITY COUNCILLOR:
LETTER FROM P.J. McGRORY & CO. SOLICITORS

1. Thank you for your minute of 31 July. I apologise for not having been able to respond earlier.
2. Our access to government guidance is clear. Senior headquarters officials should avoid meeting with Sinn Fein elected representatives whenever possible. If the circumstances are exceptional and such contact would be essential for fair administration then Ministerial authority must be sought for any such meeting.
3. In the instance which has caused McGrory & Co. to write to John Steele on behalf of Mitchell McLaughlin, Mr Steele's response was entirely in accordance with our established procedures. Moreover, our legal advice is clear. We do not contravene Section 19 of the 1973 Northern Ireland Constitution Act (discrimination on grounds of political opinion, to which the McGrory letter refers) so long as we are specific that our policy of not meeting Sinn Fein elected representatives is because of that party's support for violence and is not related in any way to their political beliefs. This we seek

C O N F I D E N T I A L

CPL1/SAL/9757

C O N F I D E N T I A L

to make clear on every available opportunity and, should the need arise, we could produce numerous quotes of Government spokespersons making that distinction.

4. The points you will want to include in your response to McGrory & Co. are:

- i. Government policy makes a distinction between senior headquarters officials and other officials meeting Sinn Fein. Mr Steele acted entirely within long established internal written guidelines, cleared at Ministerial level.
- ii. More junior government officials meet elected Sinn Fein representatives in order to deal with specific constituency concerns so as not to disadvantage their constituents in any way.
- iii. Refusals to meet Sinn Fein elected representatives by Ministers, or by senior headquarters officials on the instructions of Ministers, on the basis of Sinn Fein's support of violence do not contravene any law of the United Kingdom. The Government repeatedly and publicly makes clear that its refusal to meet Sinn Fein is based solely on their support for violence and not on any other grounds.

5. Since the purpose of judicial review is for the courts to satisfy themselves that the Government has followed the proper procedures I do not foresee any major difficulties here for us. Our guidance is clear (and written) and has been in operation for some years. The Government has been at pains to refer at all times to Sinn Fein's support for violence being the stumbling block. The Secretary of State is on record as saying that if Sinn Fein/PIRA were to turn away from violence the Government would respond "imaginatively".

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6. I am, in view of the interest in this subject, copying my reply and your minute and enclosures widely.

(SIGNED)

CLAIRE MARSON
Constitutional and Political Division
OAB Ext 6575
4 September 1990

C O N F I D E N T I A L

CPL1/SAL/9757

CONFIDENTIAL

Reference.....

FROM: Mrs A Logan
Prison Secretariat
3rd September 1990

TO: Ms C Marson - CPL

Seamus McNeill wrote to you on 31 July 1990 asking for advice on how we might reply to a letter from Messrs P J McGrory & Co, Solicitors, regarding a meeting between the Controller of Prisons and a deputation from Derry City Council.

Are you yet in a position to reply to Mr McNeill's request?

A Logan

A LOGAN (MRS)

B/F 18/9/90.

CONFIDENTIAL

Confidential

From: S McNeill
Prison Secretariat
31 July 1990

Ms C Marson - CPL

As discussed today by telephone and on the advice of Reg Wilson, Central Secretariat, I enclose correspondence about a meeting between the Controller of Prisons and a deputation from Derry City Council.

I would be grateful for any advice on how we might reply bearing in mind that this may be the first round of a battle which will end with a judicial review. I have sought local legal advice from John McMeel but you may wish to range more widely.

Contrary to Mr McGrory's contention in the last sentence of his second paragraph, the meeting with the deputation, minus Sein Fein, took place on 19th July.



S McNeill

B/F 16/8/90

cc Mr Steele
Mr Wilson

E.R.

Copy (Clare Nasson)

FROM: J F McMEEL
SENIOR LEGAL ADVISER
1 AUGUST 1990

cc: Mr Steele

Mr S McNeill
Prison Secretariat

RE: POLICY REGARDING SINN FEIN REPRESENTATIVES

I thank you for your minute of 30 July together with enclosures and acknowledge receipt of file Reg No PI 571/88 handed to me during our subsequent discussion.

