



Private Secretary to
MINISTER OF STATE FOR
THE ARMED FORCES

MINISTRY OF DEFENCE
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CONFIDENTIAL

D/MIN(AF)/JS/12/1

21 May 1986

Dear Private Secretary,

THE CALCUTT REPORT: STATEMENT

... I attach a copy of the final draft of the statement which my Minister proposes to make tomorrow afternoon, the contents of which have been discussed with officials in your Department. If there are any further comments I should be grateful to have these by cease of play to-day.

I am copying these to the Private Secretaries to the Prime Minister, the Home Secretary, the Foreign Secretary and to the Director of Public Prosecutions and the Treasury Solicitor.

J F M TESH

Private Secretary to
the Attorney General

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CALCUTT INQUIRY: FINAL DRAFT STATEMENT

1. Following the acquittal last year of eight servicemen from 9 Signal Regiment in Cyprus who had been charged under the Official Secrets Acts, I announced in the House on 29 October that there was to be an independent inquiry into the way in which the Service police carried out their investigations of the eight men originally accused. Mr David Calcutt QC agreed to conduct this inquiry. The House was also told that it was the intention that, subject to the usual security considerations, Mr Calcutt's report on his inquiry would be published. The report has been published to-day Cmnd 9781 .

2. Mr Calcutt has concluded that the Service police investigations, which he acknowledged involved special difficulties due to their sensitivity and complexity, were undertaken without any animosity or ill-will towards the servicemen concerned, and that none of the servicemen were subjected to any violence or threats of violence, or any form of torture or inhuman or degrading treatment.

3. Mr Calcutt has, however, concluded that the custody of the eight servicemen was, for part of the time, unlawful and that even after the servicemen had been lawfully arrested on holding charges their continued custody was at least improper. The interviews by the service police with each of the eight servicemen mostly took place during these periods of unlawful and improper custody.

4. In the light of Mr Calcutt's conclusions as to the lawfulness of the custody of the servicemen, my Rt Hon Friend the Secretary of State for Defence has concluded that in the case of 7 of them we should adopt the procedures followed by the Home Office for ex gratia payments in cases of wrongful conviction or charge described to the House by my Rt Hon Friend the Home Secretary on 29 November last year at Written Answers Col. 691. These 7 servicemen - Senior Aircraftsmen Kriehn, Lightowler, Owen and Payne, Lance Corporal Glass and Signalmen Hardman and Tuffy - will be told that they may make an application for an ex gratia payment. If they do so, their applications will be referred to Mr Michael Ogden QC, who acts as the independent assessor in Home Office cases and who has agreed to do so here.

5. As regards the eighth serviceman, Senior Aircraftsman Jones, the Trial Judge, now Lord Justice Stocker, considered the provisions of the Air Force Rules of Procedure and concluded that the relevant Rule had been complied with in the case of Senior Aircraftsman Jones and that his custody was lawful. In these circumstances, my Rt Hon Friend the Secretary of State does not consider that an ex gratia payment can be paid in Senior Aircraftsman Jones's case.

6. Mr Calcutt has also concluded that, as the number of days spent in custody increased, so the pressure which was exerted on each of the servicemen gradually built up and crossed over, from what was at first proper to what he could only regard as becoming improper, and that the pressures which were ultimately exerted on each of the servicemen were such that these were likely to render unreliable answers given or statements made by them. However Mr Calcutt also points out that the investigations carried out by the service police in Cyprus in February and March 1984 were difficult, sensitive and complex, and they would have created profound problems for anyone who was given the task of carrying them out. Mr Calcutt concludes that though he has pointed to some breaches of lawful and proper procedures, it would be unfair to be over-critical either of the investigating service police or of those who were advising them.

7. The Government fully recognises the difficult position in which the Service investigators in the case were placed and that they were motivated solely by what they perceived to be their clear duty. The Government is also grateful to the service investigators for their full participation in Mr Calcutt's inquiry which was entirely of their own volition. I should also like to take this opportunity to make it quite clear that we continue to have full confidence in the integrity and professionalism of the Royal Military Police and the RAF Police who do difficult, complex and very important security work in many key Defence areas.

8. Mr Calcutt has recommended seven matters for further consideration. These are:

the potential conflict between learning the nature, extent and full circumstances of any breach of security and bringing the offender to justice;

the need to give at an early stage in an investigation clear guidance on the relative priority to be given to the counter-intelligence aspect and the criminal aspect of a security case;

whether, in certain circumstances, the 48 hour maximum period allowed under current service procedures for suspects to be detained without charge should be capable of being extended;

whether RAF Queens Regulation 1034 should be either annulled or amended;

how far the rigid application of the need to know principle may have the effect of depriving a suspect of the protection which the law provides for him;

the effect of classifying the routine documentation in security investigations; and

whether investigations such as those leading up to the Cyprus trial should be conducted from the UK rather than overseas.

The Government accepts all of Mr Calcutt's recommendations for further consideration and, the House will be informed of the outcome of this further work.

From: THE PRIVATE SECRETARY
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HOME OFFICE
QUEEN ANNE'S GATE
LONDON SW1H 9AT

21st May 1986

Dear John

THE CALCUTT REPORT: STATEMENT

Thank you for sending me a copy of your letter of 21 May enclosing a draft of this statement.

I am afraid that we feel that some amendment is needed to paragraph 4, since this does not quite reflect the advice which we have given to your officials. The present draft implies that it is Mr Ogden who makes decisions on whether an ex gratia payment should be made to someone in respect of a wrongful conviction or charge. In fact, Mr Ogden merely determines the amount of the award: the decision to make an award is taken by the Home Secretary.

I attach a revised passage which you may care to consider.

I am copying this letter to the recipients of yours.

Yours sincerely
William Booth

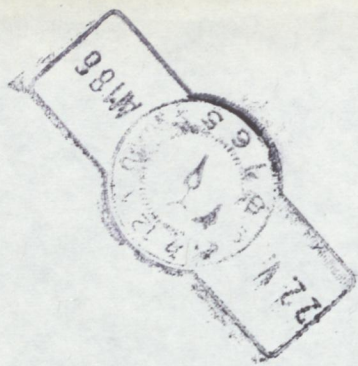
for

S W BOYS SMITH

J F M Tesh, Esq

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4. In the light of Mr Calcutt's conclusions as to the lawfulness of the custody of the servicemen, my Rt Hon Friend the Secretary of State for Defence has concluded that in the case of 7 of them he is prepared to make an ex gratia payment [in compensation for their [unlawful] [improper] custody]. The 7 servicemen concerned are [names]. On their application, my Rt Hon Friend will ask Mr Michael Ogden QC to make an independent assessment of the amount of the award in each case. (Mr Ogden acts as the independent assessor in cases where the Home Secretary has agreed to make an ex gratia payment in respect of a wrongful conviction or charge.)



LEGAL PROCEEDURE

PEREMPTORY

CHALLENGES

12/85