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CUSTODY CONTACTS of PEOPLE ACCUSED OF SECURITY OFFENCES.

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SECURITY

July 1984

Referred to	Date	Referred to	Date	Referred to	Date	Referred to	Date
~~4.7.84~~ 13/7/84.							

PREM 19/1375

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10 DOWNING STREET

From the Principal Private Secretary

13 July 1984

Dear Hugh,

Prison Contacts

The Prime Minister was grateful for the Home Secretary's minute of 3 July covering a report by the Working Party to consider ways in which better protection could be provided for security in cases like that of Michael Bettaney.

The Prime Minister has read the report with interest and notes that the Home Secretary thinks that it will be possible to make special custody arrangements on the lines outlined in the report, as had been done in the case of Bettaney. As regards contacts with legal advisers, she endorsed the conclusion which the Home Secretary has reached after consultation with the Lord Chancellor and the Attorney General that legislation should not be taken to restrict privileged contacts.

I am copying this letter to Richard Stoate (Lord Chancellor's Office), Henry Steel (Law Officers' Department), Graham Sandiford (Northern Ireland Office) and Richard Hatfield (Cabinet Office).

Yours sincerely,

Robin Butler

Hugh Taylor Esq
Home Office

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Ref. A084/2010

MR BUTLER

Thank you for your minute of 9 July on the Home Secretary's minute of 3 July to the Prime Minister covering a report by a Working Party on controlling the contacts, whilst in custody, of people accused of security offences.

2. I have now discussed the minute and the report with the Director General of the Security Service, and both he and I are content that the Prime Minister should accept the recommendation about special custody arrangements and the conclusions in the Home Secretary's minute that legislation should not be taken to restrict privileged contacts with legal advisers.

RIA

ROBERT ARMSTRONG

13 July 1984

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10 DOWNING STREET

From the Principal Private Secretary

SIR ROBERT ARMSTRONG

You will have received a copy of the Home Secretary's minute of 3 July to the Prime Minister covering a report by a Working Party on controlling the contacts, whilst in custody, of people accused of security offences.

I had envisaged that the Prime Minister would hold a meeting on this submission and the report, but the Home Secretary indicates in his covering minute that he accepts the recommendation about special custody arrangements, and the Prime Minister has indicated that she accepts the conclusions in the Home Secretary's minute that legislation should not be taken to restrict privileged contacts with legal advisers.

BF/

Could you please let me know whether you and the Security Services are content with these conclusions? If so, it does not look as if a meeting will be necessary.

F. E. R. BUTLER

9 July 1984

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Prime Minister 1 4

Conclusions at flag A.

The Home Secretary, Lord Chancellor and Attorney General are not disposed to try to obtain powers to ~~safeguard~~ interfere with unrestricted and private access to lawyers in cases like Bettaney's.

Agree? or would you like a discussion with recipients of this minute and Sir John Jones?

FERB 4.7.

Prime Minister

PRISON CONTACTS

In the light of the Bettaney case you asked me to consider what other measures could be taken to amend the law or the Prison Rules to provide better protection in cases of this sort. A Working Party has met under Home Office chairmanship to consider this matter, and I attach a copy of their report.

Since receiving the report I have reflected on the possible measures that it identifies. The report covers measures that involve changes in the law, and steps that I can take as a matter of administrative practice to minimise the risk that sensitive information will be relayed.

There are indeed useful steps that we can take in the latter respect. As we have found in relation to Bettaney himself, the placement of this kind of prisoner within the prison system has to be a matter of careful judgment, striking a difficult balance between the need to prevent the most dangerous contacts and the need not to impose a regime which could be represented as amounting to solitary confinement. Moreover if, in order to deny contact with the most dangerous category A fellow prisoners, the prisoner is to be held outside the dispersal system, the conditions must be secure and must not invite the charge that the prisoner is being treated too softly. I believe that the arrangements we have made for Bettaney's accommodation at HMP Coldingley satisfy these criteria, and that in any similar future case we should be able to find some equally satisfactory solution in the light of the particular circumstances of each case.