It would appear from the tone of the solicitors' letter that their client is contemplating challenging the Department's policy regarding Sinn Fein representatives in the courts and while there does not appear to be any rule of law or statutory provision imposing a duty on a Minister or departmental official to receive deputations, nevertheless, in the light of recent developments in the field of Judicial Review in particular the application of the concept of "legitimate expectation" one could not say with confidence that a court would hold that the decision in question was not justiciable. In addition, the solicitors have indicated that they propose to rely on section 19 of the Northern Ireland Constitution Act.

Some useful guidance may be obtained from the case of *In re McCartney's* application concerning a challenge to the decision of the Secretary of State not to allow Sinn Fein elected representatives to visit prisons or prisoners other than members of their immediate families which was heard at first instance by the Lord Chief Justice and on appeal by the Court of Appeal. Before the Lord Chief Justice the following arguments were canvassed on behalf of the applicant:

1. The Secretary of State failed to have any or proper regard for all relevant considerations. The Lord Chief

Justice quoted from the judgment of Lord Greene MR in the *Wednesbury Corporation* case [1948] 1 KB 223 where he stated that the court was entitled to investigate the action of a local authority with a view to seeing whether they had taken into account matters which they ought not to have taken into account or, conversely, had refused to take into account or neglected to take into account matters which they ought to have taken into account and that once that question had been answered in favour of the local authority it might be still possible to say that although the local authority had kept within the four corners of the matters which they were to consider they had nevertheless come to a conclusion so unreasonable that no reasonable authority could ever have come to it. The Lord Chief Justice stated that he was satisfied that the action taken by the Secretary of State clearly complied with these criteria.

2. The Secretary of State's ban applied only to elected representatives and not to unsuccessful candidates, party workers or other identified supporters of Sinn Fein. Lord Lowry stated that the fact that it might be reasonable to impose a wider ban did not in his opinion render it unreasonable to impose a ban on an easily identified class of public representatives.
3. The Secretary of State should have heard the applicant (the prisoner) or Mr Keenan (the Sinn Fein representative). On this point the Lord Chief Justice ruled that as the decision was not a judicial one and the facts taken into account were, as far as they went, incontrovertible this complaint was without substance.
4. The Secretary of State acted without any evidence that Mr Keenan could be a threat to discipline, good order or the prevention of crime. Lord Lowry stated that the

decision taken was a reasonable one by Wednesbury standards and added that the case of R v London County Council [1915] 2 KB 466 justified the Secretary of State in not adopting a policy of 'wait and see'.

5. The Lord Chief Justice also dealt with a point not raised by the applicant namely why the Secretary of State's decision should be deemed reasonable when the court had held (in other proceedings) that members of local authorities could not lawfully take steps to prevent Sinn Fein councillors from participating in local government business. He stated that the anomaly was explained by the absence of a statutory power in the one case and its presence in the other and quoted from his own judgement in the Cookstown Council case:

"I do not subscribe to the view that Sinn Fein has to be regarded as a lawful organisation or by necessary implication as a legitimate political party just because it has been allowed, since 1975, to operate as a political party without being proscribed. That is a different thing from saying, in the present state of the law, that individual members of Sinn Fein, if not otherwise disqualified, cannot legally stand for election and take their seats as councillors if elected, but they are entitled to do so despite their membership of Sinn Fein and not because of it."

The applicant appealed to the Court of Appeal against the decision of the Lord Chief Justice on the following grounds:-

1. The appellant did not pursue the argument raised before the Lord Chief Justice that the Secretary of State's prohibition was unreasonable but argued that while such a policy might in itself be reasonable this did not

