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Way attached*

*Mr Murphy
22 Sept. 11 M.?
my minute &
3/4.10 519/93*

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cc Mr Q Thomas - NIO
Mr P Bell - NIO
Director TFU
Mr D J Cooke - NIO

4.10
Mr D J Watkins
Central Secretariat
Stormont Castle

ASST SEC 79/10
1 - 6 OCT 1993
CENT MBW SEC

UNDER/ SEC 20/10
- 10 OCT 1993
CENT SEC

MISS DONNA MAGUIRE - PUBLIC LIABILITY CLAIM

1. Thank you for your minute of 22 September commenting on our draft submission. I enclose a revised draft which I hope adequately takes into account the points you have made. Again I would be grateful for comments.
2. We have not so far had any response from Miss Maguire's Solicitor to our request for the casualty notes. Hopefully this is a good sign but it may only indicate a slothful Solicitor.
3. I do think we need to put a submission to Ministers now because having given us due warning Miss Maguire's Solicitor could apply to the Court at any time for leave to have her evidence taken on commission.

R. E. Aiken

R E AIKEN

30 September 1993

Enc

PB/REA/D 740

JB

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DRAFT

cc PS/Sir J Wheeler
PS/PUS
Mr D Fell
Mr D Watkins
Mr P Bell (L)
Mr Q Thomas (L)
Mr D A Cooke (L)
Mr M Dodds (L)
Director TFU
Mr Ford
Miss McCleary

1. PS/Minister
2. PS/Secretary of State

MISS DONNA MAGUIRE - PUBLIC LIABILITY CLAIM

Purpose

1. The purpose of this note is to seek guidance from Ministers about how to deal with a public liability claim by Miss Donna Maguire against the Department of the Environment.

Background

2. In July 1985 DOE received a claim for damages on behalf of Miss Maguire. She alleged that she injured both her ankles when she tripped on the uneven footpath surface outside Newry Cattle Market. The claim has not been resolved because the Department has so far refused to settle out of court and because Miss Maguire spent much of the last 3 years in jail. She was acquitted in Dublin on charges of possession of explosives in 1990, acquitted in the Netherlands on murder charges the following year and is now facing a murder charge in Germany.

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The Claim

3. As was the case with a number of other such tripping claims made in the mid-eighties, the Department is unable to raise the statutory defence provided in Article 8 of the Roads Order 1980 against this claim. This is because the Department knew about the poor state of the footpath surface in this area and did not repair it within a reasonable period. Our maintenance procedures have of course been much improved since then.

4. However, we have so far refused to settle the case out of court for 2 reasons:-

Firstly, it is highly unusual for a person to injure both ankles as a result of a trip. Indeed her injuries would be more consistent with landing badly when jumping from a height.

Secondly, it seems that Miss Maguire did not go to hospital until a few days after the alleged trip.

Options

5. The claim has been valued at £7,500.

Recent Developments

6. There were no developments in the case for some years until 2 September when Miss Maguire's Solicitor informed the Crown Solicitor's Office that they intended to apply to the Court for leave to have her evidence taken on commission. This would involve Miss Maguire's Counsel and Solicitor, the Department's Counsel and Solicitor and a Barrister appointed by the

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Court to act for the Judge, travelling to Germany to take evidence from Miss Maguire and cross-examine her. Clearly this would be a very expensive business. Knowing this Miss Maguire's Solicitor has suggested that the Department should now make an offer to settle the case. As Miss Maguire is entitled to legal aid the potential high costs are no deterrent to her. Even if the Department wins the case it will still be responsible for its own costs.

7. The Department has responded to Miss Maguire's Solicitor by asking him to supply copies of the casualty notes concerning her attendance at Daisyhill Hospital, Newry, for examination and treatment of her sprained ankles. These notes might support her claim or they could seriously undermine it and clearly we would need to see them before we could even consider offering to settle the case out of Court. However our expert legal advice based on the evidence available so far is that, despite the doubts about Miss Maguire's case, the odds are probably in favour of her winning.

Options

8. We can deal with this case in one of 2 ways. Either we can handle it so far as possible in the same way as we would deal with a similar case brought by someone who was not being held on terrorist charges. The Court would certainly deal with it in that way. This approach would mean considering the strength of Miss Maguire's case when all the evidence becomes available and then making a judgement on whether to attempt to settle out of Court for a reasonable sum. This could well be the most cost-effective solution. However we might still decide to fight the case.

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- Conclusion
9. The alternative approach would be to decide to fight the case irrespective of the odds against us winning. The arguments in favour of this approach are firstly that any settlement or award could well go into the funds of PIRA and we should not therefore contemplate making any out of Court settlement with her and we should be prepared to use substantial public funds to fight the case vigorously and so try to avoid any award being made to her by the Court.
 10. Secondly, it could be difficult to defend publicly paying any settlement to Miss Maguire in respect of what many people will assume to be a spurious claim. At least a decision by the Court to award damages would be for the Judge to defend, not Ministers.
 11. Thirdly, if the legal aid system and the public liability claims system are so vulnerable to an apparently spurious claim such as this it might be in the longer term public interest to expose such vulnerability. This could help create a favourable climate for changes in the systems which would make it more difficult for such claims to succeed in the future.

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Conclusion

12. I would be grateful for guidance from Ministers of which option we should pursue. Should we fight the case irrespective of our chances of winning or should we take our decision on whether to defend or settle it in the same way as we would with other public liability claims?