But the Achilles heel of any arrangements that we make within the present legal framework is the prisoner's privileged contacts with his legal advisers. The report identifies two ways of reducing the risks in this respect. The first would be to institute a procedure enabling the Crown to object to the appointment of unsuitable legal advisers. The second would be to make arrangements for a prisoner's interviews and correspondence with his legal advisers to be supervised.

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Legislation would be needed to implement either of these options; and, except in the case of supervision by one of my officials, it would have to be primary legislation.

In view of the implications that such measures would have for the courts and for the legal profession I have taken the views of Quintin Hailsham and Michael Havers before submitting the working party's report to you. None of us is attracted to either of the two main options identified in the report. They would certainly invite the most vehement opposition not only in Parliament but also in the legal profession. Michael Havers takes the view - and I am sure he is right - that such proposals would be criticised not merely by the usual civil rights lobby, but also by responsible non-political members of both branches of the legal profession. They would be seen as incompatible with the traditional and constitutional guarantees of a fair trial which the British legal system provides.

Michael Havers has also very helpfully analysed the main options from the point of view of conformity with the European Convention of Human Rights - a point alluded to in the report. He believes that it is very possible indeed that a procedure for objecting to an unsuitable choice of defence counsel would be challenged as contrary to Article 6(3)(c) of the European Convention, and that we could not be at all confident of successfully defending it. The European Court's case law provides some grounds for thinking that our position would not be absolutely hopeless, but the serious risk of a successful challenge is not one that we should take lightly.

Michael also points out that there may be grounds for challenging the other main option (supervision of legal advisers' visits) under the Convention as an interference with the accused's right to communicate freely with his legal advisers, and for those communications not to be imparted to anyone associated with the prosecution. Quintin Hailsham has highlighted the dilemma in this respect, to which the report makes reference. There is probably no public servant (whether prison officer of appointee) who could be sufficiently above suspicion to command public - or defence - confidence in his impartiality, and Quintin doubts whether there is any judicial officer suitable for the purpose envisaged. But even if such a person could be found, it is doubtful

whether someone with little of no experience of intelligence work could reasonably be expected to tell whether sensitive information was being passed or not. The only people who could really tell would be members of the security and intelligence community who would be inescapably associated with the prosecution.

I find these arguments persuasive, and would myself take the view that the case has not been made out for the implementation of either of these main options. The legislation to give them effect would be very contentious. We are already committed to a Bill on the interception of communications next session, and we are considering legislation on the protection of intelligence identities. Yet another piece of contentious legislation on a security matter could run the risk of a serious public and Parliamentary backlash. No legislative measures we might take could have any effect in relation to Bettaney himself. The circumstances of his case were in many respects unique, and it is open to question whether the chances of a recurrence justify bringing forward legislation which might do the government considerable harm in Parliament, in the legal profession, and in Strasbourg.

I am copying this minute to Quintin Hailsham, Michael Havers, Jim Prior and Sir Robert Armstrong.

L.B.

3 July 1984


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PRISON CONTACTS

REPORT BY WORKING PARTY

Following the arrest on charges under the Official Secrets Act of the Security Service officer Michael Bettaney, the Prime Minister asked the Home Secretary to review and report on the arrangements for controlling the contacts whilst in custody of similar future security cases. There is a real risk that whilst in custody people like Bettaney may attempt to pass on to hostile intelligence services or to terrorist orgnaisations highly sensitive information of which they have knowledge, particularly in relation to Northern Ireland operations. Officials of the Home Office (police, prison and legal advisers Departments), Northern Ireland Office and the Security Service under Home Office chairmanship have considered the measures that might be taken to provide better protection in any future case of this sort. The membership of the Working Party is set out in Annex 1.

Possibilities for action

2. Two main areas were identified for consideration. The first is some form of control over the choice of legal representation in cases under section 1 of the Official Secrets Act. The second is the arrangements that could practicably be made within the prison regime to exclude the most potentially dangerous contacts as far as possible, and to supervise effectively the contacts that were permitted. Whilst the imposition of controls on the choice of legal representation would require primary legislation, an effective arrangement to exclude legal advisers who were unacceptable from the national security viewpoint would be the most effective way of ensuring that lawyers' visits were not abused.