absolve the Secretary of State from considering and exercising his discretion in each individual case. He relied on the well-established principle that an authority can fail to give its mind to a case and can thus fail to exercise its discretion lawfully by blindly following a policy laid down in advance. In dealing with this point O'Donnell LJ accepted that a refusal to listen to a substantial argument reasonably presented urging a change of policy would provide grounds for an application for judicial review but held that in the instant case it was clear that the letter from the Secretary of State to the appellant was merely stating the general policy and that there was no suggestion in the letter that there would be or had been a refusal to consider any reasonable argument urging a change of that policy in the individual case. He added that had the letter gone on to say that no exceptions would be made to the general rule or that no application in an individual case where exceptional circumstances were set out would be considered then quite a different situation would have arisen. The appellant's counsel had suggested that the only method by which the Secretary of State could lawfully refuse Mr Keenan permission to visit was by inviting the appellant to make representations if he wished an exception to be made to the policy on visits by elected representative of Sinn Fein. The Lord Justice stated that there was no suggestion in any of the decided cases to support this contention and pointed out that the Secretary of State did not attempt to restrict in any way the right to make representations nor did he refuse to listen to any representations which might be made and therefore held that the appellant had failed to make out a case that the Secretary of State had failed to exercise a discretion in the individual case before him.

2. The evidence upon which the Secretary of State relied for

making the policy decision which he made was inadmissible and inadequate. The Lord Justice pointed out that in a number of Northern Ireland cases the courts had taken judicial notice of the fact that the policy and aims of Sinn Fein were to take power in Northern Ireland with a ballot paper in one hand and an armalite in the other and that Sinn Fein gave unambivalent support to the armed struggle and that such judicial notice had also been taken by the Chief Justice of the Irish Republic in a case in 1982.

3. The refusal to permit Mr Keenan to visit was contrary to the provisions of Section 19 of the Northern Ireland Constitution Act 1973 in that it discriminated against a person on the ground of political opinion. On this point O'Donnell LJ stated that what was clear from the policy decision of the Secretary of State was that visits by members of Sinn Fein were not the subject of a general policy ban. The visits which were in fact prohibited were those visits by elected members of Sinn Fein to persons other than relatives and that the reason why elected members of Sinn Fein were singled out was because they must have given unequivocal support to the armed struggle before they could be considered as candidates for election. It is clear that the decision to prohibit visits by elected members was taken not because of the political opinions which such elected members might hold but because of their support for violence as a method of achieving political objectives. The Lord Justice also held that it could not be considered that Section 19 covered support for violence as the expression of a lawful political opinion.

In the light of the foregoing I would be confident that if an application for judicial review were to be brought on behalf of a

E.R.

Sinn Fein representative whom the Secretary of State had declined to meet in accordance with the stated policy a court would hold that the decision was reasonable and was not discriminatory within Section 19 of the Constitution Act. So far as a reply to the Solicitors' letter is concerned I think that it would be proper to reply to it setting out briefly the Government's policy on this issue. If the policy has been announced publicly eg in a press release or statement in Parliament it might be desirable to adopt the wording of such pronouncement or at least not to use a form of words inconsistent with it. If no such statement has been published I would suggest that the reply could follow the wording of paragraph 2 of Central Secretariat's memorandum of 20 May 1985 namely that there will be no personal dealings with Sinn Fein [elected representatives] unless and until Sinn Fein renounce support for the use of violence. In the light of the Court of Appeal's decision in McCartney I do not think that it is necessary to state in the letter that consideration will be given to departing from the policy in exceptional circumstances.

I return file Reg No PI 571/88 herewith.

A handwritten signature in cursive script, appearing to read 'J F McMeel', is written in dark ink on the page.

J F McMEEL

From: S McNeill
Prison Secretariat
30 July 1990

Mr J McMeel

1. I attach correspondence regarding a meeting between the Controller of Prisons and a Deputation from Derry City Council. I think it speaks for itself.
2. I would be grateful for your advice on how we might reply to Mr McGrory's letter, if at all. I have consulted Central Secretariat who have issued advice in the past on the policy relating to Sinn Fein but, surprisingly, they do not have appeared to have received a request for advice on the type of challenge contained in the solicitor's letter of 17 July. I have also copied the letter to Sir Kenneth Bloomfield's office.
3. On the point raised in the last sentence of the second paragraph of McGrory's letter the meeting did take place on 19 July and you will see from Mr Steele's letter of 10th July that he did not refuse to meet the deputation rather he said he would not receive Sinn Fein representatives even if they formed part of that deputation. This decision was based on general advice given by Central Secretariat. As regards the other point in the final paragraph I am afraid I must leave it to you to advise on the position in relation to Section 19 of the Constitution Act.