J MURRAY
Permanent Secretary

September 1993

I am sorry that I think that the... decision does not...
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of public liability claims...
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action. It seems to be...
that...
options...
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Miss... who has not been...
found guilty...
nevertheless...
of...
in Germany. This suggests that her case should not be...

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DJW/61/9

FROM: D J WATKINS
US CENT SEC
DATE: 22 SEPTEMBER 1993

CC: Mr Thomas - B
Mr Bell - B
Director, TFU - B
Mr Cooke - B

HODEN, CC: Mr M'CUSKER

Mr Aiken, DOE

MISS DONNA MAGUIRE : PUBLIC LIABILITY CLAIM

1. Thank you for your minute of 15 September attaching a draft submission to Ministers on this difficult case. Apologies for missing your deadline but I was anxious to take the views of some colleagues.
2. I am sorry that I think that the draft submission does not hit the target. It seeks to inform Ministers of a course of action which could result in money going to a suspected terrorist for a prima facie spurious compensation claim. It thus seeks to implicate Ministers in a decision, without asking for their approval of a select course of action. It seems to me that, rather than simply alerting them to a decision which DOE officials will subsequently take, you need to take the mind of Ministers on the options; this in turn will doubtless require a rather fuller weighing up of the courses open to them.
3. Miss Maguire is a suspected terrorist who has not been found guilty by any court. She is therefore, of course, technically innocent. Her record is nonetheless interesting: acquitted in Dublin on charges of possession of explosives in 1990, acquitted in Holland on murder charges the following year and now facing a murder charge in Germany. This suggests that her case should not be

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dealt with in the same way as we might deal with a similar case brought by someone who was not the subject of terrorist or other criminal charges - and it is of course for that reason that you had wished to draw your dilemma to the attention of Ministers. Given Miss Maguire's strongly suspected connections, there is the quite clear risk that she stands to gain a significant sum of money which could go to support terrorism or which would relieve PIRA of the obligation of funding an equivalent amount. In the light of that risk, as I am sure you recognise, it is important for us to test rigorously the validity of the claim. I am therefore somewhat concerned that the thrust of the draft submission is that the cheapest way of settling the issue is an important factor in its resolution: this seems to ignore the distinction which should be drawn up between money spent on fighting the case and money spent on paying the claimant. The two are different in kind, particularly in the context of this case: money spent resisting the claim is money put to good use; any sum, however small, offered in settlement of the claim is money which risks going to support terrorism.

4. Even on the purely pragmatic grounds of protecting Ministers and the Department from criticism, it seems to me that there is a strong case for leaving it to the court to resolve the issue. The risks of unwelcome publicity are not perhaps as evenly balanced as set out in paragraph 9 of your draft. An out of court settlement would be seen by the public, the media and the security forces as the Department and Ministers failing in their duty to test to the limit the validity of a prima facie spurious claim by a terrorist; the decision by a court to award damages would at least be for the judge to defend, not Ministers. These points should, I strongly suggest, be reflected in a revised submission.

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5. Perhaps you might also weigh up a further consideration in favour of pursuing this case to conclusion in court, viz, if the legal aid system and the public liability system are so vulnerable to apparently spurious claims, it might be as well to expose this vulnerability to the public as a stocking horse for a drive for further reform. This is not to belittle the important steps which the DOE Central Claims Unit has taken, and in practice I do not think that our systems are so open to abuse and so I would hope that a court might well refuse leave to Miss Maguire to have her evidence taken on commission. Even if she overcame that hurdle, there is at least the expectation that eventually a court would refuse her claim for damages. But if not, it seems to me to be of no service to the public to keep the entire matter behind closed doors: an out of court settlement would mean that we could not put into the public domain the facts of the claim and the Government's scepticism about Miss Maguire's veracity and credibility. Conversely, a robust defence of this claim might profitably involve Miss Maguire being asked searching questions on matters concerning her probity and credibility. If she refused to reply to such questions, that could be indicative of her lack of integrity and would be to her detriment. All of these matters deserve a public airing.

6. You will note from this that, on the basis of other experience, we tend to take a slightly different view about whether the Government could win the case. This is based, not least, on the judgement that Miss Maguire would find it very difficult to convince the court that she is an honest and credible witness: previous charges against her are known and her entire claim rests on her unsupported statement that she fell outside Newry Cattle Market, as I understand it. I would expect the DOE lawyer to exploit to the maximum her untrustworthiness. Clearly you have to weigh up carefully your own expert legal

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advice; but I hope that you will not set aside too lightly the difficulties that Miss Maguire would face in persuading a court that her claim rang true. Lastly, on what appears a point of detail but could perhaps become very important indeed, I wondered about the wisdom of putting forward a submission before you have received from Miss Maguire's solicitor copies of the casualty notes from the hospital. These notes may have a material impact either way and seem to me to be relevant in gauging advice to Ministers.

7. In summary therefore I am sorry to have to say that I think that Ministers should be invited in very full and robust terms to decide on the course of action which they would wish to be taken on a case which raises important issues of public interest. This would require a pretty full explanation of the options available and the supporting arguments. You may not consider this intervention to have been particularly helpful and may therefore be reluctant to consult us on a further draft, but I should be happy to offer that facility if you wish to avail yourself of it.

[Signed DJW]

D J WATKINS

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