3. The problems discussed in this report potentially arise in any case where a prisoner has had access to highly sensitive information, and is suspected of being prepared to communicate that information to hostile intelligence agencies or to terrorist groups.

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But for convenience the report is set out in terms of the Bettaney case. The problems, and the legal background within the prison system, are similar whether the prisoner is on remand or covicted.

7. The introduction of such a procedure would require primary legislation, which would clearly be highly sensitive.

8. Care would also need to be taken to ensure that a procedure of the kind proposed did not infringe Article 6 of the European Convention of Human Rights which gives an accused person the right "to defend himself in person or through legal assistance of his own choosing". If the procedure were challenged under the Convention, a possible argument might be that the procedure did not deny the accused person the right to choose his legal adviser: even if his first choice were the subject of an objection, he would still have a free choice from among a very large number of qualified and independent lawyers.

Supervision of contacts whilst in custody

(a) Measures involving legal changes

9. Adequate arrangements (described under (b) below) can probably be made, without legal changes, for limiting contacts other than those with legal advisers. For legal advisers, if the procedure proposed above for objecting to an unsuitable choice of solicitors were to be adopted, it would lessen, although not altogether eliminate, the need for close supervision of contacts with legal advisers by prisoners held or convicted under section 1 of the Official Secrets Act.

10. Another possibility for supervising contacts with legal advisers, instead of or to supplement an objection procedure, would be to amend the Prison Rules. The relevant Rules are set out in Annex 2. Under Prison Rule 37(1), interviews in prison with legal advisers are conducted in sight of but out of the hearing of a prison officer. It would be possible, by amendment of this rule, to provide for such interviews to be listened to by an officer of the Secretary of State in section 1 cases in which the interests of national security required that. If Ministers thought that it would not be publicly acceptable, even in a national security case, for interviews to be listened to by a prison officer, another possibility which might be more acceptable might be to bring in

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some other officer of the Secretary of State (who was not in any way connected with the proceedings against the prisoner). In either case, the principal aim of this supervision would be largely one of deterrence against the passing of sensitive information during the interview by providing an overt third-party presence. It would also be necessary, however, for the supervising officer to have the power to intervene to terminate the interview in some cases. The main problem with this possibility would be that of finding supervising officers who were sufficiently independent of the proceedings to be publicly acceptable and at the same time sufficiently knowledgeable and authoritative to supervise the interview effectively.

11. Another option would be to have interviews in these cases supervised not by an officer of the Secretary of State but by a totally independent person (perhaps an officer of the Court). It would probably take primary legislation to achieve this, but the presentational advantages could be sufficient to justify this, particularly if Ministers were to decide in favour of primary legislation to control the choice of solicitors.

12. A similar problem arises in relation to prisoners' letters to their legal advisers. Prison Rule 37A(1) (see Annex 2), provides that, where a prisoner is a party to legal proceedings, such correspondence may be examined, in effect to ensure that the envelope does not contain extraneous material. It may also be read, but only if the Governor has reason to suppose that the correspondence contains matter not related to the proceedings. It would not seem right to expect Governors to accept responsibility for ensuring that national security is not endangered by such correspondence when their power to read the material is limited in this way. It would be possible, however, to provide for all correspondence between a prisoner charged with security offences and his legal adviser to be read by an officer of the Secretary of State or of the court: the former could be achieved by amending the Prison Rules, but the latter would require primary legislation.

(b) Measures not involving legal changes

13. A prisoner held in the highest security Category A is normally located in a dispersal prison where there is reasonable freedom of movement and association with other prisoners within the wings and in workshops, educational classes, physical recreation, exercise, film shows and concerts etc.

14. Visitors to Category A prisoners have to be approved by the Home Office Prison Department and their visits are supervised to a point where conversation can be heard. Visits to other prisoners, even in dispersal prisons, are not subject to that sort of scrutiny. Ordinary correspondence may be read by the prison authorities, and particular attention can be given to the correspondence of particular prisoners such as Bettaney. It would not be possible, however, to scrutinise all the correspondence of all his fellow prisoners. Moreover, even in a top security prison, where a Category A prisoner would normally be held following conviction and sentence, there is a good deal of movement in and out of the prison. Apart from the daily movement of staff (which, in addition to uniformed prison officers, includes chaplains, teachers and probation staff), inmates move on to other prisons, and are discharged or temporarily released - sometimes without escort - for various purposes.