S McNeill

cc Mr Steele

P.J. McGRORY, LL.B.
P.J. BARRA McGRORY, B.A.

THERESA GILCHRIST, LL.B.


Solicitors

P.J. McGRORY & CO.
COURT CHAMBERS,
109 VICTORIA STREET,
BELFAST BT1 4 PD.
PH. (0232) 323511/231171

J. M. Steele
Prison Service Headquarters
Northern Ireland Office
Dundonald House
BELFAST
BT 4 3SU

OUR REF. BMcG/COR
YOUR REF. 17 July 1990.

Dear Sir

Please note that we have received instructions from Mr. Mitchell McLaughlin who is a member of Derry City Council, concerning a proposed meeting between yourself and a deputation from their Council at 2.30 pm on Thursday 19 July 1990.

We would refer to your letter of 10 July to Mr. Geary, Town Clerk, and Chief Executive of Derry City Council indicating that you will not receive Sinn Fein representatives in accordance with Government policy. We are instructed, however, that it has never been Government policy that Government officials should not meet Sinn Fein representatives. Mr. McLaughlin himself has met with numerous Government officials in the past from various departments to discuss a wide variety of issues. We would also point out that to refuse to meet a deputation on the grounds that members of Sinn Fein form part of that deputation would be contrary to law.

In view of your letter and in order to avoid delay in a discussion of the very important issue involved my client will not accompany the deputation.

However, he does not propose to allow the matter to rest there, particularly in view of the provision of Section 19 of the Northern Ireland Constitution Act, and he will await confirmation or clarification of your position as stated in your letter, and request your response as a matter of urgency. It would be helpful if you would set out clearly and precisely the Government policy on which you rely.

Yours faithfully



P. J. McGrory & Co.

18 JUL 90

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Controller of Prisons
J M STEELE OBE

Prison Service Headquarters
Northern Ireland Office
Dundonald House
Belfast BT4 3SU
Telephone Belfast 63255

Mr C M Geary BE DPA CEng MICE
Town Clerk and Chief Executive
Derry City Council
Guildhall
DERRY
BT48 6DQ

10 July 1990

Dear Mr Geary

Thank you for your letter of 5 July.

I can confirm that I will be able to see the deputation from Derry City Council at 2.30 pm on Thursday, 19 July at Dundonald House.

I look forward to receiving details of the deputation as soon as possible. I should however add that, in accordance with Government policy, I will not receive Sinn Fein representatives even if they form part of the deputation of elected representatives.

Yours sincerely

J M STEELE

HLS/5677



DERRY CITY COUNCIL

COLM M. GEARY, B.E., D.P.A., C.Eng., M.I.C.E.
Town Clerk and Chief Executive

Guildhall,
DERRY, BT48 6DQ.
Northern Ireland.
Phone: (0504) 365151
Fax No. 368536

Our Ref. P33.1 - CMG/KD.

*Mr McNeill
Draft copy please*

5th July, 1990.

Dear Mr. ~~Steele~~, *8/7*

I refer to letter dated 28th June, 1990 from Mr. Kyle, Private Secretary to the Minister, John Cope, M.P. regarding the current unrest at Belfast Prison which I understand was copied to you. I also refer to our telephone conversation this morning.

Regarding the comment in Mr. Kyle's letter that you would be willing to receive a deputation from Derry City Council to discuss the current problems at Belfast Prison, I wish to state that I have discussed this matter with the Mayor and I am putting forward the time of 2.30 p.m. on Thursday, 19th July to visit you at Dundonald House. My Council's resolution indicates that the deputation would be a cross-community one from all Parties on Council and I would imagine that the numbers would not exceed six plus an Officer.

I shall write to you again when the deputation has been selected and I should be glad if, in the meantime, you would confirm that the above arrangement is acceptable to you.

Yours sincerely,

TOWN CLERK.

Mr. John Steele,
Controller of Prisons,
Dundonald House,
Upper Newtownards Road,
BELFAST.

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