

-1 APR 1982

NOTES OF A MEETING HELD IN STORMONT CASTLE ON 30 MARCH 1982
TO DISCUSS INITIAL PLANNING FOR THE KINCORA INQUIRY

Present: PUS
Sir Ewart Bell
Mr Marshall
Mr Dugdale
Mr Buxton
Mr Hammond
Mr Platt
Mr Buchanon
Mr Harrington
Mr Daniell

for follow up

1. In reviewing the current state of play on Kincora, PUS noted the Attorney-General's estimate that police enquiries into the affair would take a further three or four months. The RUC had undertaken to inform the NIO of any significant developments arising out of their investigation. Mr Dugdale said that the Department of Health and Social Security team had produced a preliminary draft report which contained some constructive suggestions. Also the inspection of homes was proceeding apace. There had been no further developments in relation to the other homes on which Mr Patten had reported in his minute to the Secretary of State of 15 March; enquiries were continuing.

A Statutory Inquiry

2. On the question of the form of an Inquiry, it was agreed that it would have to be statutory; the Lord Chancellor had made this a condition of providing a High Court Judge as Chairman and an Inquiry without powers to compel the attendance of witnesses would not be acceptable in the Province. This left a choice between a 1921 Act Inquiry and one held under the auspices of the Health and Personal Social Services (NI) Order 1972. There might be objections to the former, particularly from other departments, on the grounds that the issue at stake did not warrant such a procedure; and given the timescale, it might not be easy to argue that the matters to be investigated were of urgent public importance, as required by the 1921 Act. Also there was a history of unsatisfactory inquiries under this legislation. On the other hand, expectations had been aroused that there would be an Inquiry under the 1921 Act which also carried the advantage that it contained powers to compel the attendance of witnesses from any part of the United Kingdom. The 1972 Order contained powers of subpoena only in relation to Northern Ireland. Given the importance of securing public confidence in the Inquiry, it was agreed that in the absence of powerful arguments to the contrary it would have to be held under the authority of the 1921 Act.

Terms of Reference

3. The Inquiry's Terms of Reference could not be drafted until the outcome of Sir George Terry's investigations was known. The Inquiry should not be given the task of reinvestigating matters that had been the subject of police enquiries. It would not concern itself with the criminal field. So far as the Department of Health and Social Services was concerned, the core of the Inquiry's work should be management issues. The Terms of Reference should not be so vague that they would provide an entrée for those who were interested only in scandal mongering and in smearing the reputation of political and other public figures; on the other hand there was a danger in their being so tightly drawn as to prevent the investigation of matters that were a cause for legitimate public concern. The Terms of Reference of previous inquiries could be examined with profit, with the Crown Agents' Inquiry being of particular interest in that the type of problem (a mixture of administrative errors and criminal offences) was similar to Kincora. It was agreed that Mr Harrington would obtain and circulate the Terms of Reference of the Crown Agents' Inquiry.

4. However the Terms of Reference were drafted, it was inevitable that many people, in particular the Press, would expect the Inquiry to be the occasion for giving publicity to unsubstantiated rumours in the hope of uncovering a major public scandal. It was important to damp down expectations in this respect and concentrate minds on management issues, which were serious and could, of course, involve the investigation of the way in which individuals had discharged their responsibilities. The Chairman of the Inquiry and Counsel would have an important role to play in steering its deliberations in the most profitable direction. Particularly in a 1921 Act Inquiry, their approach on this would carry considerable authority. Also it might be possible for the Secretary of State, in speaking to the resolution before the House, to refer to the report of the Salmon Commission which had said expressly that tribunals should not be set up to investigate rumour. If he could obtain the backing of the House for this approach, it might assist those running the Inquiry to keep it on course. Mr Harrington agreed to check the precedents with a view to discovering whether it was usual for a speech of substance to be made on introducing such a resolution.

Immunities

6. It was the firm view of the Attorney-General that immunity from criminal prosecution would have to be granted to those giving evidence before the Inquiry. However the question of disciplinary proceedings was more difficult. At the Scarman Tribunal on the Brixton riots the ruling was that in addition to immunity from criminal prosecution there would be protection from the possibility of disciplinary proceedings being substituted for criminal proceedings; but there was no immunity from disciplinary proceedings in relation to conduct which did not constitute a criminal offence. In the Kincora case it would be wrong to grant an immunity which prevented the dismissal of staff whose conduct was shown to be incompatible with their continuing in post. It was agreed that Mr Harrington, in conjunction with Mr Hammond would examine the papers relating to the Crown Agents' Inquiry to discover whether they contained any guidance on this point.

Civil Immunities

7. Witnesses appearing before the Inquiry would have absolute privilege in respect of defamation and other privileges available to witnesses appearing before the High Court. Otherwise there was no general immunity in respect of civil actions such as negligence.

Chairman of the Inquiry

8. The Lord Chief Justice (Northern Ireland) was of the view that the Chairman of the Inquiry should be a Northern Ireland Judge; if a member of the judiciary in Great Britain were appointed, it would be interpreted as a slur on the Province's legal profession. Moreover the Lord Chancellor had said that he could not provide an English Judge. It was arguable that, given the nature of the Inquiry, there might not be so much confidence in a Chairman from Northern Ireland as one from outside; and if the proceedings proved contentious from the political angle, a Northern Ireland Judge might have difficulties in returning to court work afterwards. On the other hand, Judges in the Province had no difficulty in dealing with some highly political, criminal cases and the Lord Chief Justice had experienced no problems after having presided at the Convention. In fact the issue was settled unless the Secretary of State chose to re-open it; on balance it was agreed that it would be best to work on the basis that a Northern Ireland Judge would chair the Inquiry.

Other Members

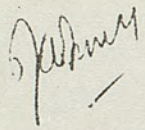
9. There would be two other members of the Inquiry; Mr Dugdale had drawn up a list of possible candidates. One would be practising or an academician in the social work field, preferably from outside Northern Ireland; the other would be a layman of standing, possibly with educational links but ought not to have Civil Service connections. It would be helpful if one of the Inquiry members had practical experience of administration.

Servicing the Inquiry

10. The Inquiry would need a secretariat with legal and administrative elements. In Great Britain it was normal for the Treasury Solicitor's department to provide the legal secretariat whose function was mainly to brief Counsel and arrange for the collection of evidence. In a major inquiry it would be normal for there to be two lawyers and a back-up staff working on a full time basis in the secretariat. It would be difficult to provide for this from within the Crown Solicitor's Office or from the legal advisers to Northern Ireland departments. Mr Hammond agreed to discuss the matter with the Deputy Treasury Solicitor.

11. The Administrative Secretary should come from the Northern Ireland Civil Service; there might be advantages in finding a retired civil servant of the right calibre. Ideally he should be familiar with the work of DHSS(NI) but should not have worked in the field that was to be the subject of the Inquiry. It was agreed that Sir Ewart Bell and Mr Dugdale would identify a pool of suitable candidates.

12. Counsel to the Inquiry would be an important position and, given the limited choice that was likely to be available, an appointment from the English bar could not be ruled out. Mr Hammond agreed to discuss this with the Deputy Treasury Solicitor and to discover who would make the appointment. Also Mr Hammond would discuss with him the question of financing 1921 Act inquiries.


J A DANIELL
PS/PUS

31 March 1982

Distribution: Those present
Mr Blelloch
Mr Erskine