15. Against this background it is unrealistic to suppose that it would be possible to eliminate every possibility of information being relayed by or to third parties. Even keeping the prisoner segregated under Prison Rule 43 (see Annex 2) would not prevent him from relaying information, and such treatment would be bound to attract substantial criticism and legal challenge in both national and European courts. The aim should thus be to provide custody arrangements which will minimise the risk of his relaying information, taking into account the circumstances of each case.

16. A particular difficulty is that the risk of escape will often place the type of prisoner concerned in Category A, and it is precisely in a Category A establishment that he will be exposed to

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the most dangerous types of contact (eg with convicted IRA terrorists). Solutions have to be sought elsewhere. As experience with Bettaney has shown, it is not easy to provide suitable placements for this type of prisoner. Each case will have to be considered in the light of its particular risks and of the accommodation available at the time. As the Bettaney case has also shown, however, on the very rare occasions when this type of case does arise, it should be possible to find a placement within the prison system which avoids the worst risks of the relaying of information. This may involve, as Bettaney's case has, the adaptation of accommodation within prisons which do not normally house Category A inmates, to provide a specially secure small unit, with a special choice of companions for the prisoner. Careful public presentation is also needed of these arrangements on each occasion for prisoners who will in the nature of things be bound to have attracted much publicity.

Conclusions

17. This report has identified various possibilities for controlling the contacts whilst in custody of those arrested on charges under the Official Secrets Act. Ministers are invited to consider:-

(1) should the Government be empowered to object to the prisoner's choice of legal advisers (paras 6-8)?

(2) should a prisoner's interviews with his legal advisers be listened to and, if necessary, terminated by a prison officer or some other officer of the Secretary of State or an officer of the Court (paras 10-11)?

(3) should a prisoner's mail be read by an officer of the Secretary of State or of the Court (para 12)?

(4) should special custody arrangements be made, as has been done for Bettaney, to limit a prisoner's

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companions and freedom of movement, usually in a special unit within a prison which does not normally house Category A inmates (paras 13-16)?

May 1984

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ANNEX 1

WORKING PARTY MEMBERSHIP

The membership of the Working Party was:-

Mr Partridge (Chairman)	Home Office
Mr Nursaw	Legal Adviser, Home Office
Mr Thomas	Prison Department, Home Office
Mr Smith	Prison Department, Home Office
Mr Le Vay	Prison Department, Home Office
Mr Sheldon	Box 500
Mr Angel	Northern Ireland Office (London)
Mr Jackson	Northern Ireland Office (Belfast)
Mr Fulton (Secretary)	Police Department, Home Office

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ANNEX 2

PRISON RULES

The following are the relevant extracts from the Prison Rules referred to in the report:-

Rule 37

Legal Advisers

37(1) The legal adviser of a prisoner in any legal proceedings, civil or criminal, to which the prisoner is a party shall be afforded reasonable facilities for interviewing him in connection with those proceedings, and may do so out of hearing but in the sight of an officer.

(2) A prisoner's legal adviser may, with the leave of the Secretary of State, interview the prisoner in connection with any other legal business in the sight and hearing of an officer.

Rule 37A

Further facilities in connection with legal proceedings

37A(1) A prisoner who is a party to any legal proceedings may correspond with his legal adviser in connection with the proceedings and unless the Governor has reason to suppose that any such correspondence contains matter not relating to the proceedings it shall not be read or stopped under Rule 33(3) of these Rules.

(2) A prisoner shall on request be provided with any writing materials necessary for the purposes of paragraph (1) of this Rule.

(3) Subject to any directions given in the particular case by the Secretary of State, a registered medical practitioner selected by or on behalf of such a prisoner as aforesaid shall be afforded reasonable facilities for

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examining him in connection with the proceedings, and may do so out of hearing but in the sight of an officer.

(4) Subject to any directions of the Secretary of State, a prisoner may correspond with a solicitor for the purpose of obtaining legal advice concerning any cause of action in relation to which the prisoner may become a party to civil proceedings or for the purpose of instructing the solicitor to issue such proceedings.

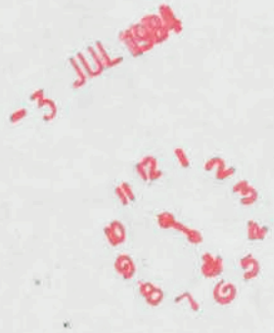
Rule 43

Removal from association

43(1) Where it appears desirable, for the maintenance of good order or discipline or in his own interests, that a prisoner should not associate with other prisoners, either generally or for particular purposes, the Governor may arrange for the prisoner's removal from association accordingly.

(2) A prisoner shall not be removed under this Rule for a period of more than 24 hours without the authority of a member of the board of visitors, or of the Secretary of State. An authority given under this paragraph shall be for a period not exceeding one month, but may be renewed from month to month.

(3) The Governor may arrange at his discretion for such a prisoner as aforesaid to resume association with other prisoners, and shall do so if in any case the medical officer so advises on medical grounds.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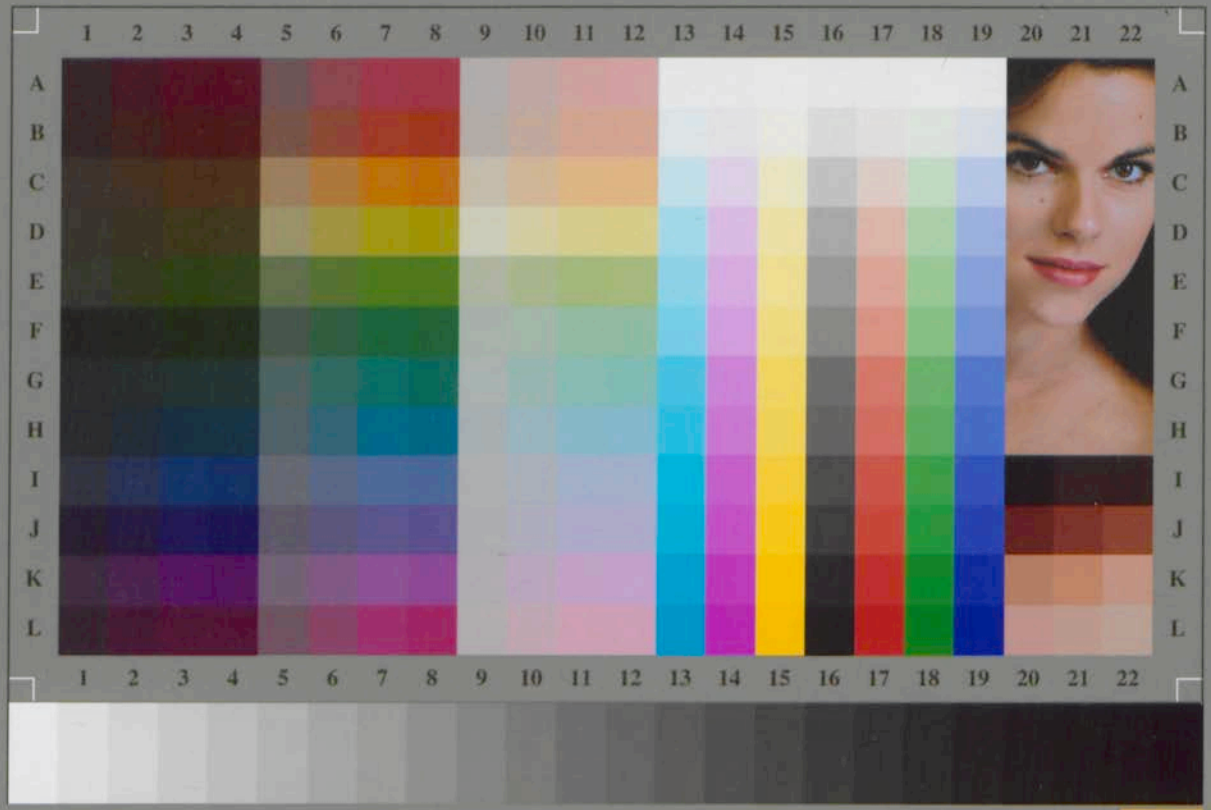

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